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PUBLIC ADVOCATES
MAKING RIGHTS REAL

August 23, 2017

Director Ken Cole
Department of Housing
County of San Mateo
264 Harbor Blvd – Building A
Belmont, CA 94002-4017

Re: Comments on the Draft Assessment of Fair Housing

Dear Director Cole:

Public Advocates welcomes the opportunity to provide comments on the Draft Assessment of Fair Housing ("AFH") for San Mateo County, Daly City, South San Francisco, Redwood City, and the City of San Mateo, and we thank you for your hard work on this important document. This letter describes changes that Public Advocates believes are necessary for the final AFH to comply with applicable legal standards and fulfill its function as a guide for rooting out housing inequality based on race, origin, disability, and other protected classes throughout the county.

As you know, the AFH is rooted in the 1968 Fair Housing Act, one of the most important legislative achievements of the civil rights movement. Enacted in the days following the assassination of Dr. Martin Luther King, Jr., the Fair Housing Act is a sweeping mandate to uproot the legacy of slavery and Jim Crow and to bend the arc of history towards justice. Crucially, Congress did not stop at merely prohibiting discrimination in housing; it required all executive departments and agencies, including the U.S. Department of Housing and Urban Development, to take affirmative steps to dismantle segregation and to

promote fair housing.[1] San Mateo and other local governments must also commit to "affirmatively further fair housing" as a condition of receiving federal funding, whether directly or indirectly.[2]

At bottom, the AFH asks what must still be done to complete the work of the civil rights movement. What urgent action is needed to reverse trends of segregation, narrow gaps in access to opportunity, and alleviate disproportionate housing needs experienced by people of color, immigrants, families with children, and people with disabilities?

While the Draft AFH correctly identifies that displacement pressures—especially evictions and increasing rents—are a key contributing factor to racial inequality in housing and opportunity, the document understates the problem and ignores some of the most important political and regulatory sources of the displacement crisis. It also fails to set out sufficient actions to address these barriers to fair housing.

To be clear: evictions, skyrocketing rents, and other displacement pressures are not merely economic issues—they are urgent civil rights burdens that fall disproportionately on people of color, immigrants, people with disabilities, and other classes protected by the Fair Housing Act.

In light of the urgent civil rights implications of the displacement crisis, San Mateo County, Daly City, South San Francisco, Redwood City, and the City of San Mateo must commit to taking aggressive steps that are reasonably targeted to mitigating displacement pressures and preventing members of protected classes (*i.e.*, people of color, immigrants, families with children, and people with disabilities) from being forced from their homes and communities. First and foremost, each jurisdiction should commit to enacting rent stabilization and just cause. Additionally, local governments in San Mateo County should also gather data on rent increases and evictions, act to allow tenants to purchase their buildings at market rate when the buildings are offered for sale, provide for relocation assistance when tenants are forced to move through no fault of their own, and prohibit discrimination against Section 8 voucher recipients.[3]

Moreover, the Draft AFH does not satisfy either its civil rights purpose or federal legal standards with regard to patterns of exclusion and segregation. Among the shortcomings in this regard, which are described in more detail below, the Draft AFH fails to identify areas of relative racial exclusion in the County, provides almost no analysis of land use and zoning restrictions that may contribute to exclusion,[4] and fails to identify areas of racial/ethnic low-income

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[1] 42 USC 3608.

[2] *See* Draft AFH, Appendix B, Letter re: "Scope of the Assessment of Fair Housing."

[3] In addition, in light of its responsibilities under its cooperating agreements with other cities in the county, San Mateo County should ensure that all cities within the county are affirmatively furthering fair housing by adopting these key anti-displacement policies.

[4] "Entitlement cities" are those cities that receive funding directly from HUD for programs like the Community Development Block Grant program, and include Daly City, South San Francisco, Redwood City, and the City of San Mateo. Entitlement cities and counties are directly required to affirmatively further fair housing, and must complete and submit an AFH. Non-entitlement cities may also be required to affirmatively further fair housing pursuant to contractual agreements entered into as a condition of participating in certain HUD programs. *See generally* Draft AFH, Appendix B, Letter re: "Scope of the Assessment of Fair Housing."

concentration adjusted for the high cost of living of the region. These inadequacies must be remedied before the final AFH is submitted to HUD.

Finally, as an overarching comment, by failing to disaggregate data pertaining to Asian American residents, the Draft AFH obscures fair housing issues relating to subgroups within that community. In particular, the Filipino and Pacific Islander communities are unlikely to enjoy the relatively rosy circumstances regarding housing and access to opportunity portrayed in the Draft AFH for Asian Americans in aggregate.[5] This lack of differentiation is inconsistent with fair housing law, which acknowledges not only race but also national origin as a protected characteristic that must be analyzed in the AFH.[6] The Final AFH must remedy this oversight.

1. **The Analysis of Displacement in the AFH Must Fully Acknowledge its Segregative Effect Within San Mateo County, and Should Identify Regulatory and Political Contributing Factors Linked to Displacement**

While Draft AFH correctly identifies displacement pressures in the rental market as a high-priority contributing factor for segregation, significant disparities in access to opportunity, and disproportionate housing needs, the Draft understates the connection between displacements of low-income renters and segregation. When the AFH states that increasing rents and the concomitant loss of affordable housing units "could lead to increased segregation,"[7] it invites doubt about whether displacement is currently resulting in segregation. Such doubt is inappropriate, particularly in light of evidence regarding the loss of African American households from the county to date, and data reported in the AFH showing that "African American and Hispanic renters are disproportionately likely to be affected by evictions relative to their share of the County's population."[8]

Then, the Draft AFH states "this segregation is most likely to occur . . . in surrounding areas where affordable housing can still be found"—completely failing to acknowledge the segregative effect of displacement pressures within San Mateo County.[9] It is a mistake to conceptualize segregation solely as the concentration of members of protected classes in certain places. Instead, it must be understood also to comprise exclusion of members of protected classes from other places. When African American and Latino residents are disproportionately forced out of their homes and thrown into a rental market that outstrips their income, the exclusionary—and thus segregative—effect of rent increases and evictions is beyond question.

Not only does the AFH understate the current and devastating fair housing impacts of displacement pressures in the rental market, it also fails to adequately investigate the conditions that have allowed this crisis to flourish. The AFH explicitly identifies both rent increases and evictions as a primary cause of displacement, but it does not acknowledge that these problems

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[5] *See* An Equity Profile of the Five-County San Francisco Bay Region for examples of disaggregated data about the Asian American population in the Bay Area, *available at* http://nationalequityatlas.org/sites/default/files/5cntyBayAreaProfile_final.pdf

[6] 24 C.F.R. § 5.154(d) (requiring analysis of fair housing issues in relation to national origin); *see also* 42 U.S.C. § 3604 (providing anti-discrimination protections on the basis of national origin); 24 C.F.R. § 5.152 (defining "protected characteristics" to include national origin).

[7] Draft AFH, V 39.

[8] Draft AFH, V 84, V 97-98.

[9] Draft AFH, V 39.

are a direct consequence of the choices made by San Mateo County local governments not to regulate rents and evictions, even though such regulations would stabilize housing opportunity. Such regulation is essential if the region is going to maintain its diversity. Moreover, the language in the AFH should be adjusted to recognize renting as an important means of obtaining access to housing, rather than suggesting renter status primarily reflects a failure to achieve homeownership.[10]

Worryingly, although community input regarding the AFH identified the deleterious effect of opposition by real estate interest groups to the key anti-displacement policies of rent stabilization and just cause, the Draft AFH does not identify interest group opposition to tenant protections as a contributing factor to segregation, significant disparities in access to opportunity, and disproportionate housing needs. As civil rights advocates have previously communicated to the Housing Department, opponents of tenant protections have resorted to racially charged language and intimidation, drawing on the same political arsenal of exclusion that has long been used to oppose affordable housing, school integration, and other civil rights goals.[11]

In discussing segregation, the AFH must acknowledge that displacement is putting the diversity of the county at risk. And the AFH cannot turn a blind eye to the political and regulatory contributing factors to the displacement crisis.

2. Participating Jurisdictions Must Commit to Taking Meaningful Action to Overcome Displacement Pressures Impacting Members of Protected Classes.

Because displacement is an urgentfair housing challenge throughout the County, and has justly been denoted as high priority in the AFH, jurisdictions participating in the AFH must identify goals and strategies that reflect a commitment to take "meaningful action" to counteract displacement.[12] Daly City, Redwood City, and South San Francisco have, as they should, identified a goal of preventing or minimizing the displacement of low-income residents.[13] San Mateo County and the City of San Mateo should adopt a similar goal. Each of the five jurisdictions should also commit to an accelerated timeline for meaningful actions to address displacement pressures in the rental market, as specified below.

The Assessment of Fair Housing is designed to serve as a guide for the far more important obligation of local jurisdictions to undertake meaningful actions "that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."[14] Meaningful actions are defined as "significant actions that are designed and can be reasonably expected to achieve a material positive change

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[10] *See, e.g.*, Draft AFH, II 5, II 8, V 88.

[11] AFH, Appendix B, Letter re: Special Interests and Civil Rights in Housing, at 5-7.

[12] 24 C.F.R. §§ 5.154(d)(4)(ii) ("In prioritizing contributing factors, program participants shall give highest priority to those factors that limit or deny fair housing choice or access to opportunity"); 5.154(d)(4)(iii) (requiring jurisdictions to "[s]et goals for overcoming the effects of [prioritized] contributing factors"); 25 C.F.R. § 5.152 (specifying that taking "meaningful actions" to address fair housing issues is an integral component of the duty to affirmatively further fair housing.)

[13] Draft AFH, page II 17, II 18, & II 22.

[14] 24 C.F.R. § 5.152; *see also* 24 C.F.R. § 91.255(a)(1) ("Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.").

that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity."[15]

As Public Advocates and other organizations have previously written, the meaningful action standard requires that participating jurisdictions must take actions that "(1) reflect the scale of the problem they address, (2) target those who are most directly affected by the problem, and which (3) reflect a robust qualitative fit between the nature of the contributing factor and the goals for mitigating or preventing its adverse impact on protected classes."[16]

Public Advocates joins others in urging the jurisdictions participating in the AFH to commit to adopting rent stabilization and just cause protections as the most fitting "meaningful action" that can be taken to address displacement pressures. (Daly City has taken a half step in this direction by committing to "[e]xplore policies pertaining to just cause eviction" in seeking to minimize displacement of low income renters.)[17] As a regulatory approach, rent stabilization and just cause can reach a far larger number of households at risk of displacement than funding or programmatic approaches. Additionally, those tenant protections would give a direct, legal benefit to renters who those who are bearing the brunt of regional displacement pressures, and by shielding them from two of the most common causes of displacement, it is precisely targeted to further the goal.

San Mateo County, Daly City, South San Francisco, Redwood City and the City of San Mateo should consider adopting the following strategies as a means of affirmatively furthering fair housing in addressing the displacement crisis:

(1) *Rent stabilization and just cause.* Enacting these policies can immediately extend important legal protections to renters, protecting them from and stabilize housing opportunity.

(2) *Data gathering*. Local governments in San Mateo County should undertake the collection of important data regarding displacement by requirement landlords to submit notices of rent increases or evictions to the local government.[18]

(3) *Tenants' First Right of Refusal.* Local governments in San Mateo County should build on a model from Washington, D.C. by adopting a rule that permits tenants to buy their buildings at market price when those buildings are offered for sale, or to assign that right to a nonprofit that would agree to manage the building as protected affordable housing. Paired with meaningful funding, this would provide a mechanism to stabilize housing for tenants at risk of displacement, and it may be more cost effective than relying solely on new construction to increase the number of protected affordable units in the county.

(4) *Relocation assistance.* Local governments in San Mateo County should also act to soften some of the harms of displacement by requiring landlords to provide relocation

[15] 24 C.F.R. § 5.152.
[16] Draft AFH, Appendix B, Letter re: "Initial Input for Draft Assessment of Fair Housing" at 6-7.
[17] Draft AFH, II 17.
[18] In order to ensure compliance, those notices should be deemed invalid if they are not provided to the local government.

assistance, building on a model from Portland, Oregon. This kind of financial assistance can aid displaced tenants in overcoming some of the cost barriers to securing housing in neighborhoods of opportunity. Redwood City has identified relocation assistance as a strategy to address displacement in the AFH.

(5) *Section 8 nondiscrimination.* Currently, landlords can choose not to accept Section 8 vouchers, limiting housing options for voucher recipients and sometimes forcing voucher recipients to look outside San Mateo County for housing options. Adopting a nondiscrimination ordinance would open up more housing opportunity within San Mateo County and remove one source of displacement pressure.

Please note that for the reasons outlined in Public Advocates' letter dated July 17, 2017, San Mateo County has a further obligation to ensure that other cities in the county that are not directly participating in the Assessment of Fair Housing are nonetheless fulfilling their contractual duties to affirmatively further fair housing.[19] Therefore, San Mateo County should not only set out a timeframe to adopt meaningful anti-displacement policies itself, it should also act to promote the adoption of such policies throughout the county.

3. The AFH Must Strengthen Its Analysis of Segregation, Significant Disparities in Access to Opportunity, and Racially and Ethnically Concentrated Areas of Poverty and Refine the Goals and Strategies Accordingly.

The Draft AFH does not identify geographical areas of exclusion within the county, or identify the factors contributing to that exclusion. For example, while the population of the entire county is majority non-Hispanic white at 51%, the populations of Daly City, South San Francisco, San Mateo, and Redwood City are all majority-minority (some by significant margins), suggesting that there must be other areas of the county where members of protected classes are underrepresented.[20] Yet those areas, which should receive prominent focus any analysis of segregation, are not identified, much less analyzed in the Draft AFH. Similarly, the AFH reports that African American residents experience the highest degree of segregation in the county, but it does not identify the cities or neighborhoods that exclude African Americans, much less analyze the contributing factors to such exclusion.

This failure extends to the analysis of significant disparities in access to opportunity as well. The HUD-provided indices show white residents (and to a lesser extent Asian residents) far outstripping African American and Latino residents in access to low poverty neighborhoods and proficient schools.[21] These results suggest geographical patterns of exclusion which the AFH fails to identify: where are the low-poverty neighborhoods in the county that African American and Latino residents do not have access to? What school districts or catchments contain high quality schools that African American and Latino children do not have access to? What barriers to access have been erected by policy, land use, or planning by the relevant cities and school districts, intentionally or otherwise?

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[19] *See* Draft AFH, Appendix B, Letter re: "Scope of the Assessment of Fair Housing."
[20] AFT Draft, V 4-9.
[21] Draft AFH, V44.

A related concern is that the Draft AFH does not adequately analyze racially and ethnically concentrated areas of economic hardship. While HUD's algorithm did not identify any racially or ethnically concentrated areas of poverty (R/ECAPs) in San Mateo County based on the federal poverty standard, this is not the end of the required analysis. It is necessary to use more locally sensitive indicators that rely on area median income to identify areas where segregation and economic hardship intersect, especially in high cost areas such as San Mateo County. The AFH Assessment Tool published by HUD explicitly asks jurisdiction to provide "additional relevant information" related to the R/ECAP analysis.[22] In San Mateo County, it would be misleading not to disclose that due to the high cost of living in the area, a formula linked to federal poverty standards fails to provide an adequate map of economic hardship—supplementing the HUD-provided data with local knowledge and data is therefore essential.

Once the geography of exclusion and hardship is more specifically identified, the AFH should then investigate the contributing factors that "create[], contribute[] to, perpetuate[], or increase[] the severity of" geographic patterns of housing inequality.[23]

Without question, key determinants of exclusion and housing opportunity in San Mateo County are land use and zoning practices that may block the construction of affordable multifamily housing. HUD anticipated the significance of zoning and land use practices by listing it as a contributing factor that should be considered with regard to each of the major areas of analysis in the AFH except fair housing enforcement.[24] Yet the Draft AFH does little if anything to grapple with these barriers. Figure V-79, which indicates what cities have adopted which housing policies, is unaccompanied by any meaningful analysis or interpretation.[25] The brief discussion of "where the policies and programs differ the most" refers only to jurisdictions participating in the AFH and does not posit any connection between the listed policies and the fair housing issues the AFH is meant to analyze.[26] The perspectives of affordable housing developers on land use and zoning practices reported in the Draft AFH are more helpful, and identify long waits for entitlements, parking requirements and height limitations, a lack of funding a developable land, and municipal preferences for commercial development as barriers they face in multiple jurisdictions.[27] Brisbane, Millbrae, and Menlo Park are mentioned as particularly inclined to prefer commercial to housing development. The AFH should take those comments as a starting point and, using the chart in Figure V-79 as a guide, conduct an analysis that specifically names cities or parts of cities that are protected by exclusionary zoning practices, and connects those practices to patterns of segregation, disparities in opportunity, and racially and ethnically concentrated areas of economic hardship.

The AFH will be substantially incomplete, and should not be accepted by HUD, if it does not include a definite analysis of land use and zoning practices in each of the twenty-one jurisdictions of the county that create barriers to housing opportunity for members of protected classes.[28] Not only is such an analysis necessary to provide an accurate assessment of the

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[22] AFH Assessment Tool at 3.
[23] 24 C.F.R. § 5.152,
[24] AFH Assessment Tool at 2, 3, 6, 7, 9, & 11.
[25] Draft AFH at V 106-07.
[26] *Id.* at 107.
[27] Draft AFH, V 107.
[28] *See* 24 C.F.R. § 5.162 ("HUD will not accept an AFH if HUD finds that the AFH or a portion of the AFH is inconsistent with fair housing or civil rights requirements or is substantially incomplete.").

contributing factors to fair housing issues for those jurisdictions that are participating in the AFH, each of the sixteen remaining cities is contractually obligated to affirmatively further fair housing pursuant to cooperating agreements with the County of San Mateo entered into as a condition of participating in the Community Development Block Grant Program.[29] San Mateo County is responsible for ensuring that they comply with this requirement, and to adequately carry out its duties in this regard it should analyze potentially exclusionary land use and zoning practices in the AFH.[30]

Once an adequate analysis of exclusionary land use and zoning practices has been completed, each of the participating jurisdictions should set a goal of reducing land use and zoning barriers to affordable multifamily housing, including a commitment by San Mateo County to work with other cities in the county to reduce those barriers as well.

4. Conclusion

The duty to affirmatively further fair housing requires that local governments that receive HUD funding take "meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."[31]

San Mateo County's landscape, along with the rest of the country, has been shaped by forces of discrimination and exclusion to the detriment of communities of color—from blockbusting[32] to mortgage discrimination[33], and from infrastructure built at the cost of communities of color to exclusionary zoning practices[34]. At a time when civil rights are increasingly threatened with erosion at the federal level, and when income inequality in the Bay Area is heightening barriers to opportunity for low-income communities of color and other vulnerable groups, the leadership of San Mateo County's local governments is sorely needed to protect and advance the cause of equal housing opportunity.

Today, the most significant civil rights challenges in San Mateo County include brutal displacement pressures in the rental market—which disproportionately impact people of color, immigrants, and people with disabilities—and the landscape of exclusion carved by land use and zoning policies of cities within the county. Public Advocates joins others in asking that the final

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[29] These cooperating agreements are on file with the County of San Mateo. The requirements for these agreements are laid out in HUD Notice CPD-17-03, *Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years (FYs) 2018-2020,* at 12-13 (April 12, 2017), *available online at* https://www.hudexchange.info/resources/documents/Notice-CPD-17-03-Instructions-for-Urban-County-Qualification-for-Participation-in-the-CDBG-Program-for-Fiscal-Years-2018-2020.pdf .
[30] *See generally* Draft AFH, Appendix B, Letter re: "Scope of the Assessment of Fair Housing."
[31] 24 C.F.R.§ 5.152.
[32] Draft AFH, V 36 (describing blockbusting and steering as discriminatory practices used in San Mateo County).
[33] Draft AFH, IV 2 (reporting that HMDA data showed higher rates of mortgage denials or subprime loans for women and racial and ethnic minorities, even after accounting for income)
[34] Draft AFH, V 36 ("Builders with intentions to develop for all types of buyers (regardless of race) found that their development sites were rezoned by planning councils, required very large minimum lot sizes, and\or were denied public infrastructure to support their developments.").

AFH squarely analyze these issues and commit the participating jurisdictions to take meaningful actions to overcome these barriers to equal housing opportunity.

Sincerely,

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