July 17, 2017

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

Re: Scope of the Assessment of Fair Housing

Dear Director Cole:

I am writing to follow up on our recent conversation regarding the scope of the Assessment of Fair Housing (“AFH”). Federal law and administrative guidance require that the analysis in the AFH encompass the entire County, including each of the twenty cities within the County’s borders.

As a direct recipient of funding from the U.S. Department of Housing and Urban Development (“HUD”), the County of San Mateo is under a duty to “affirmatively further fair housing,” that is, to take meaningful actions “that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics” such as race, national origin, familial status, and disability status. The AFH, which is required by federal regulation, is an essential predicate to compliance with the duty to affirmatively further fair housing. By identifying key fair housing issues, and the contributing factors to those issues, the AFH will lay the groundwork for San Mateo County to meaningfully expand equal housing opportunity for residents throughout the County.

1 24 C.F.R. § 5.152 (definition of “affirmatively furthering fair housing”).
Programmatically, San Mateo County’s duty to affirmatively further fair housing “extends to all of [the County’s] activities and programs relating to housing and urban development.” The geographical scope of the AFH then must at least match the breadth of the County’s urban and housing development programs, and indeed extends even further in light of the cross-border and regional influences that affect the housing market, transportation patterns, and access to opportunity within San Mateo County. As the Assessment Tool published by HUD and intended to guide the AFH analysis acknowledges, “fair housing issues and contributing factors not only cross multiple sectors—including housing, education, transportation, and commercial and economic development—but these issues are often not constrained by political-geographic boundaries.”

In particular, as I shared with you in our conversation, the AFH must analyze city zoning, land use, and housing related policies for each of the twenty cities within the County in the course of identifying the contributing factors to fair housing issues like segregation, disproportionate housing needs, or disparities in access to opportunity for people of color, immigrants, families with children, and people with disabilities. Without this analysis, the AFH will be turning a blind eye to some of the most consequential influences on housing and access to opportunity within San Mateo County.

Not only is an analysis of barriers to fair housing opportunity within the twenty San Mateo County cities necessary to enable a substantively adequate analysis of fair housing issues within the County, HUD guidance and related federal law make clear that the regional San Mateo County AFH is legally obligated to complete such an analysis, in addition to the required analysis of the County’s unincorporated communities and the two PHAs participating in this regional AFH.

As you know, the County of San Mateo has entered into cooperation agreements with the “non-entitlement” cities (or cities that do not directly receive HUD funding) within its borders for the purpose of submitting a Consolidated Plan to HUD and receiving and distributing HUD funding. Together, the County and those cooperating cities make up the “Urban County.” (Four cities in the County, South San Francisco, Daly City, Redwood City, and the City of San Mateo, are direct recipients of HUD funding and are participating in the AFH in order to comply with their own obligations under the Affirmatively Further Fair Housing Rule.)

As a condition of eligibility for participating in the Community Development Block Grant program, HUD guidance requires that the cooperation agreements (1) obligate the County

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2 Id.
3 24 C.F.R. § 5.154(d)(2) (requiring a regional analysis of each of the four categories of fair housing issues); see also 24 C.F.R. § 5.152 (defining “geographic area”). Indeed, “the inclusion of a larger regional analysis for participants is necessary to put the local fair housing issues into context required by the Fair Housing Act and case law.” HUD, Affirmatively Furthering Fair Housing Rule, 80 F.R. 42286 (July 16, 2015).
5 See, e.g., Assessment Tool, Appendix C at 10-11 for a detailed list of land use and zoning policies that may contribute to fair housing issues.
and each cooperating city to “take all actions necessary” to comply with the certification of affirmatively furthering fair housing, and (2) prohibit the County from “funding activities in, or in support of, any local government that does not affirmatively further fair housing within its jurisdiction or that impedes the County’s action to comply with its fair housing certifications.”

As the HUD guidance explains:

This provision is required because noncompliance by a unit of general local government included in an urban county may constitute noncompliance by the grantee (i.e., the urban county), that can, in turn provide cause for funding sanctions or other remedial actions by the Department.

Plainly, in order comply with the provisions of the cooperation agreements and meet its obligations under the HUD guidance, San Mateo County must analyze in the AFH whether the cities that are parties to the agreements are in fact affirmatively furthering fair housing and whether they are impeding the ability of the County to affirmatively further fair housing.

Instructive guidance can be found in a recent opinion from the protracted litigation between HUD and Westchester County, NY regarding Westchester’s failure to affirmatively further fair housing, County of Westchester v. HUD, 802 F.3d 413 (2d Cir. 2015). At issue was the decision by HUD to withhold Community Planning and Development funding from Westchester County for fiscal years 2011, 2013, and 2014 based on the inadequacies of the County’s Analysis of Impediments (the predecessor to the AFH). Specifically, HUD found that the Analysis of Impediments “failed to address whether zoning practices [within the county] were exclusionary under state and federal law, and lacked adequate strategies for bringing about changes to problematic zoning practices in some of the County’s municipalities.”

The Second Circuit upheld HUD’s withholding of funds from Westchester County, reasoning that “[b]ecause exclusionary zoning and violate the [Fair Housing Act], and because HUD is required to further the policies of that statute, it was reasonable for HUD to require the County to include in its AI an analysis of its municipalities’ zoning laws.”

In addition to these authorities, I would note that the County is also participating in the Assessment of Fair Housing in its role as the Housing Authority of San Mateo County. Many members of protected classes rely on Housing Choice Vouchers issued by the Housing Authority to secure housing throughout the County, including in non-entitlement cities. Analyzing fair housing issues and their contributing factors within non-entitlement cities is therefore essential to permit the Housing Authority to adequately carry out its duties with regard to the AFH.

I urge you to ensure that the San Mateo County AFH is compliant with HUD guidance and federal law regarding the duty to affirmatively further fair housing by including an analysis

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8 Id. at 13.
9 802 F.3d at 416.
10 Id. at 423.
11 Id. at 432.
of relevant policies, investments, and decisionmaking by each of the twenty cities within the County, in addition to the policies and practices of the County itself. In this way, the County can simultaneously support the entitlement cities and participating public housing authorities in meeting their fair housing duties, ensure that there is adequate fair housing data to guide the County’s own policy and investment decisions, and ensure that the County complies with its supervisory obligations vis a vis cities in the urban county.

As a starting place—but by no means an exhaustive list—such an analysis should encompass the following:

- A determination of whether and to what extent a city protects tenants from the significant displacement pressures in the region by limiting rent increases and regulating the valid bases for eviction;
- A determination of whether and to what extent a city has acted to address the cost barriers to developing housing affordable to protected class members in high opportunity areas by enacting linkage fees or other revenue raising measures;
- An analysis of whether provisions in a city’s zoning code and land use framework create undue barriers to the construction of affordable housing, as guided by the AFH Assessment Tool, Appendix C;12
- An analysis of the location of “opportunity sites” in a city’s housing element to determine whether the sites are located in high-opportunity neighborhoods, or whether they reflect a perpetuation of segregation patterns;
- A determination of whether a city has implemented policies and programs from its housing element that would strengthen equal housing opportunity for members of protected classes.

Finally, once this analysis is completed, the Assessment of Fair Housing should include goals and strategies that the County will use for overcoming those contributing factors to fair housing issues that have their roots in the policies, practices, and investments of non-entitlement cities within the County.

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I appreciate the hard work that you and your colleagues are doing to produce the San Mateo County AFH. Please take these comments into consideration as you complete your work. I look forward to reviewing the draft AFH and providing additional feedback in the near future.

Sincerely,

Anne Bellows

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Cc: Jeff Jackson, U.S. Department of Housing and Urban Development
Supervisor Don Horsely
Supervisor Dave Pine
Supervisor Carole Groom
Supervisor Warren Slocum
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