

Responses to Comments – Nassau County Analysis of Impediments to Fair Housing:

Nassau County's draft AI was available for public review online and at the Nassau County Office of Housing and Community Development beginning March 30, 2016. The public comment period was held open for a minimum of 30 days. All comments received at the Public Hearing, which was held on April 12, 2016, and all written comments on the AI have been carefully reviewed and considered and, as appropriate, the Final AI reflects revisions based on comments.

The following section includes all comments on the AI that were part of the public hearing and the subsequent 30 day public comment period. Each comment is followed by a detailed response. The exact written comments, as submitted to Nassau County, are provided at the rear of Appendix R. These include:

**Correspondence #1:** Transcript of Public Hearing, April 12, 2016

**Correspondence #2:** Long Island Housing Services Statement (Presentation and Comments at Public Hearing), April 12, 2016

**Correspondence #3:** Comments to Nassau County's Analysis of Impediments to Fair Housing Choice, V. Elaine Gross, April 27, 2016

**Correspondence #4:** Nassau County's Draft Analysis of Impediments to Fair Housing Choice, Federal Fiscal Years 2015-2019, Lawyers' Committee for Civil Rights Under Law, April 29, 2016

**Correspondence #5:** March 30, 2016 Draft Analysis of Impediments, Brian Stolar, Village Attorney of the Village of Sea Cliff, April 29, 2016

Correspondence #1:

**Correspondence #1, Comment #1:**

Can you just explain to us when you said that the Village of Lynbrook ranks high for its census tracts. Can you explain to us what that means especially in terms of our program because you know where we build housing.

(Katrina Brooks, Town of Hempstead, pg. 1)

**Correspondence #1, Response #1:**

What the County will do when reviewing funding applications is take a look at the location of the activity and the nature of the activity. The HOA scores will primarily be used for applications that are for the development of affordable housing. The County will look at the school proficiency index, what type of housing is proposed — is it housing for senior citizens, is it housing for the disabled or is it housing for families? The County will consider where that housing is proposed to be located and these factors will impact funding decisions made by the Nassau County Office of Housing and Community Development.

The County will prioritize funding for projects that are located in higher rated opportunity areas. The intent is to provide more opportunities for housing in different communities. As you know there are

restrictions, of course, that come with the use of Block Grant dollars and the use of HOME dollars. The County must ensure that all projects stay within the requirements of the Programs. But the HOA scores will be used in making funding decisions. It is also going to be a matter of what kind of applications the County receives. There are timeliness concerns that govern much of what the County can fund in a given program year so projects must be ready for development. The County will review applications as they are received and often it's more of a comparison of competing applications.

**Correspondence #1, Comment #2:**

I have a question that has to do with the process, specifically with the HOAs. I think we all know how the County handles regular applications for CDBG funding. But is there a way because of how you have to go about the business of obtaining these properties within a timeframe for most sellers when you want to redevelop properties for the purpose of affordable housing. Is there a way that the process can be looked at and expedited? If it is going to take four, five, six months it's going to be very hard to do that if you are going out to sign a contract with someone subject to the receipt of CDBG funds. Most sellers in a high opportunity area are not going to want to wait five or six months. So I am wondering if there is a way that awards can be expedited? Obviously, you guys do a great job getting things through your Office but if we could have things expedited through the other Departments that need to review the awards knowing that the folks on the ground are trying to negotiate deals that are impacted by this extended period of time to obtain those funds. And perhaps the contract can be written in such a way that a generic contract through your Office somehow gives flexibility in the purchase of properties that are to be used for this purpose.

(Dermot Kelly, Town of North Hempstead, pg. 2)

**Correspondence #1, Response #2:**

These are valid complaints and valid concerns that the Nassau County Office of Housing and Community Development is aware of. We have actually discussed these issues internally and we will be addressing specific situations as they arise. We are fully aware of the time constraints and we want to expedite anything that is within our control and we will work with other Departments to improve the process. It is definitely a valid concern and we give you our assurances that we will be working hand in hand with your Agency and other recipients of such funds to move the process on an on-going basis. This is absolutely a valid concern and we will address these issues and expedite projects as they come along.

**Correspondence #1, Comment #3:**

When you listed up those factors on the PowerPoint about the factors that go into how you decide where you can allocate the funding, is it the higher the score — such as the higher the score on the poverty index or transportation index — that makes the area less desirable or more desirable for the funding?

(Celia Capers, Office of Nassau County Legislature, pg. 2)

**Correspondence #1, Response #3:**

The HOA (High Opportunity Area) score is just one factor that we are considering in how we will make funding decisions. It is not the sole factor. In fact, some of these high opportunity areas are not in low and moderate income areas which would preclude us from using Block Grant dollars for certain types of activities in those areas. As I mentioned we still have to comply with the HUD Program rules. But to answer your question, the HOAs — the higher the score the more desirable the community.

**Correspondence #1, Comment #4:**

I just want to make sure — and you did hit the point that you are using a more global perspective — that this is one of many factors and you are looking into how the housing would fit in and suit the needs of the community.

(Celia Capers, Office of Nassau County Legislature, pg. 3)

**Correspondence #1, Response #4:**

Correct. In the example, the transit access score for the census tract in the Lynbrook example is a 93 out of a possible 100 score. So the transit access in that particular census tract is excellent. That particular census tract contains two Long Island Rail Road stations – the Lynbrook Station which connects to the Babylon and Long Beach Branches and the Westwood Station on the West Hempstead Branch. The area is also served by several NICE bus routes that run along Merrick Road, and Hempstead and Franklin Avenues. This provides residents with access to numerous job centers and other areas. That's a very high score so it is considered an area where someone would want to live because it gives them access to all the opportunities in the surrounding area.

**Correspondence #1, Comment #5:**

So Lynbrook vs. let's say somewhere in Great Neck — how would that factor in when you consider that there is a likelihood that in Great Neck the income level — there's going to be a very low LMI? Because there is going to be more people that are well above the poverty line? Would that still foreclose on anything being developed in some place like Great Neck?

(Celia Capers, Office of Nassau County Legislature, pg. 3)

**Correspondence #1, Response #5:**

No, Nassau County would not foreclose on development in an area based solely on LMI.

**Correspondence #1, Comment #6:**

So you would consider maybe a host of other factors. Would you consider like, for instance, like availability to transit or — what other factors would you consider that make Great Neck attractive? Just using them as a hypothetical.

**Correspondence #1, Response #6:**

Most of the applications we receive for housing cannot be compared easily because they are not equal projects. When we look at the number of units being developed, the affordability of those units, but also the location — when we are looking at location factors we want to know that the people that will be occupying those units will have access to jobs, will have access to a good school system. If it's senior housing then the school proficiency index might be something that we don't consider because there won't be any children in the development. These are all factors that will be considered in our decision. If it's housing for disabled adults school proficiency would also not be a factor but all other factors may be relevant. If it's a group home where the provider is also planning transportation to job sites then transit access and job proximity are less of a concern. The housing type will dictate how those HUD factors are considered.

**Correspondence #1, Comment #7:**

Hempstead, Roosevelt, Freeport, I don't know if they have representatives here, but would they be considered as high opportunity areas?

(Reverend Eliot, Deputy County Executive for Minority Affairs, pg. 4)

**Correspondence #1, Response #7:**

I think that's all relative. There are census tracts throughout each of those communities that have positives. It depends on what type of housing is being sited there. Again the high opportunity area scores are really things we are looking at in the placement of housing but there are needs in every community so each community is tasked with identifying the needs in its community and how they will be addressing those needs. This is just another tool that we are using to assess whether the federal funds are being used in a community to achieve the best result. So if there are factors that are in any community that are considered to be deficient and the funds are going to be used to address those deficiencies then you can consider that. But each of the census tracts are ranked by score so obviously there is going to be a #1 and a #259. We are not drawing a line in any particular place and saying that these are the high opportunity areas and these are the low opportunity areas. A lot of it is going to be a comparison. So if we receive three applications and they are in different high opportunity areas but they are also for different types of housing — we may end up funding all three of them if funding is available. It depends on the benefits and the rating factors of the individual applications. At bottom, we really go through the process a couple of times it's hard to determine how it's going to play out.

**Correspondence #1, Comment #8:**

The County is currently the subject of a federal civil rights lawsuit and a HUD Administrative Complaint alleging that the County has used federal housing funds to perpetuate segregation through deliberate

steering of funding to minority communities. It is crucial that the County take deliberate measures to re-evaluate their mission as well as methodology on distributing affordable housing throughout the County, not just in minority communities. Fair housing seeks to achieve parity for all people and families who want to pursue the American dream. Let us not stymie those efforts if we can use our time, talent and resources to effectuate viable alternatives through the Analysis of Impediments and create an environment where Nassau County reflects the diversity and inclusion in housing as well as all facets of life.

(Celia Capers, on behalf of Legislator Siela Bynoe, pg. 5)

**Correspondence #1, Response #8:**

The AI has been updated in coordination with the 2015-2019 Consolidated Plan, and will be updated as needed in accordance with HUD's Fair Housing and Equal Opportunity recommendations. Further, the County of Nassau is committed to providing fair and affordable housing opportunities for all of its residents. Efforts towards eliminating fair housing impediments are on-going and fair housing planning is a fluid process that continually affects housing and community development programs and policies. The goal of this AI is for Nassau County to not only combat discrimination but to promote integration within Nassau County communities. The AI and efforts to AFFH are fluid and ongoing and Nassau County anticipates that additional actions to overcome impediments may be identified as part of the fair housing activity statements (FHAS) to be completed by each individual consortium community.

**Correspondence #1, Comment #9:**

My question is, if you have a high opportunity area as identified by your scoring, these high opportunity areas are in a sense, to build low and moderate income housing in those communities because of your mandate for this housing for HUD — so — they used Great Neck as an example. If those communities don't have census tracts that would normally be CDBG eligible isn't that sort of, doesn't that stop in the tracks the Program of — an area that can be close to transportation and all that other sort of stuff — but it's not a CDBG eligible area then how is that high opportunity area number going to help get housing if you're using the normal HUD formula for placing that housing to begin with?

(Kendal Lampkin, Town of Hempstead, pg. 5)

**Correspondence #1, Response #9:**

That is a good question, because it points to a common misconception. There are three national objectives of the Block Grant Program, which are low and moderate income benefit, slum and blight removal and urgent need. Within the low and moderate income national objective there are different ways you can meet that test. The criteria you are referring to is the area benefit where you look at a census tract and each census tract has a low/moderate income percentage. In order for us to fund certain types of activities, say to improve a downtown community or a park, it would have to be located in a service area that has a large enough percentage of low and moderate income persons. That can't be funded in every community. There are areas throughout the County that have high enough low/mod income percentage that allow us to fund area benefit activities.

But a second test under the low/mod income benefit national objective is through housing. Under the housing component of the low/mod national objective, you are looking at the income of the persons residing in the housing. So the same way you can fund the rehabilitation of single-family housing because the homeowner qualifies as being low/mod you can use Block Grant dollars, or more importantly, HOME dollars, to assist the development of affordable housing in any area because you are looking at the beneficiaries of the housing: the people residing the housing. So in an area where you don't have a high enough low/moderate income percentage to meet our test, you can use Block Grant dollars to acquire housing, to clear an area, or fund infrastructure improvements — maybe to bring water to a site. There are ways you can use Block Grant dollars to support the development of affordable housing without it being in a low/moderate income area.

**Correspondence #1, Comment #10:**

Isn't it fair to say that those communities, minority communities on Long Island, within the Town of Hempstead or in the County in general, there is also an acute need for affordable housing even in those communities so the question of using HUD dollars specifically or only or in a large part in those communities. I mean those communities also have a need for additional affordable housing as well. Isn't that correct?

(Kendal Lampkin, Town of Hempstead, pg. 6)

**Correspondence #1, Response #10:**

Yes it is. And that is one of the weighting factors we will need to utilize when reviewing proposals. The County only receives about 40% of the HOME dollars that we were allocated only fifteen years ago so there is less money to go around. There are fewer funds to be utilized in every community so it's really a factor of weighing the different benefits of each development proposal. Just like I said, it is another tool we will use in making funding decisions. Let me just add that community support is a factor in weighing proposals too. So if there are proposals for projects in areas that may not score well in terms of high opportunity areas but the proposal evidences a great deal of community support that will help to make an application fundable.

**Correspondence #1, Comment #11:**

Why can't you check all communities in Nassau County? All, not certain areas. In the whole Nassau County to see about affordable housing? You said you had money to build affordable housing. Why don't you analyze all communities? Whether they rich or poor you should check all the communities because we would like to live in areas other than Lynbrook. You have money to build affordable housing so you should build it in all the neighborhoods, not just certain neighborhoods.

(Alanta Cockrell, pg. 6-7)

**Correspondence #1, Response #11:**

Well that is the focus of the AFFH. We are open to receiving applications for projects in all communities. Nassau County doesn't build the housing. We provide funding to assist the development. We have to receive an application for funding for an actual project. And we are open to receiving applications in any community. We are open to receiving applications for projects from members of our consortium who provide us with detailed plans as to how they will spend the monies once they are awarded the funds. So it's a matter of our Department receiving that information and making funding decisions based on the merits of an application.

**Correspondence #1, Comment #12:**

Can you explain the consortium aspect of the prior response?

(Ralph Reissman, Nassau County Attorney's Office, pg. 7)

**Correspondence #1, Response #12:**

There are thirty-two municipal members of the Nassau Urban County Consortium. Every village is invited to join the consortium. But the majority of the villages in Nassau County are not members of the consortium. But that doesn't mean they are not able to apply for funds or that a developer cannot apply for funds to develop housing in a non-participating community. It just means that they would apply to New York State rather than Nassau County.

**Correspondence #1, Comment #13:**

The primary purpose of the County's duty to affirmatively further fair housing is to take concrete actions to address residential segregation and set forth actions to promote residential integration. The County's proposed Analysis of Impediments clearly fails to do this. Indeed, it makes no mention of the decision in the fair housing case in which the County is a party. I am talking about the Garden City case which found that a zoning decision by Garden City perpetuated residential segregation and violated, clearly violated, the Fair Housing Act. The County's proposal does not set forth meaningful action steps, which is what we are looking for. We are looking for meaningful action steps designed to address the severe residential segregation in Nassau County, which is clear and obvious to any resident residing in this County. All the Analysis in the world will not reduce segregation and provide low income African American and Latino residents with real access to opportunity in the absence of meaningful action steps.

(Luca Sanchez, New York Communities for Change, pg. 7-8)

**Correspondence #1, Response #13:**

The AI has been updated in coordination with the 2015-2019 Consolidated Plan, and will be updated as needed in accordance with HUD's Fair Housing and Equal Opportunity recommendations. Further, the County of Nassau is committed to providing fair and affordable housing opportunities for all of its

residents. Efforts towards eliminating fair housing impediments are on-going and fair housing planning is a fluid process that continually affects housing and community development programs and policies. See AI Appendix A for a summary of these efforts. The goal of this AI is for Nassau County to not only combat discrimination but to promote integration within Nassau County communities. The AI and efforts to AFFH are fluid and ongoing and Nassau County anticipates that additional actions to overcome impediments may be identified as part of the fair housing activity statements (FHAS) to be completed by each individual consortium community.

Nassau County's AI provides a thorough and fair analysis of impediments to fair housing in Nassau County using the Fair Housing Planning Guide and technical assistance provided by HUD's Office of Fair Housing and Equal Opportunity. The AI does address existing local, County, State and federal rules and regulations. The AI does not address ongoing fair housing lawsuits against Nassau County and/or consortium communities as the AI is not the appropriate venue for such proceedings.

The AI is intended to be a readable and easy to understand analysis and plan to achieve fair housing. The AI should not be a document that describes parties' contentions and allegations of ongoing or pending suites requiring explanation or interpretation by an attorney.

**Correspondence #1, Comment #14:**

The draft Analysis of Impediments fails to identify impediments to fair housing choice within the villages that do not participate in the urban county consortium. The HUD regulations clearly require grantees to address impediments in their entire jurisdictions not just within consortium members in their Analysis of Impediments. This submission is particularly problematic because the villages that are not consortium members are overwhelmingly white, overwhelmingly affluent and have extremely restrictive zoning ordinances. Far from being excluded from the analyses, these villages, these thirty-seven villages, should be the starting point of any analysis. Let me just give you some quick statistics on these thirty-seven villages. Of the these thirty-seven villages that do not participate in the consortium, only two — Lake Success and Old Westbury — are less heavily non-Latino white than Nassau County as a whole. Ten villages are over 90% non-Latino white and fifteen are between 80% and 90% non-Latino white. Not a single one of the thirty-seven villages is more heavily Latino or more heavily African American than the County as a whole. And twenty-two of the thirty-seven are less than one percent African American. Only one of the thirty-seven villages — Great Neck — has a median household income that is less than that of the County as a whole. Thirteen of the thirty-seven have median household incomes greater than \$200,000 or more, and eleven of them have median household incomes between \$150,000 and \$200,000. Again, all the analysis — this is to conclude — in the world will not reduce segregation and provide low income African American and Latino residents with real access to opportunity in the absence of meaningful action steps.

(Luca Sanchez, New York Communities for Change, pg. 8)

**Correspondence #1, Response #14:**

As stated on pages 3-4 in the AI, the Nassau Urban County Consortium includes participating Cities, Towns and Villages who agree by cooperation agreement to apply for U.S Department of Housing and Urban Development (“HUD”) Community Planning and Development (“CPD”) formula fund programs including the Community Development Block Grant (“CDBG”), HOME Investment Partnerships Program (“HOME”), and Emergency Solutions Grants (“ESG”) Programs. Nassau County Office of Housing and Community Development is the administrating agent for the Nassau Urban County Consortium.

Every three years the Nassau Urban County Consortium applies for recertification to HUD as an Urban County. During this recertification process, the County solicits non- participating municipalities to join the Consortium and also provides the opportunity for participating communities to “opt out” of the Consortium.

Currently, the member municipalities (hereinafter sometimes referred to as “consortium members”) include: the Cities of Glen Cove and Long Beach, the unincorporated areas of the Towns of Hempstead, North Hempstead and Oyster Bay and the following 27 incorporated villages: Bayville, Bellerose, Cedarhurst, East Rockaway, Farmingdale, Floral Park, Freeport, Garden City, Great Neck Estates, Great Neck Plaza, Hempstead, Island Park, Lynbrook, Malverne, Manorhaven, Massapequa Park, Mineola, Munsey Park, New Hyde Park, Rockville Centre, Roslyn, Sea Cliff, South Floral Park, Stewart Manor, Valley Stream, Westbury, and Williston Park. The Village of Garden City recently signed a Cooperation Agreement which effectively deems them a member of the consortium beginning October 1, 2015.

Together, these communities are considered a “Participating Jurisdiction” or PJ. The HUD formula allocation distributed and administered by Nassau County is based solely on the population and demographics of the participating municipalities.

Non-participating municipalities are eligible to participate in the New York State CDBG, HOME and ESG programs. New York State receives HUD formula grant funding based on population and demographics. These non-participating communities are solely within the jurisdiction of the New York State “Participating Jurisdiction” and are subject to the Analysis of Impediments for Fair Housing Choice prepared by New York State Homes and Community Renewal.

**Correspondence #1, Comment #15:**

The County’s priority for affordable housing development proposals in high opportunity areas is too vague to provide confidence that family occupancy affordable housing will actually get built in these areas.

(Luca Sanchez, New York Communities for Change, pg. 8)

**Correspondence #1, Response #15:**

All funding applications for affordable housing will be considered and prioritized based on several factors including the site’s ranking in the HOA analysis. Applications (if any are ready for action) received for

CDBG, HOME, and ESG funds are screened by Nassau County Office of Housing and Community Development for completeness and compliance with applicable regulations. It is Nassau County's policy to prioritize applications for affordable housing development in communities where such development will affirmatively further both fair housing and promote integration.

The vast majority (more than 80%) of funds received by Nassau from HUD is not just for integrative housing, but for all community development activities of which integrated housing is just one. For example, the HUD Program funds provided to Nassau for the most recent calendar year were split with \$12.8 million allocated to the CDBG Program and \$1.8 million to the HOME program (which is the sole program that provides for the building of new affordable housing).

Nassau County is establishing a special set aside of up to 7.5% (increased from the 2.5% noted in the Draft AI). of its annual allocation of HUD CDBG Program funds for activities in support of affordable housing and 25% of its annual allocation of HUD HOME Program funds specifically for new construction of multi-family housing starting in PY 2017.

**Correspondence #1, Comment #16:**

The County, furthermore, has not laid out plans for using its influence to get municipalities that lack affordable housing to re-zone significant amounts of land to allow multi-family housing as a right. The County must use every tool at its disposal to do so. Again, the County's analysis of the zoning ordinances of the consortium members is deeply flawed and must be revised substantially to meaningfully address exclusionary zoning in many consortium members' jurisdictions.

(Luca Sanchez, New York Communities for Change, pg. 8-9)

**Correspondence #1, Response #16:**

Nassau County OHCD has undertaken a detailed review and analysis of zoning and land use for every individual consortium community. The zoning analysis examines zoning and residential land use patterns. The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning. Based on the detailed analysis by Nassau County, the County finds and concludes that there does not appear to be a correlation between low/moderate income minority residential patterns and residential zoning.

While Nassau County has no legal authority to amend the zoning laws or to directly alter the local public policy of Consortium members, Nassau has taken several steps to encourage Consortium members to allow multi-family housing and to affirmatively further fair housing. These actions have included hosting mandatory workshops and consortium meetings on the subject of fair housing, and holding individual meetings with consortium members to discuss the use of CDBG and HOME funds to assist with the development of multi-family housing. These efforts have demonstrated positive conclusions regarding affordable fair housing.

The cooperation agreements entered into between Nassau County and the individual consortium communities require communities to AFFH as a mandatory condition of receipt of HUD funds. Nassau can

withhold HUD funding where any particular municipality is found in violation of its cooperation agreement with Nassau.

Nassau County remains committed to promoting new affordable housing in high opportunity areas including expansion of affordable housing through state policy, enforcement, funding and inclusionary housing. Inclusionary housing, is a zoning technique whereby a municipal zoning ordinance would require a given share of new construction to be affordable by people with low to moderate incomes. Nassau County will continue to work with individual consortium communities and provide technical assistance to communities to identify opportunities to promote inclusionary housing.

**Correspondence #1, Comment #17:**

And we will provide detailed written comments on what changes need to be made in order for the Analysis of Impediments to be adequate. And just to conclude, the community participation process has been less than adequate. The County should have reached out to community-based advocates like New York Communities for Change for example, at an earlier stage in the process to ensure that the Analysis would reflect our concerns. It is deeply, deeply troubling that a County of 1.3 million people that receives over \$10 million annually in HUD funds thinks that it is acceptable to have only one or two public hearings that are in the middle of the day, and on a weekday at that. The County must consider holding additional public hearings at times that work for people with diverse work schedules and should schedule meetings with stakeholder organizations to discuss their concerns.

(Luca Sanchez, New York Communities for Change, pg. 9)

**Correspondence #1, Response #17:**

Numerous public hearings were held. Please see Correspondence #3, Response #4 for a detailed listing of Public Hearing dates. Also see Correspondence #4, Response #11.

**Correspondence #1, Comment #18:**

I am a staff attorney and program manager at Long Island Housing Services in the foreclosure prevention program. We are actually mentioned in the AI working with the County and we've been funded under the CDBG grants before. I am here today on behalf of our Executive Director, Michelle Santantonio. She will be submitting more detailed comments but I have written comments to put in also. But she asked me to also speak a little bit about our agency for anyone who is not familiar with us because it will help enlighten you about the AI, also since we are mentioned in there. Our mission is the elimination of unlawful housing discrimination, the promotion of decent affordable housing through advocacy and education. Our services, programs and use of all funds are driven by that mission. LIHS is a unique not-for-profit service provider with a well-established advocacy record of affirmatively furthering fair housing dating back to 1969, the year after the Fair Housing Act was passed. And specific to Nassau County since 1990 when we expanded to become a bi-county fair housing service provider. Some of the services we provide are fair housing enforcement and advocacy, foreclosure prevention, renter's assistance

counseling, homebuyer education programs and pre-purchase and post-purchase counseling and group education and one-on-one counseling.

(Ian Wilder, Staff Attorney and Program Manager, Long Island Housing Services, pg. 9-10)

**Correspondence #1, Response #18:**

Comments noted. Many of the services and programs provided by Long Island Housing Services are detailed in the AI.

**Correspondence #1, Comment #19:**

Good morning everybody. My name is Diane Goins. I am the Chair of New York Communities for Change on Long Island. I am a lifetime resident of Long Island. I was born and raised in Freeport, moved to Roosevelt and now I'm in Hempstead. I never quite made it to Garden City because they wouldn't let me in. Now I'm telling you this is just the testimony — and I think we'd have a lot more testimony if this hearing was later on in the day because there are a lot of folks that know how segregated Long Island is. But you don't seem to know. It's like you should have a map up there to show everybody where we live. We are clustered here, clustered there, clustered here, because we are not allowed to go to those other communities not even if they have affordable — some of us can afford to go — but we're not allowed to go. I would love to get an apartment, a senior apartment — I am retired — in Garden City. But I am not allowed to go. We just want this thing to be fair, like you said. We need our voices to be heard so that you can do a good job of putting affordable housing where it needs to be. We would like to spread all over Long Island but as it is now we can't go all over Long Island because these other communities that you don't have in your consortium — they don't want us there, just as Garden City doesn't want us there — and I know that for a fact. So you are just feeding into that. This is not helping us. None of this is helping us. We want you to help us and we want you to listen to us so that we can integrate Long Island because right now, after 73 years it's the same as it was 73 years ago. So what's wrong? Something is not being done fairly. Something is not being done right. And like I said – we're going to stand and you're going to hear our voices until that change is made on Long Island.

(Diane Goins, New York Communities for Change, pg. 10)

**Correspondence #1, Response #19:**

Unlawful discrimination is one of the most blatant impediments to fair housing. If you believe you have been a victim of unlawful discrimination, you are urged to speak with a representative from Long Island Housing Services (LIHS) or you can file a complaint with the Nassau County Commission on Human Rights.

In response to the request for maps, the AI includes a map (page 24) illustrating low/moderate income concentrations and African American concentrations and a separate map (page 25) illustrating low/moderate income concentrations and Hispanic concentrations. In addition, similar maps are provided for each individual consortium community in Appendix P.

**Correspondence #1, Comment #20:**

I am in Hempstead for twenty years. When I first started looking for my home, I didn't realize how and why, segregation is still going on. I left from the south. I was raised and born in South Carolina. If anyone here knows anything about the south in the 60's and the 50's you know what segregation is. We know how it is to be kept out of certain areas. We know when they tell you you are not allowed to go across that street. Well, when I began to look for my home in Hempstead, they said, well, you can look in the area but you can't go across that line and I'm looking for the line. The line is what they call a street. Because as I've been here and as I've been observing it and listening to different stories, the line is an invisible line that is the street. Once you cross the street on the Garden City side and Hempstead they said you cannot go across that street. It took me back to South Carolina. When I began to join NYCC I started to listen to residents around me and in my block when people were welcoming me to the block and I started sharing stories — you know what — I was dumbfounded when they told me that I couldn't go across that street to buy a house. I am a working mother. I have my children. I want them to go to the best schools because we always said education is the best thing to give your children. You try to do the best; you try to get them educated. You want them in a good environment. But, you can't go across the street. No matter how much money you have. You can't go across the street. So if anyone sitting here, and thinking that Nassau County is not segregated then we are all in for an awakening because it's true. We cannot go across the street. And Garden City is like a place I left from the south. Those are the Garden Cities. So you look at Lynbrook. You may talk about the jobs when you are all doing your analysis. Well when you look at Hempstead – transportation - you have the train station, you have the bus station right there. But guess what? You don't have the jobs. Why? Why? So I think you need to go back and start to look at Nassau as a whole and look at the peoples okay? Then come up with a better answer on how to come up with an analysis on how to serve your people here in Nassau.

(Mary Crosson, New York Communities for Change, pg. 10-11)

**Correspondence #1, Response #20:**

It is important to understand the basic rights provided to you under the fair housing laws. The premise of fair housing law is simple: everyone has the legal right to live anywhere they want (and can afford) to live. As stated in correspondence #1, response #15 above. If you believe you have been a victim of unlawful discrimination, you are urged to speak with a representative from Long Island Housing Services (LIHS) or you can file a complaint with the Nassau County Commission on Human Rights.

One of the goals of Nassau County's housing and community development programs is to provide housing opportunities and access for low and extremely low-income families outside areas of high poverty or high concentration of minority populations.

In order to determine which locations best exhibit community characteristics that have the potential to be receiving areas for new affordable housing units, an analysis of High Opportunity Areas (HOA) was conducted for the Nassau County Consortium Communities. High Opportunity Areas are locations that exhibit both social and economic indicators that would help Nassau County achieve their goals of

increased integration of affordable units in areas that provide affordable housing residents access to attributes of economic growth and mobility.

All funding applications for affordable housing will be considered and prioritized based on several factors including the site's ranking in the HOA analysis. Applications (if any are ready for action) received for CDBG, HOME, and ESG funds are screened by Nassau County Office of Housing and Community Development for completeness and compliance with applicable regulations. It is Nassau County's policy to prioritize applications for affordable housing development in communities where such development will affirmatively further both fair housing and promote integration.

**Correspondence #1, Comment #21:**

Can you speak to how the zoning analysis in Appendix P was put together, in terms of, did you rely on the consortium members to provide you with their own analysis and then you did your analysis or did you just review every zoning code and do your own analysis?

(Andrew Bolton, ERASE Racism, pg. 11)

**Correspondence #1, Response #21:**

The zoning analysis covers every community in the Nassau County Consortium. Nassau County already had every zoning code and every zoning map. That's a matter of public record. We did work with some individual communities that were undergoing re-writes or amendments to their zoning code. We reached out to either the municipal attorneys, supervisors, staff, if there were specific things that needed to be discussed. Those were usually things that are undergoing change as we speak. So to get that information, to get the zoning changes or proposed zoning changes we did reach out to them. We also worked with Nassau County to determine if there were applications that were submitted for zoning changes that had been declined because we do monitor those. Nassau County has always monitored those. So to some extent there was work with the individual members of the consortium communities. As you know from the AI the plan is to do a Fair Housing Activity Statement with every one of the individual consortium communities going forward. That will involve even greater one-on-one work with each of the consortium communities, including zoning and other patterns.

**Correspondence #1, Comment #22:**

Is there a draft FHAS yet?

(Andrew Bolton, ERASE Racism, pg. 12)

**Correspondence #1, Response #22:**

Nassau County is currently working on the preparation of a FHAS. After appropriate meetings with consortium members a final FHAS will be completed.

Correspondence #2:

**Correspondence #2, Comment #1:**

Some of the items to be addressed in further written comments relate to analysis of funds expended to address and remediate impediments; the need for more resources for systemic investigations; need for analysis of population change to include data concerning national origin [in addition to race]; more in-depth analysis related to Housing Choice [Section 8] Voucher use; analysis as to the whether the communities in which first time buyers are utilizing down payment assistance are ones that would meet 'high opportunity' expectations. We note that the draft AI does not address all protected class members; these should be included with analysis of any identified, related impediments.

(Ian Wilder, Staff Attorney and Program Manager, Long Island Housing Services, pg. 2)

**Correspondence #2, Response #1:**

Impediment #4 deals with limited availability of funds, including limited funding available to address and remediate impediments to fair housing choice and the need for more resources. The AI also discusses fair housing counseling and enforcement services and, specifically, the services provided by Long Island Housing Services including the funding provided to LIHS for these services (see AI pages 42-44).

The data analysis in the AI is focused heavily on race and income and less on national origin, particularly as the data analysis focuses on the individual consortium communities. There is a limited discussion regarding recent growth in the Asian population in Nassau County (see page 30). Going forward, Nassau County will consider gathering and analyzing national origin data as part of the FHAS process with each consortium community.

The Housing Choice Voucher (Section 8) Program has completed an analysis comparing Nassau County's Section 8 payment standard to those of the other agencies in Nassau and Suffolk, broken down by bedroom size. This analysis was submitted to HCR and as a result Nassau County's payment standard has been raised, except for studio apartments (zero bedrooms). The payment standards were changed as follows:

	Std Effective December 2015		Previous Std		Difference
0 Bedroom:	\$1,090.00		\$1,100.00		-\$10.00
1 Bedroom:	\$1,415.00		\$1,339.00		\$76.00
2 Bedroom:	\$1,718.00		\$1,600.00		\$118.00
3 Bedroom:	\$2,234.00		\$2,100.00		\$134.00
4 Bedroom:	\$2,492.00		\$2,325.00		\$167.00
5 Bedroom:	\$2,866.00		\$2,674.00		\$192.00

The low payment standard is a big impediment to Section 8 voucher recipients finding housing, especially outside of areas where there is already high utilization. The payment standard is set by New York State and it is based on HUD's Fair Market rent. HUD reduced the Fair Market Rent for Nassau/Suffolk in 2016, however. A link to the NYS HCR Section 8 Housing Choice Voucher Administrative Plan is available on Nassau County's website.

With regard to the suggestion that there be more analysis as to whether the communities in which first time buyers are utilizing down payment assistance are ones that would meet 'high opportunity' expectations, the AI provides a detailed listing of the locations of first-time homebuyer downpayment assistance homes purchased (see Table 14) and a detailed racial and ethnic summary of program beneficiaries (see Table 15).

While the analysis in the AI focuses more heavily on race, color, and disability, all protected classes are included within the overall analysis.

**Correspondence #2, Comment #2:**

We urge the County to expend greater resources to AFFH as a mandatory condition of receipt of all HUD funds as the County has a duty to require. And we also suggest greater emphases and resources allocated to advertise Nassau's Fair Housing law through print, T.V., posters/billboards and social media as an efficient means to reach larger audiences. A more comprehensive examination of the Towns in the Consortium (such as that reported for the Villages) would be useful, as the report doesn't cite to them although they are part of the consortium, therefore the population analysis of the last 10 years may need revision. Similarly, the information related to signs of integration may need closer examination: there is reference to a decrease in racial concentrations of African Americans, but information related to increase of Hispanic residents in those same areas is lacking in the analysis.

(Ian Wilder, Staff Attorney and Program Manager, Long Island Housing Services, pg. 2)

**Correspondence #2, Response #2:**

The cooperation agreements entered into between Nassau County and the individual consortium communities require communities to AFFH as a mandatory condition of receipt of HUD funds. Nassau can withhold HUD funding where any particular municipality is found in violation of its cooperation agreement with Nassau.

Nassau County will continue to allocate resources, as available, to promote and advertise fair housing including Nassau's Fair Housing law.

Data has been analyzed for Nassau County as a whole and for each of the individual consortium communities including two cities, three towns and 27 incorporated villages. Within the towns, patterns relative to race, income and zoning are provided in detail (see Maps 1 and 2 and Appendices M, O and P).

Information related to signs of integration is discussed in Impediment #1. Detailed trends from 2000-2010 are illustrated for each consortium community in Table 4. Table 4 also shows minority (black plus Hispanic) percentage of total population for 2000 and 2010. Data for each consortium community including median household income and black or Hispanic share of population is provided in Table 3.

**Correspondence #2, Comment #3:**

We note that, under Impediment #3, the report cites to zoning and land-use planning having an effect of excluding lower-income; racial groups; families with children and disabled persons from housing. The County asserts that New York State is a "home rule state" which delegates zoning authority to local towns, cities and villages. However, the County could assess possible measures to eliminate this as an impediment to affirmatively furthering fair housing: work for change to allow greater zoning control on the county and state level in order to create inclusive zoning environments, if local villages and towns are unwilling to AFFH.

(Ian Wilder, Staff Attorney and Program Manager, Long Island Housing Services, pg. 2)

**Correspondence #2, Response #3:**

Impediment #5 states that zoning may be an impediment to fair housing. For the purposes of the AI, Nassau County undertook a detailed review and analysis of zoning and land use for every individual consortium community. The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning. Within many consortium communities, Nassau County found that there does not appear to be a correlation between low/moderate income minority residential patterns and residential zoning.

It is Nassau County's intent to continue to work with consortium communities to affirmatively further fair housing and to achieve inclusive and integrated housing for all Nassau County residents.

**Correspondence #2, Comment #4:**

A frequently noted impediment is the [mis]perception that multifamily housing creates additional stress on school districts with more children attending the schools. This perception has been challenged by research which shows that multifamily housing actually leads to less numbers of children per household than single family developments.

(Ian Wilder, Staff Attorney and Program Manager, Long Island Housing Services, pg. 2)

**Correspondence #2, Response #4:**

Comments noted. Nassau County has not found and does not suggest in the AI that multifamily housing creates additional stress on school districts.

**Correspondence #2, Comment #5:**

Additionally, we note there is no mention to increase funding for greater enforcement efforts under the Human Rights Commission and there is limited discussion on what the county government is doing to AFFH through legislation, appropriations, and regulatory activities. On behalf of LIHS, thank you for this opportunity to comment.

(Ian Wilder, Staff Attorney and Program Manager, Long Island Housing Services, pg. 2)

**Correspondence #2, Response #5:**

It is Nassau County's intent to continue to allocate resources, as available, to affirmatively further fair housing and to achieve inclusive and integrated housing for all Nassau County residents. Nassau County Human Rights Law and the Nassau County Human Rights Commission are discussed in the AI (see pages 1-3). The Nassau County Human Rights Commission is discussed in further detail on pages 35-38. Table O-3 in Appendix O illustrates case resolution for cases filed with the Nassau County Human Rights Commission.

Correspondence #3:

**Correspondence #3, Comment #1:**

The draft AI is deficient in description of AFFH obligation and proposed actions. The County is severely deficient in its description of its AFFH obligation and its actions to ensure that it and the Consortium communities affirmatively further fair housing.

As detailed in these comments, the County has conducted an inadequate analysis to identify impediments and has proposed inconclusive and unsound actions to eliminate identified impediments and has failed to identify critical impediments and related actions. Further, the draft AI's proposed actions do not promote fair housing choice or provide opportunities for inclusive patterns of housing occupancy.

A review of the draft AI makes clear that the proposed actions are not those reasonably calculated to overcome the impediment of historical racial segregation.

The County does not propose any significant actions to integrate low minority-populated areas of the County, many of which are in high-opportunity communities, by committing to the development of affordable unrestricted multi-family rental housing in those areas.

(V. Elaine Gross, pg. 1)

**Correspondence #3, Response #1:**

Nassau County's AI has been undertaken in a manner consistent with HUD's Fair Housing Planning Guide and with technical assistance provided by HUD's Office of Fair Housing and Equal Opportunity. Data collection and analysis for Nassau County's AI meets or exceeds those prescribed by HUD's Fair Housing Planning Guide.

It is noted that in July 2013, HUD published a new proposed rule to Affirmatively Further Fair Housing (AFFH) which was adopted as a final rule on July 8, 2015. The adoption of the new rule was an attempt to clarify the definition of affirmatively furthering fair housing. As part of its Five (5) Year Consolidated Planning Process, Nassau County has prepared the AI, which, to the extent possible, is based on HUD's July, 2013 Proposed Rule. Thus, the data that HUD proposed to supply to grantees was not fully available from HUD. Accordingly, Nassau County has used its own resources to locate and assimilate data using the data sources identified in the Proposed Rule and/or those provided by HUD.

Based on the extensive analysis in the AI and the supporting appendices that are part of the AI, Nassau County has identified 10 impediments to fair housing and proposed specific action to overcome these impediments. Based on Nassau County's AI, the identified impediments are:

1. Discrimination in the Nassau County housing market (including discrimination based on race, income, disability, and other factors);
2. Lending policies, practices and disparities;
3. Lack of vacant land and high cost of land;
4. Limited availability of funds;
5. Public policy, zoning and local opposition;
6. Limited non-profit capacity;
7. High construction cost and high property tax burden;
8. Abandoned/deteriorating housing;
9. Employment/housing/transportation linkage;
10. Insufficient understanding of reasonable accommodation and ADA compliance;

One of the goals of Nassau County's housing and community development programs is to provide housing opportunities and access for low and extremely low-income families outside areas of high poverty or high concentration of minority populations. In this regard, the Nassau County AI identifies specific actions to be taken over the next five (5) year period to combat discrimination in housing. These actions, as detailed in the AI, are specific, measurable and consistent with HUD regulations for the implementation of CDBG and HOME Programs.

In order to determine which locations best exhibit community characteristics that have the potential to be receiving areas for new affordable housing units, an analysis of High Opportunity Areas (HOA) was conducted for the Nassau County Consortium Communities (see AI Appendix M). High Opportunity Areas are locations that exhibit both social and economic indicators that would help Nassau County achieve their goals of increased integration of affordable units in areas that provide affordable housing residents access to attributes of economic growth and mobility. In order to identify the High Opportunity Areas in the Nassau Urban County Consortium, analyses were conducted on six HUD established input variables: school proficiency, poverty, health hazard exposure, job proximity, labor market engagement, and transit access.

All funding applications for affordable housing will be considered and prioritized based on several factors including the site's ranking in the HOA analysis. Applications (if any are ready for action) received for CDBG, HOME, and ESG funds are screened by Nassau County Office of Housing and Community Development for completeness and compliance with applicable regulations. It is Nassau

County's policy to prioritize applications for affordable housing development in communities where such development will affirmatively further both fair housing and promote integration. Any project, however, that is funded is also reviewed by the Office of Housing and Community Development to ensure consistency with:

- HOME Program regulations (including affirmative fair housing marketing plans) and objectives;
- Nassau County's Consolidated Plan;
- Nassau County's fair housing efforts to overcome impediments to fair housing choice by providing housing opportunities in high opportunity areas; and
- Recommendations identified in Nassau's Ten Year Plan to End Chronic Homelessness.

Furthermore, in or about Fall 2016, Nassau County will notify consortium members that Nassau will utilize a Fair Housing Activity Statement. The County will hold an individual meeting with each community and work with them in the formulation of their Fair Housing Activity Statement. These statements will provide anecdotal and local information on zoning, settlement patterns, and other obstacles to providing additional affordable housing.

The AI and efforts to AFFH are fluid and ongoing and Nassau County anticipates that additional actions to overcome impediments may be identified as part of the fair housing activity statements (FHAS) to be completed by each individual consortium community.

**Correspondence #3, Comment #2:**

The County's monitoring plan is inadequate.

The County has not included in the draft AI or otherwise provided a draft of that document or any indication of what that assessment entails.

At the very least, the Fair Housing Activity Statement should include components found in the Texas Fair Housing Activity Statement.

(V. Elaine Gross, pg. 3)

**Correspondence #3, Response #2:**

Nassau County maintains a comprehensive monitoring plan that is in compliance with HUD regulations. The monitoring plan is discussed in additional detail in the AI (see section IV. Monitoring Performance).

Nassau is considering modeling the Fair Housing Activity Statement (FHAS) after the Texas FHAS. Nassau will refine the Texas model to better suit the needs of Nassau County and the unique needs of this consortium.

**Correspondence #3, Comment #3:**

The draft AI is not an honest assessment of impediments to fair housing choice, in part, because it fails to provide necessary context to the status of fair housing in Nassau County by intentionally omitting from the draft AI on-going and settled fair housing lawsuits against the County and/or Consortium members.

(V. Elaine Gross, pg. 4)

**Correspondence #3, Response #3:**

Nassau County's AI provides a thorough and honest analysis of impediments to fair housing in Nassau County using the Fair Housing Planning Guide. The AI does address existing local, County, State and federal rules and regulations. The AI does not address ongoing fair housing lawsuits against Nassau County and/or consortium communities as the AI is not the appropriate venue for such proceedings.

The AI is intended to be a readable and easy to understand analysis and plan to achieve fair housing. The AI should not be a document that describes parties' contentions and allegations of ongoing or pending suites requiring explanation or interpretation by an attorney.

**Correspondence #3, Comment #4:**

The County was deficient in its outreach in the creation of the draft AI and in the public comment process.

During the preparation of the draft AI, the County should have provided housing advocacy organizations and other stakeholders with more opportunities to provide input on the draft AI.

As scheduled, the County's public comment process will not provide adequate public hearings, in terms of frequency and time, in order to allow members of the public to be heard by the public and the County. The County held one public hearing on Tuesday, April 12 at 10:00 AM. The County should have held at least two public hearings, and at least one of them should have been after 5:00 PM to accommodate people who work during the daytime.

(V. Elaine Gross, pg. 5)

**Correspondence #3, Response #4:**

The data collection and public participation process used in the preparation of the Analysis of Impediments is detailed in the document under Section II Methodology. Additional public input on housing and community development needs and the preparation of the Fair Housing Plan and Analysis of Impediments was sought at three public hearings held during the Five Year (2015-2019) Consolidated Plan. These hearings were held on February 10<sup>th</sup>, May 5<sup>th</sup>, and June 30<sup>th</sup>, 2015. In preparation of the Action Plan, OHCD consulted and coordinated with County agencies, consortium communities, public housing authorities, community development agencies, and not-for-profit organizations interested in providing input on housing and community development needs and strategies. Additionally, most of the larger consortium members also held a public hearing to obtain views of citizens, public agencies and other interested parties, to obtain input on local needs, their proposed use of funds, and past performance. The municipalities hold their own public hearings and encourage participation at the local

Responses to Comments: Nassau County Analysis of Impediments to Fair Housing

level as this is where change often begins. The Five Year (2015-2019) Consolidated Plan was also reviewed by the Nassau County Legislature during its own hearings prior to submission to HUD. The following table illustrates the public hearings that have been held as part of the Consolidated Planning and Fair Housing process:

<b><u>Nassau County Public Hearings</u></b>	<b><u>Date</u></b>
First Public Hearing	February 10, 2015
Second Public Hearing	May 5, 2015
Third Public Hearing	June 30, 2015
Con Plan/Fair Housing Plan Thirty Day Comment Period	June 16, 2015 – July 16, 2015
Public Hearing AI	April 12, 2016
AI Thirty Day Comment Period	March 30, 2016-April 29, 2016
Nassau County 1st Legislative Meeting	June 29, 2015
Nassau County 2nd Legislative Meeting	July 13, 2015
<b><u>Nassau County Participation in State AI</u></b>	<b><u>Date</u></b>
Public Hearing Nassau County Legislative Building	October 1, 2015
<b><u>Municipal Public Hearings</u></b>	<b><u>Date</u></b>
Bayville Village	March 23, 2015
Bellerose Village	March 16, 2015
East Rockaway Village	March 9, 2015
Farmingdale Village	March 16, 2015
Floral Park Village	March 19, 2015
Freeport Village	March 17, 2015
Glen Cove City	February 10, 2015
Hempstead Town	February 27, 2015
Hempstead Village	February 24, 2015
Long Beach City	March 17, 2015
Lynbrook Village	March 16, 2015
Malverne Village	March 4, 2015
Massapequa Park Village	March 23, 2015
Mineola Village	March 11, 2015
North Hempstead Town	March 9, 2015
Oyster Bay Town	March 4, 2015
Rockville Centre Village	February 4, 2015
Sea Cliff Village	March 9, 2015
Stewart Manor Village	March 3, 2015
Valley Stream Village	March 23, 2015
Westbury Village	March 5, 2015
Williston Park Village	March 3, 2015

**Correspondence #3, Comment #5:**

The County is not becoming more integrated. Nassau County is misleading in its assertion that the County is “becoming increasingly more integrated”.

Certain jurisdictions that have low shares of African American residents are in close proximity, or even border, jurisdictions with much larger shares...These statistics may be evidence of barriers that the County and Consortium members are required to address moving forward.

The County should provide a comprehensive assessment of segregation within the County and within each Consortium member. This assessment should include extensive analyses of racial and income concentrations in each Consortium community, including to the degree to which areas are concentrated.

(V. Elaine Gross, pg. 6; Long Island Housing Services, pg. 2)

**Correspondence #3, Response #5:**

Nassau County is becoming more integrated based on an analysis and comparison of data between 2000 and 2010. Data has been analyzed for Nassau County as a whole and for each of the individual consortium communities including two cities, three towns and 27 incorporated villages. Within the towns, patterns relative to race, income and zoning are provided in detail (see Maps 1 and 2 and Appendices M, O and P).

Information related to signs of integration is discussed in Impediment #1. Detailed trends from 2000-2010 are illustrated for each consortium community in Table 4. Table 4 also shows minority (black plus Hispanic) percentage of total population for 2000 and 2010. Data for each consortium community including median household income and black or Hispanic share of population is provided in Table 3.

The data is clear. Nassau County uses acceptable methodologies for data collection. All data is from reliable sources such as HUD or the U.S. Census Bureau. Nassau County did not use proprietary or unreliable data sources.

Nassau County does not suggest that there is no segregation - - only that the County is, over time and based on factual data, becoming more integrated.

**Correspondence #3, Comment #6:**

The County’s analysis of Impediment #1 (housing discrimination) is inadequate. The draft AI lacks the appropriate breadth and depth of a baseline of housing discrimination in Nassau County to allow the County to provide a thorough analysis. The draft AI does not provide an analysis of housing discrimination based on disparate impact, including discriminatory policies and practices by Consortium communities.

(V. Elaine Gross, pg. 7)

**Correspondence #3, Response #6:**

Nassau County identifies discrimination in the Nassau County housing market as impediment #1. Nassau County's analysis is comprehensive. The analysis includes: segregation by income and race/national origin; historic settlement patterns; segregation amongst the disabled population; discrimination in protected classes; and other analyses. Fair housing complaints are analyzed in detail and all complaints are summarized in Appendix O. As stated earlier, Nassau County's AI has been undertaken in a manner consistent with HUD's Fair Housing Planning Guide. Data collection and analysis for Nassau County's AI meets or exceeds those prescribed by HUD's Fair Housing Planning Guide.

**Correspondence #3, Comment #7:**

The County's evaluation of fair housing complaints is not an accurate assessment of the severity of intentional discrimination.

(V. Elaine Gross, pg. 7)

**Correspondence #3, Response #7:**

Comment noted. As stated in the Nassau County AI:

*Although analyzing complaints brought by those who believe they have been victimized by illegal discrimination can by no means provide a comprehensive picture of the level of discrimination throughout Nassau County, these grievances can provide a snapshot of some of the barriers that may be impeding fair housing choice throughout the County. Further, completing an analysis of complaints of discrimination in housing is made difficult by the absence of a single county-based repository of data regarding number, type, management and outcome of complaints filed.*

**Correspondence #3, Comment #8:**

The draft AI does not provide information on the bases [sic] for which people filed housing discrimination complaints and comprehensive information on the outcomes of housing discrimination complaints. The draft AI should include the protected class bases [sic] for which people filed housing discrimination complaints with the Nassau County Human Rights Commission, the NYS Division of Human Rights, and HUD.

The draft AI should include comprehensive information on the outcomes of housing discrimination complaints in order to: 1.) increase transparency; 2.) determine if there are trends in outcomes; 3.) determine if there are geographic or other trends in complaints.

(V. Elaine Gross, pg. 7)

**Correspondence #3, Response #8:**

The requested information is provided in the AI (see pages 37-41 and Table O-3 of Appendix O).

**Correspondence #3, Comment #9:**

As part of its AFFH activities, the County should increase funding to test for discrimination, especially for discrimination based on source of income, which is a protected class under the County's Human Rights Law and may serve as a veil for other forms of discrimination, and for discrimination based on color/race, since racially segregated housing patterns continue, and in some areas are worsening, in Nassau County.

(V. Elaine Gross, pg. 8)

**Correspondence #3, Response #9:**

Nassau County will continue to allocate resources, as available, for fair housing testing. LIHS conducts testing to uncover housing discrimination and gather evidence that may be crucial to support a victim's claims or on a random basis to monitor industry practices. Nassau County will continue to provide financial assistance to LIHS matching or exceeding current levels (should HUD funds remain stable).

**Correspondence #3, Comment #10:**

The draft AI does not propose adequate actions to affirmatively further fair housing with the funds it receives. Impediment #4 – Limited availability of funds. The County does not propose adequate actions to eliminate impediments to fair housing choice and promote integration with the funds it receives and the funds it generates.

The draft AI lacks a detailed or convincing analysis to determine the reasons that it has not received many applications to build affordable housing in areas that do not have low and moderate income minority population concentrations, i.e., high opportunity areas.

(V. Elaine Gross, pg. 8)

**Correspondence #3, Response #10:**

The vast majority (more than 80%) of funds received by Nassau from HUD is not just for integrative housing, but for all community development activities of which integrated housing is just one. For example, the HUD Program funds provided to Nassau for the most recent calendar year were split with \$12.8 million allocated to the CDBG Program and \$1.8 million to the HOME program (which is the sole program that provides for the building of new affordable housing).

As stated in the AI, the following lists the specific steps Nassau County can implement over the next five year period to overcome the limited availability of funds impediment to fair housing:

1. NC OHCD will hold two public hearings per year to among other things, encourage the use of CDBG and HOME dollars for affordable housing purposes. The public, consortium

members, attorneys, developers, fair housing advocates, government entities and non-profit organizations will be invited and encouraged to provide input into fair housing initiatives and apply for funding to further those initiatives.

2. Starting in PY 2017 NC OHCD will establish a special set aside of up to 7.5% of its annual allocation of HUD CDBG Program funds for activities in support of affordable housing and 25% of its annual allocation of HUD HOME Program funds specifically for new construction of multi-family housing starting in PY 2017.
3. Continue to provide financial assistance to LIHS matching or exceeding current levels of \$95,000 per year (should HUD funds remain stable)
4. Undertake the goals of housing units rehabilitated, retained, and units created by these programs as identified in the 2015-2019 Five Year Consolidated Plan and Annual Action Plan in Table O-5 of Appendix O.
5. Work to increase the number of emergency, transitional and permanent housing units through housing support services and homelessness prevention programs with the goal of matching or exceeding 15,250 persons assisted as identified in the 2015-2019 Five Year Consolidated Plan and Annual Action Plan found in Table O-5 of Appendix O.
6. NC OHCD will actively participate in the National Association of County Community and Economic Development (NACCED) which helps counties to professionally administer federally-funded affordable housing, community development, and economic development programs that benefit their low- and moderate-income households and who advocates for federal housing progress.

The reasons that Nassau County has not received many applications to build affordable housing in areas that do not have low and moderate income minority population concentrations, i.e., high opportunity areas, are imbedded in the impediments. Going forward, as part of the Fair Housing Activity Statements (FHASs), Nassau County will further explore this with the individual consortium communities.

**Correspondence #3, Comment #11:**

The set aside should be a "hard" percentage of not less than 20%. Further, the set aside should explicitly be for affordable housing in high-opportunity communities.

(V. Elaine Gross, pg. 9)

**Correspondence #3, Response #11:**

The vast majority (more than 80%) of funds received by Nassau from HUD is not just for integrative housing, but for all community development activities of which integrated housing is just one. For example, the HUD Program funds provided to Nassau for the most recent calendar year were split with \$12.8 million allocated to the CDBG Program and \$1.8 million to the HOME program (which is the sole program that provides for the building of new affordable housing).

Nassau County has agreed to establish a special set aside of up to 7.5% of its annual allocation of HUD CDBG Program funds for activities in support of affordable housing and 25% of its annual

allocation of HUD HOME Program funds specifically for new construction of multi-family housing starting in PY 2017.

**Correspondence #3, Comment #12:**

The County should establish an affordable housing trust fund for the development of new multi-family rental units in high-opportunity communities and reconsider the use of the funds from zombie housing to prioritize funds for affordable housing in high opportunity areas.

(V. Elaine Gross, pg. 9)

**Correspondence #3, Response #12:**

At this time, Nassau County does not have an affordable housing trust fund. Should additional funding in appropriate levels become available in the future, Nassau County may consider establishing an affordable housing trust fund.

Nassau County does not have “funds from zombie housing”. The HUD Neighborhood Stabilization Program, which is no longer an active, funded program, identified eligible areas for neighborhood stabilization. HUD determined the eligible areas, not Nassau County.

“Zombie homes” are often bank-owned and sale or redevelopment of these homes may not be affordable.

**Correspondence #3, Comment #13:**

The County should establish a special priority to use County-owned property located in high-opportunity communities for unrestricted multi-family housing.

(V. Elaine Gross, pg. 9)

**Correspondence #3, Response #13:**

The Nassau County Office of Real Estate will identify county owned vacant parcels that may be available for future development as multi-family housing. As Nassau County has identified a vendor to assist with this project, it is anticipated that the project will come to fruition during PY2017. Nassau County OHCD will make every effort to assist development projects with CDBG or HOME funds in order to address affordability.

**Correspondence #3, Comment #14:**

The County does not provide actions to address Impediment #5, suggesting, without adequate analysis, that public policy, zoning and local opposition are not impediments.

The draft AI strongly suggests that public policy, zoning, and local opposition are not impediments to fair housing choice in Nassau County, as evidenced by the absence of any implementation strategies or

actions to overcome Impediments #5. However, the draft AI lacks a cogent analysis to justify the County's conclusion that public policy, zoning and local opposition are not impediments.

(V. Elaine Gross, pg. 9)

**Correspondence #3, Response #14:**

Based on HOME project applications submitted to Nassau County OHCD and Nassau County Planning Commission reviews of local zoning actions, there is no evidence to support the premise that local opposition is a substantive or measureable impediment to fair housing.

Impediment #5 states that zoning may be an impediment to fair housing. For the purposes of the AI, Nassau County undertook a detailed review and analysis of zoning and land use for every individual consortium community. The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning. Within many consortium communities, Nassau County found that there does not appear to be a correlation between low/moderate income minority residential patterns and residential zoning.

**Correspondence #3, Comment #15:**

The County's methodology for analyzing the effect of zoning provisions as those provisions relate to concentrations of low- and moderate-income, African American, and Hispanic population is too simplistic to yield a meaningful conclusion. The draft AI provides no research or analysis to suggest that NIMBYism does not exist within areas of the Consortium.

Zoning for three units will not support the density required to bring down unit cost and to permit rental rates that are within the payment standards allowed under the Housing Choice Voucher Program.

(V. Elaine Gross, pg. 10-11)

**Correspondence #3, Response #15:**

Nassau County's AI has been undertaken in a manner consistent with HUD's Fair Housing Planning Guide and with technical assistance provided by HUD's Office of Fair Housing and Equal Opportunity. Data collection and analysis for Nassau County's AI meets or exceeds those prescribed by HUD's Fair Housing Planning Guide.

Nassau County OHCD has undertaken a detailed review and analysis of zoning and land use for every individual consortium community. The zoning analysis examines zoning and residential land use patterns. The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning. Based on the detailed analysis by Nassau County, the County finds and concludes that there does not appear to be a correlation between low/moderate income minority residential patterns and residential zoning.

The methodology that was employed to undertake the zoning analysis and provide the information in the AI was reviewed:

1. The most recent zoning map for each individual consortium community was obtained and is provided in the AI. These individual consortium community **Zoning maps** have not been altered or manipulated in any way.
2. For the next step in the Detailed Zoning Analysis, the 31 separate zoning maps were digitized using GIS to assist in the analysis.
3. For comparison purposes, zones for all consortium communities were mapped and labeled with generalized categories to create commonalities throughout the consortium (**Generalized Zoning map**). A Generalized Zoning map has been created for each individual consortium community to facilitate the detailed zoning analysis.

Each consortium community has its own unique zoning ordinance with varying zoning districts. Therefore, there is not uniformity across communities in the definitions of specific zoning terms and districts. For example, a single-family district in one community permits no accessory housing, while a single-family district in another community permits accessory housing that could be rented to a non-related household, in essence, creating a two-family home. While these districts may both be labeled as single-family, the latter provides housing opportunities that the former does not. In order to provide a clearer understanding of the issues and opportunities present in these communities, the zoning districts within each community were simplified and labeled as these four generalized residential categories:

- Single-family residences (including some districts which permit accessory apartments that can only be rented to blood-relatives),
  - Two-family residences (including some single-family districts which permit accessory apartments than can be rented to anyone),
  - Three or more family residences (multi-family residences),
  - All non-residential zones where residential uses are not permitted (including all municipal variations of commercial or business, industrial/manufacturing, community/public facilities, parks/open space, and parking districts).
4. Maps illustrating areas with concentrations of African-American populations (with concentrations defined as areas where the percentage of African-Americans is higher than the percentage of African-Americans at the County level) were created. These maps also illustrated the areas where families are earning at or below the County median income. These maps were both layered on top of Generalized Zoning maps to create a map showing areas with concentrations of African-Americans with low/moderate income in relation to zoning. This analysis was also done in separate maps to depict low/moderate income Hispanic concentrations. These Low/Moderate Income and African-American or Hispanic Concentrations with Generalized Zoning maps were created for each consortium community so that the communities can be analyzed parallel to each other to determine if zoning district boundaries have dictated racial residential patterns and if racial residential patterns have a correlation to the density of residential zoning.

It must be noted that Census data provided on the maps in this section is based on census block group areas while zoning areas do not follow census boundaries. As a result, census block group data for population may be mapped in an area that does not permit any residential use if a portion of the census block group does permit residential use.

In response to the comment concerning NIMBYism, a Vision Long Island newsletter (dated June 10, 2016) states that opposition to downtown projects is "at an all-time low":

*Challenges exist - there are still delays that occur with development on LI compared to other regions. We still need more rental units and downtown housing stock, which Vision has made part of our mission over the last 19 years to address. There are numerous regulatory hurdles and general anti-small business climate in NYS.*

*The good news is that numerous municipalities have approved downtown and Transit Oriented Development projects. In a review of the project hearings over the last four years, here are the results:*

*63 project hearings in 35 communities; 50 projects had more support than opposition and were approved; 1 had more support than opposition and is pending final approval; 7 had more opposition than support and were approved; 4 had more opposition than support and were denied or withdrawn; 1 had more opposition than support and is pending final approval.*

*Vision board, staff and community partners have been represented at the above hearings and along with the public records, minutes and recorded votes can attest to the shift in support.*

*What should also be clear to critics of the pace of change and local land use control is that the bulk of the downtown redevelopment projects underway are initialized and advancing - at the request of the community. There are roughly 100 downtown business districts on LI - 60 have community driven downtown plans and 40 of those are actively approving projects. Granted there are still 40 business districts that have not shown any effort to revitalize and maybe that is why some folks are frustrated in some roundabout way.*

*Most folks now know not to call community and local business leaders, who appropriately question and influence their duly elected Villages and Town officials, names like NIMBYs. Dehumanizing real people does absolutely nothing to bridge the gap between pro redevelopment goals and real community concerns. In fact these types of approaches only widen a divide that still exists between regional interests and local communities.*

*What we have said for many years is the best way to advance change in local communities is to stop the regional critique and get off the sidelines, engage with a local civic, chamber or municipality which is happening in spades. So let's take a moment to thank the folks that are making our downtowns better you know you are deeply appreciated and making a huge difference in communities across Long Island as the results speak for themselves.*

As stated in the AI, affordable housing sponsors may be confronted with neighborhood opposition to proposed low- and moderate income developments. While some opposition can be found in the local community at times it is not the greatest obstacle to combating the housing crisis on Long Island. The other impediments listed within the 2010 AI were a greater obstacle.

While the 2010 AI identified local opposition as an impediment, current research does not demonstrate substantial local opposition to any proposed affordable housing project. Based on HOME project applications submitted to Nassau County OHCD and Nassau County Planning Commission reviews of local zoning actions, there is no evidence to support the premise that local opposition is a substantive or measureable impediment to fair housing. As such, the actions listed under Impediment #6, Local Opposition, were incorporated into actions for other impediments in the 2015 AI and local opposition was removed from the 2015 AI as a separate impediment. To the extent that local opposition remains a limited impediment to fair housing, it is identified as such in the 2015 AI under Impediment #5 Public Policy, Zoning and Local Opposition.

Nassau County agrees that zoning for three units will not support the density required to bring down unit cost and to permit rental rates that are within the payment standards allowed under the Housing Choice Voucher Program.

**Correspondence #3, Comment #16:**

The County should conduct a thorough zoning analysis to differentiate between lower and higher density multi-family housing. Zoning that allows as of right multi-family buildings with 25 or more units is imperative in order to provide the necessary economies of scale.

By placing all zoning districts into one of four categories, without factoring in whether those districts allow a type of housing as of right or by special use permit, or whether restrictions exist which make a type of housing, which is technically allowed, impossible to develop in practice, the County's analysis is flawed from the onset.

(V. Elaine Gross, pg. 11)

**Correspondence #3, Response #16:**

Density, in and of itself, does not dictate affordability. While densely developed public housing projects provide affordable rental housing, it is not Nassau County's mission or intent to provide affordable housing opportunities solely in the form of dense, multi-family rental projects. There are nine separate public housing authorities located in Nassau County. Nassau County currently has an estimated 7,450 housing units with some type of federal assistance. Of these, approximately 3,738 are public housing and approximately 3,200 are other project based assisted housing developments built under Section 202, Section 8 and Section 236 Programs, as well as being tenant based assistance under the Section 8 Certificate and Voucher Programs.

Nassau County utilizes its limited HOME funding to support the development of both rental and first-time homeownership opportunities for low and moderate income residents. Nassau County does not limit its funding of affordable units solely to those in dense multi-family buildings. Instead, Nassau County

Responses to Comments: Nassau County Analysis of Impediments to Fair Housing

recognizes that low and moderate income residents want to choose their housing location and type. Therefore, Nassau County supports a variety of housing options including single-family, two-family and multi-family housing varying from low density development to higher density development.

**Correspondence #3, Comment #17:**

The proposed action, related to Impediment #7, to prioritize affordable housing for high cost burden groups provides no analysis or data to support that action.

The draft AI provides no analysis or data that supports its contention that elderly, physically disabled, and disabled populations with non-physical disabilities are populations with a high cost burden, and that other populations, specifically African Americans and Hispanics, do not have a high cost burden.

(V. Elaine Gross, pg. 11)

**Correspondence #3, Response #17:**

Nassau County has utilized extensive analysis and data sources in preparing the AI. All data and information provided in the Nassau County Consolidated Strategy Plan and Annual Action Plan are incorporated in the AI by reference. The Nassau County Consolidated Strategy Plan and Annual Action Plan are available on Nassau County's website. Data relative to housing cost burden is provided to Nassau County directly from HUD and included in the Consolidated Plan Needs Assessment.

The primary sources of information utilized in the development of this Fair Housing Plan include:

- Demographic data available through the U.S. Census Bureau, as well as descriptive data pertaining to the Long Island housing market and trends in real estate.
- Mortgage lending trends through the analysis of data available through the Home Mortgage Disclosure Act (HMDA). Enacted by Congress in 1975 and implemented by the Federal Reserve Board's Regulation C, HMDA requires lending institutions to report public loan data. Using the loan data submitted by these financial institutions, the Federal Financial Institutions Examination Council (FFIEC) creates aggregate and disclosure reports for each metropolitan area (MA) that are available to the public at central data depositories located in each MA.
- Data from the HUD funded Analysis of Impediments to Fair Housing Choice 2004 report submitted by ICF Consulting and data from Nassau County's 2010 AI.
- The Nassau County Consolidated Strategy Plan and Annual Action Plan.
- Information collected from the Nassau County Commission on Human Rights.
- Information collected from Long Island Housing Services, a not-for-profit organization that receives funding from Nassau County to address fair housing issues in Nassau County.
- Anecdotal information collected from discussions and meetings held with local stakeholders in Long Island's housing and lending sectors, including fair housing advocacy groups.
- Existing fair housing policies and strategies in place for each of the Long Island grantees.
- Locally generated reports and other relevant data pertaining to Long Island's housing market and patterns, and local economy.
- Information collected from the 2015 Fair Housing Survey.

**Correspondence #3, Comment #18:**

African American and Hispanic renters have a disproportionate share of high housing cost burden. Further, since African Americans and Hispanics constitute disproportionate shares of the population who reside in renter-occupied housing units, restrictive zoning codes, especially those which do not allow multi-family housing as of right, have a disparate impact on families of color in Nassau County.

(V. Elaine Gross, pg. 12)

**Correspondence #3, Response #18:**

Data relative to housing cost burden is provided to Nassau County directly from HUD and included in the Consolidated Plan Needs Assessment.

The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning. Within many consortium communities, Nassau County found that there does not appear to be a correlation between low/moderate income minority residential patterns and residential zoning.

Correspondence #4:

**Correspondence #4, Comment #1:**

Nassau County must address the Second Circuit's reversal of the District Court's summary judgment decision with respect to the county's steering of housing and community development resources to African American and Latino Communities.

Remarkably, the draft AI does not mention the fact that the U.S. Court of Appeals for the Second Circuit recently reversed a District Court decision granting summary judgment to the county on the undersigned organizations' claim that the county had violated the Fair Housing Act and Title VI by intentionally steering affordable housing in the county and affordable housing and community development resources to low-income communities of color, and away from white communities, with the effect of perpetuating segregation. Any effective AI must address substantial allegations of racial discrimination in housing against the grantee preparing the analysis. The receipt of federal housing and community development funds is what triggers the county's duty to affirmatively further fair housing and to conduct this AI. How those funds are used is incredibly important to ensuring to promoting integration within the county, particularly where those allegations implicate the county's compliance with its duty to affirmatively further fair housing.

(Lawyer's Committee for Civil Rights Under Law, pg. 2)

**Correspondence #4, Response #1:**

Nassau County's AI provides a thorough and honest analysis of impediments to fair housing in Nassau County using the Fair Housing Planning Guide and technical assistance provided by HUD's Office of Fair Housing and Equal Opportunity. The AI does address existing local, County, State and federal rules and regulations. The AI does not address ongoing fair housing lawsuits against Nassau County and/or consortium communities as the AI is not the appropriate venue for such proceedings.

The AI is intended to be a readable and easy to understand analysis and plan to achieve fair housing. The AI should not be a document that describes parties' contentions and allegations of ongoing or pending suits requiring explanation or interpretation by an attorney.

**Correspondence #4, Comment #2:**

Nassau County must broaden the geographic scope of the draft AI to assess villages within the county that are not consortium members and to evaluate fair housing conditions in a regional context.

(Lawyer's Committee for Civil Rights Under Law, pg. 3)

**Correspondence #4, Response #2:**

The Nassau Urban County Consortium includes participating Cities, Towns and Villages who agree by cooperation agreement to apply for U.S Department of Housing and Urban Development ("HUD") Community Planning and Development ("CPD") formula fund programs including the Community Development Block Grant ("CDBG"), HOME Investment Partnerships Program ("HOME"), and Emergency Solutions Grants ("ESG") Programs. Nassau County Office of Housing and Community Development is the administrating agent for the Nassau Urban County Consortium.

Every three years the Nassau Urban County Consortium applies for recertification to HUD as an Urban County. During this recertification process, the County solicits non- participating municipalities to join the Consortium and also provides the opportunity for participating communities to "opt out" of the Consortium.

Currently, the member municipalities (hereinafter sometimes referred to as "consortium members") include: the Cities of Glen Cove and Long Beach, the unincorporated areas of the Towns of Hempstead, North Hempstead and Oyster Bay and the following 27 incorporated villages: Bayville, Bellerose, Cedarhurst, East Rockaway, Farmingdale, Floral Park, Freeport, Garden City, Great Neck Estates, Great Neck Plaza, Hempstead, Island Park, Lynbrook, Malverne, Manorhaven, Massapequa Park, Mineola, Munsey Park, New Hyde Park, Rockville Centre, Roslyn, Sea Cliff, South Floral Park, Stewart Manor, Valley Stream, Westbury, and Williston Park. The Village of Garden City recently signed a Cooperation Agreement which effectively deems them a member of the consortium beginning October 1, 2015.

Together, these communities are considered a "Participating Jurisdiction" or PJ. The HUD formula allocation distributed and administered by Nassau County is based solely on the population and demographics of the participating municipalities.

Non-participating municipalities are eligible to participate in the New York State CDBG, HOME and ESG programs. New York State receives HUD formula grant funding based on population and demographics. These non-participating communities are solely within the jurisdiction of the New York State "Participating Jurisdiction" and are subject to the Analysis of Impediments for Fair Housing Choice prepared by New York State Homes and Community Renewal.

With regard to the aspect of the comment suggesting that Nassau County evaluate fair housing conditions in a regional context, Nassau County actively participated in the *Implementation Plan for Sustainable Development in the New York – Connecticut Metropolitan Region*, dated May 30, 2014, which was produced through collaborative planning by a partnership of nine cities, two counties and six regional planning organizations known as the New York – Connecticut Sustainable Communities Consortium. Preparation of the Plan was funded by the Partnership for Sustainable Communities, a joint effort of the federal Departments of Housing and Urban Development (HUD), Transportation (DOT) and the Environmental Protection Agency (EPA).

The Implementation Plan for the New York Metropolitan Region included a Fair Housing and Equity Assessment (FHEA), the findings of which are summarized in the AI.

Further, in 2004, the five entitlement communities on Long Island, Nassau County, Suffolk County, Town of Babylon, Town of Islip and Town of Huntington prepared an updated Long Island Fair Housing Analysis of Impediments. This AI was prepared by ICF Consulting, a funded HUD technical services consultant.

#### **Correspondence #4, Comment #3:**

Inexplicably, the draft AI does not address fair housing conditions within communities that are not members of the Nassau Urban County Consortium and, in fact, disclaims all responsibility for considering those communities. On page four of the draft AI, the County states that the "non-participating communities are solely within the jurisdiction of the New York State 'Participating Jurisdiction' and are subject to the Analysis of Impediments for Fair Housing Choice prepared by New York State Homes and Community Renewal." Although New York State must consider non-participating communities as well as participating communities in its AI, this view of the scope of the County's obligation is incorrect both with regard to HUD regulations and as a necessary consequence of what would be necessary to conduct an effective fair housing assessment of conditions within the participating communities.

First, the applicable version of 24 C.F.R. § 91.225(a)(1) states that "[e]ach jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard (emphasis added)." Further, 24 C.F.R. § 91.5 defines a

jurisdiction as a "State or unit of general local government" and a unit of general local government as a "city town, township, county, parish, village or other general purpose political subdivision of a state; an urban county; and a consortium of such political subdivisions recognized by HUD in accordance with the HOME program (24 CFR part 92) or the CDBG program (24 CFR part 570)." Notably, this definition includes the term "county" in addition to the term "urban county." Even if the definition of an urban county is more limited than the definition of a county and may exclude the non-participating communities, Nassau County remains a county in addition to being an urban county and must analyze conditions throughout its jurisdiction as a county, which unambiguously includes the non-participating communities, alongside conditions in the participating communities.

Second, even if the language of the regulation did not directly require an analysis of conditions in the non-participating communities, such an analysis would be necessary because it is impossible to effectively assess conditions within the participating communities without considering the non-participating communities. This is especially true in Nassau County, which, as the draft AI acknowledges in Impediment #1, is segregated by race and national origin. The draft AI further notes that there are significant correlations between race and national origin and household income across participating communities. This conclusion, while valid, significantly understates the extent of the problem of segregation because the non-participating communities prove the point much more dramatically. Of the 37 villages that do not participate in the consortium, not a single one is either more heavily Latino or more heavily African American than the county as a whole. 22 out of the 37 are less than 1% African American. Only one of the 37 has a median household income that is below that of the county as a whole. This pivotal data, which is omitted from the draft AI, reflects the depth of segregation within the county and the key role that the non-participating communities play in contributing to segregation in Nassau County.

(Lawyer's Committee for Civil Rights Under Law, pg. 3-4)

**Correspondence #4, Response #3:**

Non-participating municipalities within Nassau are eligible to participate in the New York State CDBG, HOME and ESG programs. New York State receives HUD formula grant funding based on population and demographics. These non-participating communities are solely within the New York State PJ and are subject to the Analysis of impediments prepared by the New York State Division of Housing and Community Renewal (DHCR). The participating communities are subject to the Consortium's Analysis of Impediments to Fair Housing Choice.

#### **Correspondence #4, Comment #4:**

In addition to its omission of the non-participating communities, the draft AI does not ground its analysis of fair housing issues within Nassau County in the context of the broader New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area. HUD recognized the importance of the regional dimensions of fair housing issues in its new Affirmatively Furthering Fair Housing regulation and supporting assessment tools. 80 Fed. Reg. 42771 (July 17, 2015). Throughout the new Assessment of Fair Housing created under that regulation, program participants, like Nassau County, are required to discuss and analyze conditions both within their jurisdictions and within their regions. Although Nassau County prepared this draft AI under the prior fair housing planning regulation, a regional scope is still critical to understanding segregation and other fair housing issues within the county.

In particular in light of their shared border, the contrast between Queens and Nassau County is revealing. While Nassau County has a population that is 62.3% non-Latino white, Queens is only 26.2% non-Latino white. The percentages of the borough's population that are African American, Asian American, and Latino far exceed the comparable percentages in Nassau County. Proportionally and in absolute terms, Queens has vastly more rental housing and multi-family housing, which are more accessible to African American and Latino households, than does Nassau County. The effects of the factors that constrain the ability of African American and Latino households in communities like Hempstead and Roosevelt to live in predominantly white communities within Nassau County do not stop at the county line. To fully understand those effects and to devise effective strategies for overcoming them, a truly regional analysis is necessary. Without that analysis, it is not possible for a county in a metropolitan region like Nassau County to produce a valid AI.

(Lawyer's Committee for Civil Rights Under Law, pg. 4)

#### **Correspondence #4, Response #4:**

Nassau County's AI has been undertaken in a manner consistent with HUD's Fair Housing Planning Guide and with technical assistance provided by HUD's Office of Fair Housing and Equal Opportunity. Data collection and analysis for Nassau County's AI meets or exceeds those prescribed by HUD's Fair Housing Planning Guide.

Nassau County actively participated in the *Implementation Plan for Sustainable Development in the New York – Connecticut Metropolitan Region*, dated May 30, 2014, which was produced through collaborative planning by a partnership of nine cities, two counties and six regional planning organizations known as the New York – Connecticut Sustainable Communities Consortium. Preparation of the Plan was funded by the Partnership for Sustainable Communities, a joint effort of the federal Departments of Housing and Urban Development (HUD), Transportation (DOT) and the Environmental Protection Agency (EPA).

The Implementation Plan for the New York Metropolitan Region included a **Fair Housing and Equity Assessment (FHEA)**, the findings of which are summarized in the AI.

Further, in 2004, the five entitlement communities on Long Island, Nassau County, Suffolk County, Town of Babylon, Town of Islip and Town of Huntington prepared an updated Long Island Fair Housing Analysis of Impediments. This AI was prepared by ICF Consulting, a funded HUD technical services consultant.

**Correspondence #4, Comment #5:**

The methodology of Nassau County's analysis of zoning ordinances is too narrow in scope, results in false negatives because of methodological flaws, and ignores Garden City's racially discriminatory conduct.

(Lawyer's Committee for Civil Rights Under Law, pg. 4)

**Correspondence #4, Response #5:**

Nassau County's zoning analysis (AI Appendix P) has been undertaken with technical assistance provided by HUD's Office of Fair Housing and Equal Opportunity (HUD FHEO). The overall form, format and methodology for the zoning analysis was reviewed by HUD's Office of Fair Housing and Equal Opportunity and revised and expanded based on technical assistance provided by HUD FHEO. Data collection and analysis for Nassau County's AI meets or exceeds those prescribed by HUD's Fair Housing Planning Guide. The zoning analysis is not a housing affordability study. Extensive information relative to race and income are also provided in the zoning analysis. Racial discrimination is addressed elsewhere in the AI (see Impediment #1, Discrimination in the Nassau County Housing Market).

Nassau County OHCD has undertaken a detailed review and analysis of zoning and land use for every individual consortium community. The zoning analysis examines zoning and residential land use patterns. The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning. Based on the detailed analysis by Nassau County, the County finds and concludes that there does not appear to be a correlation between low/moderate income minority residential patterns and residential zoning.

The methodology that was employed to undertake the zoning analysis and provide the information in the AI was reviewed:

1. The most recent zoning map for each individual consortium community was obtained and is provided in the AI. These individual consortium community **Zoning maps** have not been altered or manipulated in any way.
2. For the next step in the Detailed Zoning Analysis, the 31 separate zoning maps were digitized using GIS to assist in the analysis.
3. For comparison purposes, zones for all consortium communities were mapped and labeled with generalized categories to create commonalities throughout the consortium (**Generalized Zoning map**). A Generalized Zoning map has been created for each individual consortium community to facilitate the detailed zoning analysis.

Each consortium community has its own unique zoning ordinance with varying zoning districts. Therefore, there is not uniformity across communities in the definitions of specific zoning terms and districts. For example, a single-family district in one community permits no accessory housing, while a single-family district in another community permits accessory housing that could be rented to a non-related household, in essence, creating a two-family home. While these districts may both be labeled as single-family, the latter provides housing opportunities that the former does not. In order to provide a clearer understanding of the issues and opportunities present in these communities, the zoning districts within each community were simplified and labeled as these four generalized residential categories:

- Single-family residences (including some districts which permit accessory apartments that can only be rented to blood-relatives),
  - Two-family residences (including some single-family districts which permit accessory apartments than can be rented to anyone),
  - Three or more family residences (multi-family residences),
  - All non-residential zones where residential uses are not permitted (including all municipal variations of commercial or business, industrial/manufacturing, community/public facilities, parks/open space, and parking districts).
4. Maps illustrating areas with concentrations of African-American populations (with concentrations defined as areas where the percentage of African-Americans is higher than the percentage of African-Americans at the County level) were created. These maps also illustrated the areas where families are earning at or below the County median income. These maps were both layered on top of Generalized Zoning maps to create a map showing areas with concentrations of African-Americans with low/moderate income in relation to zoning. This analysis was also done in separate maps to depict low/moderate income Hispanic concentrations. These Low/Moderate Income and African-American or Hispanic Concentrations with Generalized Zoning maps were created for each consortium community so that the communities can be analyzed parallel to each other to determine if zoning district boundaries have dictated racial residential patterns and if racial residential patterns have a correlation to the density of residential zoning.

**Correspondence #4, Comment #6:**

As explained above, it is critical that Nassau County consider the villages that are not participating communities in its AI. This is particularly true in connection with the issue of zoning and land use regulations. At a high level, it appears that these 37 villages have disproportionately restrictive zoning ordinances that limit the development of multi-family housing and rental housing that may be more accessible to African American and Latino families in the county and in the region. 28 of the 37 non-participating communities have a higher share of detached single-family homes than the county as a whole. In 26 villages, over 90% of housing units are detached single-family homes. Moreover, 33 out of the 37 villages have higher homeownership rates than the county as a whole. These statistics reflect the reality that the decision not to join the Nassau Urban County Consortium is significantly correlated with exclusionary practices that restrict fair housing choice for lower income

minority households and may violate the Fair Housing Act. These practices have resulted in an extremely imbalanced housing stock and stark residential segregation. Given that many of these non-participating communities are clustered geographically on the North Shore, the aggregate effect of their likely exclusionary policies is to render a significant, largely contiguous portion of the county off-limits to low-income people of color. Nassau County must revise its AI to include an analysis of zoning and land use regulations in communities that do not participate in the consortium.

(Lawyer's Committee for Civil Rights Under Law, pg. 4-5)

**Correspondence #4, Response #6:**

See Correspondence #4, Response #2 above. Further, based on the detailed analysis by Nassau County, the County finds and concludes that there does not appear to be a direct correlation between low/moderate income minority residential patterns and residential zoning.

**Correspondence #4, Comment #7:**

There are at least two notable flaws in the methodology utilized by Nassau County in the zoning analysis in the draft AL First, the analysis appears only to discuss segregation within villages and towns by comparing, for example, one portion of an individual village to another portion of that same village. An appropriate analysis should layer a comparison of villages and towns to the broader region on top of that intra-jurisdictional focus. When a jurisdiction utilizes zoning and land use controls to exclude African American and Latino households, as two federal courts have held that Garden City did, that discrimination is not discernible from a comparison of the single-family zones within such communities to their rare multi-family zones. Instead, the segregative effect of Garden City's zoning becomes apparent when one considers the extremely limited supply of land zoned for multi-family housing in that community to more diverse communities like the Village of Hempstead and like much of Queens that allow for more multifamily housing. Indeed, the reference point for determining whether exclusionary zoning exists is not merely a comparison of two zoning maps. Rather, it must also consider regional data reflecting housing tenure by race and ethnicity. When a municipality, like Garden City, places severe constraints on the development of multi-family housing, particularly renter-occupied multi-family housing for families, and African American and Latino households in the region are disproportionately likely to both rent and to live in multi-family housing that is the very essence of exclusionary zoning.

Second, in addition to the shortcomings of the county's narrow intra-jurisdictional framework, the zoning analysis fails to grapple with other, more specific ways in which zoning and land use regulations can impede fair housing choice by targeting specific groups for adverse treatment, particularly families with children and persons with disabilities. The zoning analysis indicates that many participating communities have zoning designations in their ordinances that are specific to senior housing; however, the draft AI does not analyze the effects of these zoning designations on families with children, a protected class under the Fair Housing Act or on African American and Latino families under a disparate impact analysis. Although the Fair Housing Act contains an exemption that limits liability for familial status discrimination

for housing providers who operate housing for older persons, that exemption protects the housing itself, not the zoning regulations, from scrutiny. A thorough and effective analysis of zoning in Nassau County needs to consider the wisdom and legality of zoning classifications that require senior housing.

With respect to persons with disabilities, there are multiple types of housing that are disproportionately or even exclusively resided in by persons with disabilities. These types may include residential care facilities, transitional housing, and permanent supportive housing. Across the country, many municipalities have zoning regulations that explicitly target these types of housing for adverse treatment. These ordinances often run afoul of the Fair Housing Act and constitute a major, recurring issue in fair housing law and policy at the local level. Nassau County's zoning analysis contains no discussion of these types of restrictions. In order for the county to produce valid and effective AI, it must do so.

(Lawyer's Committee for Civil Rights Under Law, pg. 5-6)

**Correspondence #4, Response #7:**

See Correspondence #4, Response #5 above. Further, the purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning.

Going forward, as part of the Fair Housing Activity Statements (FHASs), Nassau County will ascertain additional information from each individual consortium community regarding potential zoning impacts to certain housing types such as residential care facilities, transitional housing, and permanent supportive housing.

**Correspondence #4, Comment #8:**

As noted at the outset of this letter, Judge Arthur Spatt of the U.S. District Court for the Eastern District of New York found that the Village of Garden City engaged in racial discrimination in zoning in violation of the Fair Housing Act and the Equal Protection Clause of the U.S. Constitution when it rejected a zoning classification that would have made the development of affordable multi-family housing on county-owned land feasible because of racially-motivated community opposition. The U.S. Court of Appeals for the Second Circuit upheld Judge Spatt's finding of discriminatory intent on appeal. This case, in fact, is the reason why Garden City is a consortium member, as the village was required to join the consortium by Judge Spatt's remedial order. Garden City's racially discriminatory zoning decision and the subsequent federal court decisions comprise one of the most vivid illustrations of the continuing salience of fair housing in hyper-segregated Nassau County. The county's failure to grapple with the episode in its analysis of zoning in Garden City is totally unacceptable.

(Lawyer's Committee for Civil Rights Under Law, pg. 6)

**Correspondence #4, Response #8:**

Nassau County's AI provides a thorough and honest analysis of impediments to fair housing in Nassau County using the Fair Housing Planning Guide and technical assistance provided by HUD's Office of Fair Housing and Equal Opportunity. The AI does address existing local, County, State and federal rules and regulations. The AI does not address ongoing fair housing lawsuits against Nassau County and/or consortium communities as the AI is not the appropriate venue for such proceedings.

The AI is intended to be a readable and easy to understand analysis and plan to achieve fair housing. The AI should not be a document that describes parties' contentions and allegations of ongoing or pending suites requiring explanation or interpretation by an attorney.

The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning.

**Correspondence #4, Comment #9:**

In order to be meaningful, Nassau County's proposal to prioritize the use of HOME and CDBG funds in high opportunity areas must be more concrete in order for community members to assess its likely effectiveness.

In both the draft AI and in Nassau County's HOME program guidelines, the county references a new policy of prioritizing funding for affordable housing development in high opportunity areas. Appendix M of the draft AI identifies the location of those areas and explains the methodology for that identification. It is critical that the county more clearly articulate (1) the value of the priority in terms of the minimum proportion of total resources that will be invested in high opportunity areas under the new Consolidated Plan, (2) that it will only allocate funds to family-occupancy affordable housing developments under the priority for projects in high opportunity areas, and (3) that it will prioritize the development of housing that is affordable to very low- and extremely low-income households through the priority. From the perspective of translating policy into meaningful action, developers, both non-profit and for-profit, need to have the confidence that the county is weighing project location in high opportunity areas heavily enough to justify a significant investment in pre-development costs that are a necessary precondition to submitting an application to the county. If the priority is amorphous, developers may lack that sense of confidence, and little affordable housing that would have an integrative effect may be developed. From the standpoint of promoting integration and providing a countervailing force to community opposition, focusing on family-occupancy housing as opposed to senior housing is absolutely essential. On Long Island, local opposition to affordable senior housing is typically considerably less strident than opposition to housing for families, and that housing tends to be more equitably distributed, as reflected in the proliferation of senior housing-specific zoning designations discussed above. Family housing, by contrast, has been shut out of communities of opportunity in Nassau County. Lastly, nominally affordable housing that is available only to households earning between 50% and 120% of the Area Median Income for Nassau County is less likely to meaningfully foster residential integration than is housing that is affordable to

households earning less than 50% of the Area Median Income.

(Lawyer's Committee for Civil Rights Under Law, pg. 6-7)

**Correspondence #4, Response #9:**

Nassau County's policy of prioritizing funding for affordable housing development is not a new policy. Prior to the receipt of the HUD data that led to the development of the high opportunity indices, the County considered the low/moderate income percentages and minority concentration when reviewing applications. As per the County's HOME Program Guidelines, all HOME funding applications were reviewed to ensure consistency with: Nassau County's Fair Housing Initiative to overcoming impediments to fair housing choice by providing housing opportunities in non-impacted communities.

**Correspondence #4, Comment #10:**

Needed zoning reform must allow for increased density across a broad range of communities.

At various junctures, the draft AI focuses on the need for zoning to facilitate affordable multi-family housing near transit or on county-owned land and includes the Nassau County Infill Redevelopment Study as Appendix F. These references to changes in zoning and land use regulations do not go nearly far enough and do not reflect a fair housing perspective. Notably, Appendix F does not reference segregation in Nassau County or the need to promote integration. With respect to Garden City, the study rates the infill opportunities near transit stations in the village relatively lowly, relying in part on lack of community support as a justification. Consistent with the omission of any mention of our litigation against Garden City and Nassau County, the study does not note that a federal court found that community opposition to multi-family housing in Garden City was racially discriminatory just five and a half months before the publication of the study.

Additionally, given the lack of undeveloped land in Nassau County and, in particular, in historically exclusionary high opportunity communities, there is a pressing need for villages and towns to rezone land that has been built out at low density but that could be reused for multi-family housing, including affordable housing. Prospective upzoning, accompanied by appropriate consideration of the effect of such upzoning on surrounding communities, is critical to creating the economic conditions in which Nassau County can truly address the twin challenges of housing affordability and residential segregation. The county has an obligation under the duty to affirmatively further fair housing to use its leverage as a grantor and its negotiating position with respect to cooperation agreements to incentivize municipalities to rezone land for higher density.

(Lawyer's Committee for Civil Rights Under Law, pg. 7)

**Correspondence #4, Response #10:**

The Nassau County AI very clearly states that there is discrimination in the Nassau County housing market and the AI analyzes segregation by race and income (see section starting on page 29). Throughout the AI,

Nassau County is very clear that it must actively and affirmatively promote integration (see AI pages 28, 31, 38, 97, 99, and elsewhere).

The commenter references the Nassau County Infill Redevelopment Study (Appendix F in the AI). It should be noted that the Infill Redevelopment Study was undertaken by the New York – Connecticut Sustainable Communities Consortium and is dated March 21, 2014. The Infill Redevelopment Study is one of many resources that Nassau County examined as part the AI. The Infill Redevelopment Study was not a result of the AI process.

As part of the AI, Nassau County has undertaken a very detailed zoning analysis (see AI Appendix P). The purpose of the zoning analysis is to determine whether there is a correlation between low/moderate income minority residential patterns and residential zoning. Within many consortium communities, Nassau County found that there does not appear to be a correlation between low/moderate income minority residential patterns and residential zoning. The zoning analysis is not a housing affordability study. Many of the concepts suggested in the comment above, pertain to housing affordability and not zoning. Well planned, quality affordable housing in high opportunity areas is created not by simply zoning for the greatest density. Appropriate density is one of many factors that contribute to quality affordable housing in integrated communities.

**Correspondence #4, Comment #11:**

The community participation process for this AI has been inadequate.

HUD's Fair Housing Planning Guide calls for effective, ongoing communication and relationships with all segments of the community during the AI process at p. 2-12. HUD's new Affirmatively Furthering Fair Housing regulation places increased emphasis on meaningful community participation. See 24 C.F.R. 5.158. The serious flaws in the draft AI are indicative of a process in which Nassau County included minimal community participation and did not solicit input from community stakeholders at an early enough stage. It appears that the county did little more than to hold one public hearing during the middle of the day on a week day, a time at which it would be difficult for many people to attend due to their work schedules. Aside from that public hearing, the acceptance of written public comments, of which the submission of this letter is a part, appears to be the remainder of the community participation process. The county took both of these steps after it had a completed draft thus preventing stakeholders from informing the drafting process before significant resources were devoted to methodologically unsound approaches. Although the county was right to do both of the two things that it did do to solicit input, much more was needed. In addition to having additional public hearings at different times and in different locations that would be accessible to a broader cross-section of stakeholders in the county and the region, the county should have begun to meet with stakeholders before the beginning of the drafting process. If they would have done so, MHANY and NYCC would have been able to provide much of the input contained in this letter before a word of the draft AI was written.

(Lawyer's Committee for Civil Rights Under Law, pg. 7-8)

#### **Correspondence #4, Response #11:**

The data collection and public participation process used in the preparation of the Analysis of Impediments is detailed in the document under Section II Methodology. Additional public input on housing and community development needs and the preparation of the Fair Housing Plan and Analysis of Impediments was sought at three public hearings held during the Five Year (2015-2019) Consolidated Plan. These hearings were held on February 10<sup>th</sup>, May 5<sup>th</sup>, and June 30<sup>th</sup>, 2015. In preparation of the Action Plan, OHCD consulted and coordinated with County agencies, consortium communities, public housing authorities, community development agencies, and not-for-profit organizations interested in providing input on housing and community development needs and strategies. Additionally, each of the larger consortium members also held a public hearing to obtain views of citizens, public agencies and other interested parties, to obtain input on local needs, their proposed use of funds, and past performance. The Five Year (2015-2019) Consolidated Plan was also reviewed by the Nassau County Legislature during its own hearings prior to submission to HUD.

The draft AI was available for public review online and at the Nassau County Office of Housing and Community Development beginning March 30, 2016. The public comment period was held open for a minimum of 30 days. All comments received are being carefully reviewed and considered and, as appropriate, the Final AI reflects revisions based on comments.

Nassau County did extensive outreach to community groups, non-profits, housing advocates and others throughout the development of the AI. As stated in the AI, the primary sources of information utilized in the development of this Fair Housing Plan include:

- Demographic data available through the U.S. Census Bureau, as well as descriptive data pertaining to the Long Island housing market and trends in real estate.
- Mortgage lending trends through the analysis of data available through the Home Mortgage Disclosure Act (HMDA). Enacted by Congress in 1975 and implemented by the Federal Reserve Board's Regulation C, HMDA requires lending institutions to report public loan data. Using the loan data submitted by these financial institutions, the Federal Financial Institutions Examination Council (FFIEC) creates aggregate and disclosure reports for each metropolitan area (MA) that are available to the public at central data depositories located in each MA.
- Data from the HUD funded Analysis of Impediments to Fair Housing Choice 2004 report submitted by ICF Consulting and data from Nassau County's 2010 AI.
- The Nassau County Consolidated Strategy Plan and Annual Action Plan.
- Information collected from the Nassau County Commission on Human Rights.
- Information collected from Long Island Housing Services, a not-for-profit organization that receives funding from Nassau County to address fair housing issues in Nassau County.
- Anecdotal information collected from discussions and meetings held with local stakeholders in Long Island's housing and lending sectors, including fair housing advocacy groups.
- Existing fair housing policies and strategies in place for each of the Long Island grantees.
- Locally generated reports and other relevant data pertaining to Long Island's housing market and patterns, and local economy.
- Information collected from the 2015 Fair Housing Survey.

Nassau County's Fair Housing Survey was sent via email to various governmental, non-profit, and civic organizations within the Consortium. A total of 30 responses were received including responses from housing advocacy groups such as Erase Racism and Long Island Housing Services.

As stated earlier, Nassau County's AI has been undertaken in a manner consistent with HUD's Fair Housing Planning Guide. Data collection and analysis, including public input, for Nassau County's AI meets or exceeds those prescribed by HUD's Fair Housing Planning Guide. Throughout the development of the AI, Nassau County took great measures to insure that stakeholders informed the drafting of the AI.

Also see Correspondence #3, Response #4 for a detailed listing of Public Hearing dates.

#### Correspondence #5:

The comments are submitted to address the section of Appendix P containing the Sea Cliff zoning analysis (Appendix P, pages 180-185).

#### **Correspondence #5, Comment #1:**

The United States Census Bureau percentages are incorrect and should be modified to reflect the correct percentages. As calculated currently, the total percentage equals 177.1%.

(Brian Stolar, Village Attorney of the Village of Sea Cliff, pg. 1)

#### **Correspondence #5, Response #1:**

Comment noted. The zoning analysis has been corrected and now states the following:

*As of the 2010 census the population was 92.8% White, 2.4% Black or African American, 0.1% Native American, 1.9% Asian, 0.02% Pacific Islander, 0.95% from other races, and 1.4% from two or more races. Hispanic or Latino of any race were 6.8% of the population.*

#### **Correspondence #5, Comment #2:**

The Village does not have a "zoning ordinance". The Village's zoning regulations relating to use districts and permitted uses within those districts are contained in the Village Code, Chapter 138 entitled "Zoning".

(Brian Stolar, Village Attorney of the Village of Sea Cliff, pg. 1)

#### **Correspondence #5, Response #2:**

Comment noted. The Zoning Analysis (Appendix P in the AI) has been corrected.

#### **Correspondence #5, Comment #3:**

The last sentence in the "Zoning Ordinance" section is incorrect. The Village Public Housing Authority guidelines provide for an expansion of accessible housing and contain no preferences that would limit

that expansion opportunity.

(Brian Stolar, Village Attorney of the Village of Sea Cliff, pg. 1)

**Correspondence #5, Response #3:**

Comment noted. The revisions have been made as suggested.

**Correspondence #5, Comment #4:**

In the "Summary" section, the Village requests that it be made clear that the lack of public sewer infrastructure and impacts from private sewers on Hempstead Harbor and Glen Cove Creek limit further development of housing opportunities in the Village. Only a small number of properties, located primarily on the border with the City of Glen Cove, are connected to operational public sewer facilities.

(Brian Stolar, Village Attorney of the Village of Sea Cliff, pg. 1)

**Correspondence #5, Response #4:**

Comment noted. The lack of sewer infrastructure in residential sections of the Village is stated in the zoning analysis, but this has been made clear in the "Summary" section as suggested above.

**Correspondence #5, Comment #5:**

In the "CDBG Program Summary" section, the analysis is not correct. The Village was able to obtain funding to provide for sewer facilities to be connected along Sea Cliff Avenue, but those facilities are not currently connected to a sewage plant and are not currently operational. The Village continues to seek opportunities and funds to create the connection of the constructed sewer infrastructure to a sewage plant.

(Brian Stolar, Village Attorney of the Village of Sea Cliff, pg. 1-2)

**Correspondence #5, Response #5:**

Comment noted. The "CDBG Program Summary" section of the zoning analysis has been revised as suggested above.

**Correspondence #5, Comment #6:**

The Village offers many senior service opportunities and provision of those services remains a priority.

(Brian Stolar, Village Attorney of the Village of Sea Cliff, pg. 2)

**Correspondence #5, Response #6:**

Comment noted.

**Correspondence #5, Comment #7:**

The term "Cesus Bureau" in charts 3 and 4 should be corrected.

(Brian Stolar, Village Attorney of the Village of Sea Cliff, pg. 2)

**Correspondence #5, Response #7:**

Comment noted. This typo has been corrected.

# Nassau Urban County Consortium

## Public Hearing Comments

### Analysis of Impediments to Fair Housing Choice

April 12, 2016 – 10:00 am – 12:00 pm

**Katrina Brooks, Town of Hempstead** ~ Kevin, can you just explain to us when you said that the Village of Lynbrook ranks high for its census tracts. Can you explain to us what that means especially in terms of our program because you know where we build housing.

**Kevin Crean** ~ Okay. So you mentioned where you build housing — just so everyone is aware — Katrina is from the Town of Hempstead. What the County will do when reviewing funding applications is take a look at the location of the activity and the nature of the activity. The HOA scores will primarily be used for applications that are for the development of affordable housing. So we will look at the school proficiency index, what type of housing is proposed — is it housing for senior citizens, is it housing for the disabled or is it housing for families? We will consider where that housing is being located and that may impact funding decisions made by our office.

We are not looking to overburden school districts or impact school districts that may already be overburdened — to put family housing in school districts that are low performing. The intent is to provide more opportunities for housing in different communities. As you know there are restrictions, of course, that come with the use of Block Grant dollars and the use of HOME dollars so the County is going to have to make sure that we stay within the requirements of the Programs as well. But the HOA scores will be used in making funding decisions. It is also going to be a matter of what kind of applications we receive. There are timeliness concerns that govern a lot of what we do so we cannot hold on to the money looking for the perfect application. We will review applications as we receive them and often it's more of a comparison of competing applications. Does that answer your question?

**Katrina Brooks, Town of Hempstead DPED** ~ Yes

**John Sarcone** ~ Anyone else have any questions?

**Dermot Kelly, Town of North Hempstead CDA** ~ I have a question that has to do with the process, specifically with the HOAs. I think we all know how the County handles regular applications for CDBG funding. But is there a way because of how you have to go about the business of obtaining these properties within a timeframe for most sellers when you want to redevelop properties for the purpose of affordable housing. Is there a way that the process can be looked at and expedited? If it is going to take four, five, six months it's going to be very hard to do that if you are going out to sign a contract with someone subject to the receipt of CDBG funds. Most sellers in a high opportunity area are not going to want to wait five or six months. So I am wondering if there is a way that awards can be expedited? Obviously, you guys do a great job getting things through your Office but if we could have things expedited through the other Departments that need to review the awards knowing that the folks on the ground are trying to negotiate deals that are impacted by this extended period of time to obtain those funds.

**John Sarcone** ~ Absolutely. Those are all valid complaints and valid concerns. We have actually discussed that internally — addressing those scenarios and we will be addressing specific situations as they come up. We are fully aware of the time constraints and we want to expedite anything that is within our control and we will work with other Departments to improve the process. It is definitely a valid concern and we give you our assurances that we will be working hand in hand with your Agency and other recipients of such funds to move the process along.

**Dermot Kelly, Town of North Hempstead CDA** ~ And perhaps the contract can be written in such a way that a generic contract through your Office somehow gives flexibility in the purchase of properties that are to be used for this purpose.

**John Sarcone** ~ It's absolutely a valid concern. We will address these issues as they come along. Anyone else?

**Celia Capers, Deputy Minority Counsel, Office of Nassau County Legislature** ~ I just have one question before I read a statement into the record. When you listed up those factors on the PowerPoint about the factors that go into how you decide where you can allocate the funding, is it the higher the score — such as the higher the score on the poverty index or transportation index — it makes the area less desirable or more desirable for the funding?

**Kevin Crean** ~ First to respond to your initial point – the HOA score is just one factor that we are considering in how we will make funding decisions. It is not the sole factor. In fact, some of these

high opportunity areas are not in low and moderate income areas which would preclude us from using Block Grant dollars for certain types of activities in those areas. As I mentioned we still have to comply with the HUD Program rules. But to answer your question, the HOAs — the higher the score the more desirable the community.

**Celia Capers** ~ Okay. But I just want to make sure — and you did hit the point that you are using a more global perspective — that this is one of many factors and you are looking into how the housing would fit in and suit the needs of the community.

**Kevin Crean** ~ Correct. In the example, the transit access score for the census tract in the Lynbrook example is a 93 out of a possible 100 score. So the transit access in that particular census tract is excellent. So I would assume that the census tract is very close to the Long Island Rail Road station, it's probably on a major road with bus routes running through the census tract. That's a very high score so it is considered an area where someone would want to live because it gives them access to all the opportunities in the area.

**Celia Capers** ~ Can I just ask one more question along that line. So Lynbrook vs. let's say somewhere in Great Neck — how would that factor in when you consider that there is a likelihood that in Great Neck the income level — there's going to be a very low LMI? Because there is going to be more people that are well above the poverty line? Would that still foreclose on anything being developed in some place like Great Neck?

**Kevin Crean** ~ No, not at all.

**Celia Capers** ~ So you would consider maybe a host of other factors. Would you consider like, for instance, like availability to transit or — what other factors would you consider that make Great Neck attractive? Just using them as a hypothetical.

**Kevin Crean** ~ For most of the applications we receive for housing, you can't compare easily because they are not equal projects, right? But when you look at the number of units being developed, the affordability of those units, but also the location — when we are looking at location factors we want to know that the people that will be occupying those units will have access to jobs, will have access to a good school system. And if it's senior housing then the school proficiency index might be something that we don't consider. There won't be any children in the development. These are all factors that will be considered in our decision. If it's housing for disabled adults school proficiency would also not be a factor but all other factors may be relevant. If it's a group home where the provider is also

planning transportation to job sites then transit access and job proximity are less of a concern. The housing type will dictate how those HUD factors are considered.

**Celia Capers** ~ Okay. Thank you. And I just have to read a statement from Leg. Bynoe.

**Kevin Crean** ~ Do you also have it in written form so we can receive a copy?

**Celia Capers** ~ I am going to put it on official letterhead. So I can submit that via email probably in a pdf. But I will still read it into the record today.

**Kevin Crean** ~ Okay. Very good. Do you want to stand at the mic so it's easier for everyone to hear?

**Celia Capers** ~ Sure.

**John Sarcone** ~ While Celia is making her way up here I would be remiss if I did not mention that Deputy County Executive for Minority Affairs Reverend Eliot is in attendance this morning and would like to make some comments. Also head of the Human Rights Commission Rodney McCray is here as well and may wish to say something.

**Reverend Eliot** ~ Good morning everybody. I was wondering if I could ask a question. I also serve another role as a minister in the community. Hempstead, Roosevelt, Freeport, I don't know if they have representatives here, but would they be considered as high opportunity areas?

**Kevin Crean** ~ I think that's all relative. There are census tracts throughout each of those communities that have positives. It depends on what type of housing is being sited there. Again the high opportunity area scores are really things we are looking at in the placement of housing but there are needs in every community so each community is tasked with identifying the needs in its community and how they will be addressing those needs. This is just another tool that we are using to assess whether the federal funds are being used in a community to achieve the best result. So if there are factors that are in any community that are considered to be deficient and the funds are going to be used to address those deficiencies then you can consider that. But each of the census tracts are ranked by score so obviously there is going to be a #1 and a #259. We are not drawing a line in any particular place and saying that these are the high opportunity areas and these are the low opportunity areas. A lot of it is going to be a comparison. So if we receive three applications and they are in different high opportunity areas but they are also for different types of housing — we may end up funding all three of them. It depends on the benefits and the rating factors of the individual

applications. I know that's a "waffling" answer, but until we really go through the process a couple of times it's hard to determine how it's going to play out.

**Reverend Eliot** ~ So you already applied the figures?

**Kevin Crean** ~ We applied it to all of the communities. Every census tract is ranked in the appendices in the Plan. But these are all HUD scores, so we just received the HUD scores, applied them to the census tracts and rated them that way.

**Reverend Eliot** ~ Very good. Thank you, Kevin.

**Celia Capers,** ~ Good morning, on behalf of Leg. Siela Bynoe, I am here to make a brief statement regarding the County's Draft Analysis of Impediments 2015-2019. The County is currently the subject of a federal civil rights lawsuit and a HUD Administrative Complaint alleging that the County has used federal housing funds to perpetuate segregation through deliberate steering of funding to minority communities. It is crucial that the County take deliberate measures to re-evaluate their mission as well as methodology on distributing affordable housing throughout the County, not just in minority communities. Fair housing seeks to achieve parity for all people and families who want to pursue the American dream. Let us not stymie those efforts if we can use our time, talent and resources to effectuate viable alternatives through the Analysis of Impediments and create an environment where Nassau County reflects the diversity and inclusion in housing as well as all facets of life. Thank you.

**John Sarcone** ~ Anyone else?

**Kendal Lampkin, Town of Hempstead** ~ My question is, if you have a high opportunity area as identified by your scoring, these high opportunity areas are in a sense, to build low and moderate income housing in those communities because of your mandate for this housing for HUD — so — they used Great Neck as an example. If those communities don't have census tracts that would normally be CDBG eligible isn't that sort of, doesn't that stop in the tracks the Program of — an area that can be close to transportation and all that other sort of stuff — but it's not a CDBG eligible area then how is that high opportunity area number going to help get housing if you're using the normal HUD formula for placing that housing to begin with?

**Kevin Crean** ~ That's a good question, because it points to a common misconception. There are three national objectives of the Block Grant Program, which are low and moderate income benefit, slum and blight removal and urgent need. Within the low and moderate income national objective there are different ways you can meet that test. The criteria you are referring to is the area benefit

where you look at a census tract and each census tract has a low/moderate income percentage. In order for us to fund certain types of activities, say to improve a downtown community or a park, it would have to be located in a service area that has a large enough percentage of low and moderate income persons. That can't be funded in every community. There are areas throughout the County that have high enough low/mod income percentage that allow us to fund area benefit activities. But a second test under the low/mod income benefit national objective is through housing. Under the housing component of the low/mod national objective, you are looking at the income of the persons residing in the housing. So the same way you can fund the rehabilitation of single-family housing because the homeowner qualifies as being low/mod you can use Block Grant dollars, or more importantly, HOME dollars, to assist the development of affordable housing in any area because you are looking at the beneficiaries of the housing: the people residing the housing. So in an area where you don't have a high enough low/moderate income percentage to meet our test, you can use Block Grant dollars to acquire housing, to clear an area, or fund infrastructure improvements — maybe to bring water to a site. There are ways you can use Block Grant dollars to support the development of affordable housing without it being in a low/moderate income area.

**Kendal Lampkin** ~ Also, one other question — Isn't it fair to say that those communities, minority communities on Long Island, within the Town of Hempstead or in the County in general, there is also an acute need for affordable housing even in those communities so the question of using HUD dollars specifically or only or in a large part in those communities. I mean those communities also have a need for additional affordable housing as well. Isn't that correct?

**Kevin Crean** ~ Yes it is. And that is one of the weighting factors we will need to utilize when reviewing proposals. The County only receives about 40% of the HOME dollars that we were allocated only fifteen years ago so there is less money to go around. There are fewer funds to be utilized in every community so it's really a factor of weighing the different benefits of each development proposal. Just like I said, it is another tool we will use in making funding decisions. Let me just add that community support is a factor in weighing proposals too. So if there are proposals for projects in areas that may not score well in terms of high opportunity areas but the proposal evidences a great deal of community support that will help to make an application fundable.

**Alanta Cockrell** ~ Yes My name is Alanta Cockrell and I live in Hempstead. My question is why you can't you check all communities in Nassau County? All, not certain areas. In the whole Nassau

County to see about affordable housing? You said you had money to build affordable housing. Why don't you analyze all communities? Whether they rich or poor you should check all the communities because we would like to live in areas other than Lynbrook. You have money to build affordable housing so you should build it in all the neighborhoods, not just certain neighborhoods.

**Kevin Crean** ~ Well that is the focus of the AFFH. We are open to receiving applications for projects in all communities.

**Alanis Cochrane?** ~ So it's an application thing?

**Kevin Crean** ~ Yes. Nassau County doesn't build the housing. We provide funding to assist the development. We have to receive an application for funding for an actual project. And we are open to receiving applications in any community.

**Ralph Reissman, Nassau County Attorney's Office** ~ Can you explain the consortium aspect of the prior response?

**John Sarcone** ~ Yes. That's Ralph Reissman from our County Attorney's Office. As Kevin was alluding to, we are open to receiving applications for projects from members of our consortium who provide us with detailed plans as to how they will spend the monies once they are awarded the funds. So it's a matter of our Department receiving that information and making funding decisions based on the merits of an application. As Kevin said we welcome applications that address identified needs.

**Ralph Reissman** ~ The questioner said why can't we check all communities. I just want to make clear that there are some communities that are not part of the consortium.

**Kevin Crean** ~ Yes. Ralph makes a good point. As I mentioned earlier, there are thirty-two municipal members of the Nassau Urban County Consortium. Every village is invited to join the consortium. But the majority of the villages in Nassau County are not members of the consortium. But that doesn't mean they are not able to apply for funds or that a developer cannot apply for funds to develop housing in a non-participating community. It just means that they would apply to New York State rather than Nassau County.

**Luca Sanchez, NYCC** ~ I want to read a statement into the record. Good morning everyone, my name is Luca Sanchez. I am the Deputy Director for New York Communities for Change. We are a community based organization. We currently have an office in Hempstead as well as in Brentwood. I just want to make a statement on behalf of New York Communities for Change regarding the Counties Analysis of Impediments. The primary purpose of the County's duty to affirmatively further fair

housing is to take concrete actions to address residential segregation and set forth actions to promote residential integration. The County's proposed Analysis of Impediments clearly fails to do this. Indeed, it makes no mention of the decision in the fair housing case in which the County is a party. I am talking about the Garden City case which found that a zoning decision by Garden City perpetuated residential segregation and violated, clearly violated, the Fair Housing Act. The County's proposal does not set forth meaningful action steps, which is what we are looking for. We are looking for meaningful action steps designed to address the severe residential segregation in Nassau County, which is clear and obvious to any resident residing in this County. All the Analysis in the world will not reduce segregation and provide low income African American and Latino residents with real access to opportunity in the absence of meaningful action steps. The draft Analysis of Impediments fails to identify impediments to fair housing choice within the villages that do not participate in the urban county consortium. The HUD regulations clearly require grantees to address impediments in their entire jurisdictions not just within consortium members in their Analysis of Impediments. This submission is particularly problematic because the villages that are not consortium members are overwhelmingly white, overwhelmingly affluent and have extremely restrictive zoning ordinances. Far from being excluded from the analyses, these villages, these thirty-seven villages, should be the starting point of any analysis. Let me just give you some quick statistics on these thirty-seven villages. Of the these thirty-seven villages that do not participate in the consortium, only two — Lake Success and Old Westbury — are less heavily non-Latino white than Nassau County as a whole. Ten villages are over 90% non-Latino white and fifteen are between 80% and 90% non-Latino white. Not a single one of the thirty-seven villages is more heavily Latino or more heavily African American than the County as a whole. And twenty-two of the thirty-seven are less than one percent African American. Only one of the thirty-seven villages — Great Neck — has a median household income that is less than that of the County as a whole. Thirteen of the thirty-seven have median household incomes greater than \$200,000 or more, and eleven of them have median household incomes between \$150,000 and \$200,000. Again, all the analysis — this is to conclude — in the world will not reduce segregation and provide low income African American and Latino residents with real access to opportunity in the absence of meaningful action steps. The County's priority for affordable housing development proposals in high opportunity areas is too vague to provide confidence that family occupancy affordable housing will actually get built in these areas. The County, furthermore, has not

laid out plans for using its influence to get municipalities that lack affordable housing to re-zone significant amounts of land to allow multi-family housing as a right. The County must use every tool at its disposal to do so. Again, the County's analysis of the zoning ordinances of the consortium members is deeply flawed and must be revised substantially to meaningfully address exclusionary zoning in many consortium members' jurisdictions. And we will provide detailed written comments on what changes need to be made in order for the Analysis of Impediments to be adequate. And just to conclude, the community participation process has been less than adequate. The County should have reached out to community-based advocates like New York Communities for Change for example, at an earlier stage in the process to ensure that the Analysis would reflect our concerns. It is deeply, deeply troubling that a County of 1.3 million people that receives over \$10 million annually in HUD funds thinks that it is acceptable to have only one or two public hearings that are in the middle of the day, and on a weekday at that. The County must consider holding additional public hearings at times that work for people with diverse work schedules and should schedule meetings with stakeholder organizations to discuss their concerns. Thank you very much.

**John Sarcone** ~ Thank you for your comments. Anyone else?

**Ian Wilder** ~ Good morning. My name is Ian Wilder. I am a staff attorney and program manager at Long Island Housing Services in the foreclosure prevention program. We are actually mentioned in the AI working with the County and we've been funded under the CDBG grants before. I am here today on behalf of our Executive Director, Michelle Santantonio. She will be submitting more detailed comments but I have written comments to put in also. But she asked me to also speak a little bit about our agency for anyone who is not familiar with us because it will help enlighten you about the AI, also since we are mentioned in there. Our mission is the elimination of unlawful housing discrimination, the promotion of decent affordable housing through advocacy and education. Our services, programs and use of all funds are driven by that mission. LIHS is a unique not-for-profit service provider with a well-established advocacy record of affirmatively furthering fair housing dating back to 1969, the year after the Fair Housing Act was passed. And specific to Nassau County since 1990 when we expanded to become a bi-county fair housing service provider. There is some of our material in back including a poster that runs down fair housing laws from the federal level to the County and our fair housing guidebook. I have more information for anyone who is interested. I have more flyers. Some of the services we provide are fair housing enforcement and advocacy, foreclosure

prevention, renter's assistance counseling, homebuyer education programs and pre-purchase and post-purchase counseling and group education and one-on-one counseling. Thank you for your attention. I will be happy to speak with anyone who has questions about our organization after the hearing is done. Thank you.

**John Sarcone** ~ Thank you. Anyone else?

**Diane Goins** ~ Good morning everybody. My name is Diane Goins. I am the Chair of New York Communities for Change on Long Island. I am a lifetime resident of Long Island. I was born and raised in Freeport, moved to Roosevelt and now I'm in Hempstead. I never quite made it to Garden City because they wouldn't let me in. Now I'm telling you this is just the testimony — and I think we'd have a lot more testimony if this hearing was later on in the day because there are a lot of folks that know how segregated Long Island is. But you don't seem to know. It's like you should have a map up there to show everybody where we live. We are clustered here, clustered there, clustered here, because we are not allowed to go to those other communities not even if they have affordable — some of us can afford to go — but we're not allowed to go. I would love to get an apartment, a senior apartment — I am retired — in Garden City. But I am not allowed to go. We just want this thing to be fair, like you said. We need our voices to be heard so that you can do a good job of putting affordable housing where it needs to be. We would like to spread all over Long Island but as it is now we can't go all over Long Island because these other communities that you don't have in your consortium — they don't want us there, just as Garden City doesn't want us there — and I know that for a fact. So you are just feeding into that. This is not helping us. None of this is helping us. We want you to help us and we want you to listen to us so that we can integrate Long Island because right now, after 73 years it's the same as it was 73 years ago. So what's wrong? Something is not being done fairly. Something is not being done right. And like I said – we're going to stand and you're going to hear our voices until that change is made on Long Island. Thank you.

**John Sarcone** ~ Thank you. Thank you for your comments. Anyone else?

**Mary Crosson, NYCC** ~ Yes. My name is Mary Crosson and I am a member of NYCC. I am also a resident, a homeowner, in Hempstead. I listened to your stories and you're using Lynbrook in your analysis and you were saying about jobs and transportation and causing you all to come up with an answer. I am in Hempstead for twenty years. When I first started looking for my home, I didn't realize how and why, segregation is still going on. I left from the south. I was raised and born in

South Carolina. If anyone here knows anything about the south in the 60's and the 50's you know what segregation is. We know how it is to be kept out of certain areas. We know when they tell you you are not allowed to go across that street. Well, when I began to look for my home in Hempstead, they said, well, you can look in the area but you can't go across that line and I'm looking for the line. The line is what they call a street. Because as I've been here and as I've been observing it and listening to different stories, the line is an invisible line that is the street. Once you cross the street on the Garden City side and Hempstead they said you cannot go across that street. It took me back to South Carolina. When I began to join NYCC I started to listen to residents around me and in my block when people were welcoming me to the block and I started sharing stories — you know what — I was dumbfounded when they told me that I couldn't go across that street to buy a house. I am a working mother. I have my children. I want them to go to the best schools because we always said education is the best thing to give your children. You try to do the best; you try to get them educated. You want them in a good environment. But, you can't go across the street. No matter how much money you have. You can't go across the street. So if anyone sitting here, and thinking that Nassau County is not segregated then we are all in for an awakening because it's true. We cannot go across the street. And Garden City is like a place I left from the south. Those are the Garden Cities. So you look at Lynbrook. You may talk about the jobs when you are all doing your analysis. Well when you look at Hempstead – transportation - you have the train station, you have the bus station right there. But guess what? You don't have the jobs. Why? Why? So I think you need to go back and start to look at Nassau as a whole and look at the peoples okay? Then come up with a better answer on how to come up with an analysis on how to serve your people here in Nassau. Thank you.

**John Sarcone** ~ Thank you very much.

**Andrew Bolton, ERASE Racism** ~ Can you speak to how the zoning analysis in Appendix P was put together, in terms of, did you rely on the consortium members to provide you with their own analysis and then you did your analysis or did you just review every zoning code and do your own analysis?

**Kevin Crean** ~ The zoning analysis was done by VHB.

**John Sarcone** ~ Yes. It was done by a consultant. Maybe we can have VHB address that question?

**Gina Martini, VHB** ~ So the zoning analysis covers every community in the Nassau County Consortium. Nassau County already had every zoning code and every zoning map. That's a matter of public record. We did work with some individual communities that were undergoing re-writes or

amendments to their zoning code. We reached out to either the municipal attorneys, supervisors, staff, if there were specific things that needed to be discussed. Those were usually things that are undergoing change as we speak. So to get that information, to get the zoning changes or proposed zoning changes we did reach out to them. We also worked with Nassau County to determine if there were applications that were submitted for zoning changes that had been declined because we do monitor those. Nassau County has always monitored those. So to some extent there was work with the individual members of the consortium communities. As you know from the AI the plan is to do a Fair Housing Activity Statement with every one of the individual consortium communities going forward. That will involve even greater one-on-one work with each of the consortium communities, including zoning and other patterns. Does that answer your question?

**Andrew Bolton** ~ You did. Just as a follow-up, because you mentioned it. Is there a draft FHAS yet?

**Gina Martini, VHB** ~ There is not a draft yet. We are going to use the model that was suggested by your organization as our model and we will refine that to better suit the needs of Nassau County and the unique needs of this consortium. Okay?

**Andrew Bolton** ~ Thank you.

**John Sarcone** ~ Thank you Gina. Anyone else? Okay. Since no one else has any questions I would like to thank you all once again for participating. We will be around even though others will be leaving, to answer any questions or to provide any contact information that you might need. Thank you very much.

**Kevin Crean** ~ Just as a reminder – written comments can still be submitted up until April 29<sup>th</sup>. The email address is on the website. If you would like to take a copy of the printout of the Power Point presentation, please do so. You can also review a hard copy of the draft AI if you are unable to download any sections. The document is available for review at our Office. Thank you.

## 4-12-16 - Presentation for ND OHCD Public Hearing Draft Analysis of Impediments to Fair Housing Choice (AI).

Good morning. I am Ian Wilder, Staff Attorney and Program Manager for Long Island Housing Services' (LIHS') Foreclosure Prevention Program. I'm here today on behalf of our Executive Director, Michelle Santantonio. She will be submitting some detailed written comments about the AI and draft Fair Housing Plan and I will briefly indicate the issues we plan to address. But first, in case there is someone unfamiliar, I wanted to take a few minutes to speak about LIHS and its Mission, which is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. Our services, programs and the use of all funds are driven by that mission. LIHS is a unique non-profit service provider, with a well-established advocacy record of affirmatively furthering fair housing dating back to 1969 – and, specific to Nassau County, since 1990, when we expanded and became a bi-county Fair Housing service provider. I left a sample of our materials that are available to take [or request] at the sign-in table. We have many downloadable resources in English and Spanish: [www.LIFairHousing.org](http://www.LIFairHousing.org) .

### **Description of LIHS' Programs:**

**Fair Housing Enforcement and Advocacy** - Our private enforcement efforts include investigating, analyzing and prosecuting fair housing cases, advocating for victims and providing representation when evidence gathered is compelling. We address housing in the context of rentals, sales, insurance and lending. In addition to individual client and case related services, we collaborate with and offer services for government sponsored agencies, non-profit service providers and housing industry groups: including fair housing education, outreach, and counseling and advocacy services, as well as help to identify housing resources of all kinds. Racial and national origin discrimination, discrimination against families with children, people with disabilities needing special accommodations or accessible features, and those reliant on government subsidies are all too frequently face critical impediments to Fair Housing choice.

**Foreclosure Prevention: Counseling and Legal Services, Loss Mitigation, Mortgage Delinquency/Default, Loan Modification; Screening for Predatory Practices and Discriminatory Lending** – Through our counseling, we teach clients how to budget their income and expenses, negotiate with lenders for workouts, forbearance, streamlining, restructuring debt, and/or loan modification. If, after counseling, a client's home cannot be saved, our counselors advise the homeowner as to options available to negotiate a deed in lieu of foreclosure or a pre-foreclosure sale. LIHS counsels clients on their liabilities and credit repercussions should one abandon their home and financial obligations. A major distinction of our Foreclosure Prevention program, compared to that of other HUD-approved Housing Counseling agencies, is that we provide free legal services, with help of 5 Staff Attorneys.

**Renters' Assistance Counseling** - Our Housing Counseling program is frequently sought for Landlord and Tenant counseling. To extent resources allow, we counsel people who live in or seek to rent government subsidized housing, very low and low income, the working poor, as well as those receiving government subsidies including Section 8; Public Assistance, TANF (Temporary Assistance for Needy Families), people with disabilities receiving SSI or SSD, and seniors with fixed incomes, as well as those without restricted income sources.

**Homebuyers' Education Programs & Pre-Purchase/Post-Purchase Counseling:** As resources allow, LIHS offers potential purchasers general information on the home buying process. For those preparing to buy a house, we are currently utilizing eHome, which allows consumers to prepare for and then connect with qualified HUD-approved Counseling agencies for individual counseling that focuses specifically on the client's needs and Long Island Housing Services, Inc. [www.LIFairHousing.org](http://www.LIFairHousing.org) email: [info@LIFairHousing.org](mailto:info@LIFairHousing.org)

circumstances regarding credit/credit repair, and programs available to save for and acquire down payments and closing costs.

**Group Education and One-On-One Counseling** - LIHS also offers group presentations on fair housing and tenancy rights, foreclosure prevention for government, non-profits and industry as well as the public (e.g. first time homebuyers and seniors seeking information on affordable housing options). At each presentation, we distribute our Fair Housing guidebooks. These books were developed by our staff, and include information specifically geared towards Long Islanders (provided in English and Spanish). It describes our programs and services, offers information related to mortgage, fair lending, illegal housing discrimination, and rental (tenant-landlord rights) issues. It is a conservative estimate to say we have distributed over 3,500 guidebooks, as well as informational fliers related these issues.

#### **The NC Draft Analyses of Impediments:**

**Some of the items to be addressed in further written comments relate to analysis of funds expended to address and remediate impediments; the need for more resources for systemic investigations; need for analysis of population change to include data concerning national origin [in addition to race]; more in-depth analysis related to Housing Choice [Section 8] Voucher use; analysis as to the whether the communities in which first time buyers are utilizing down payment assistance are ones that would meet 'high opportunity' expectations. We note that the draft AI does not address all protected class members; these should be included with analysis of any identified, related impediments.**

We urge the County to expend greater resources to AFFH as a mandatory condition of receipt of all HUD funds as the County has a duty to require. And we also suggest greater emphases and resources allocated to advertise Nassau's Fair Housing law through print, T.V., posters/billboards and social media as an efficient means to reach larger audiences. A more comprehensive examination of the Towns in the Consortium (such as that reported for the Villages) would be useful, as the report doesn't cite to them although they are part of the consortium, therefore the population analysis of the last 10 years may need revision. Similarly, the information related to signs of integration may need closer examination: there is reference to decrease in racial concentrations of African Americans, but information related to increase of Hispanic residents in those same areas is lacking in the analysis.

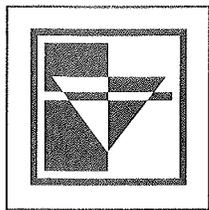
We note that, the under Impediment #3, the report cites to zoning and land-use planning having an effect of excluding lower-income; racial groups; families with children and disabled persons from housing. The County asserts that New York State is a "home rule state" which delegates zoning authority to local towns, cities and villages. However, the County could assess possible measures to eliminate this as an impediment to affirmatively furthering fair housing: work for change to allow greater zoning control on the county and state level in order to create inclusive zoning environments, if local villages and towns are unwilling to AFFH.

A frequently noted impediment is the [mis]perception that multifamily housing creates additional stress on school districts with more children attending the schools. This perception has been challenged by research which shows that multifamily housing actually lead to less numbers of children per household than single family developments.

Additionally, we note there is no mention to increase funding for greater enforcement efforts under the Human Rights Commission and there is limited discussion on what the county government is doing to AFFH through legislation, appropriations, and regulatory activities. On behalf of LIHS, thank you for this opportunity to comment.

Ian Wilder, Staff Attorney/Foreclosure Prevention Program Manager  
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Long Island Housing Services, Inc. [www.LIFairHousing.org](http://www.LIFairHousing.org) email: [info@LIFairHousing.org](mailto:info@LIFairHousing.org)

E·R·A·S·E



E D U C A T I O N  
R E S E A R C H  
A D V O C A C Y &  
S U P P O R T T O  
E L I M I N A T E

RACISM

April 27, 2016

Submitted via email & USPS

Nassau County  
Office of Housing and Community Development  
40 Main St., 1<sup>st</sup> Floor  
Hempstead, NY 11550

Re: Comments to Nassau County's Analysis of Impediments to Fair Housing Choice

To Whom It May Concern:

ERASE Racism, a 501(c)(3) civil rights organization incorporated in New York ("the State"), hereby submits the following comments to the draft "Nassau County Analysis of Impediments and Fair Housing Plan." As a nonprofit organization dedicated to the housing, community development and public school education concerns of people of color, especially those with families, ERASE Racism has developed a public policy initiative to further fair housing and increase affordable housing placement in high-opportunity areas throughout New York State.

Information in the draft Nassau County Analysis of Impediments and Fair Housing Plan, including impediments to fair housing choice and actions to overcome impediments, which is not addressed in our comments is not an endorsement or support of that information.

- I. The draft AI is deficient in description of AFFH obligation and proposed actions.

**The County is severely deficient in its description of its AFFH obligation and its actions to ensure that it and the Consortium communities affirmatively further fair housing.** The County states that "[t]o meet its obligation to 'affirmatively further fair housing', [it] must ensure that all housing assisted with CDBG, HOME and ESG Funds is made available on a nondiscriminatory basis, without regard to race, color, religion, sex, age, national origin, disability, or familial status."<sup>1</sup> While the County must do this, this alone does not fulfill the AFFH obligation.

Pursuant to 24 CFR § 91.225, the County, as a certifying jurisdiction, must "conduct an analysis to identify impediments to fair housing choice, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard."<sup>2</sup> HUD interprets this to mean that jurisdictions will "analyze and

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<sup>1</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 4.

<sup>2</sup> 24 CFR § 91.225 (a) (1).



eliminate housing discrimination in the jurisdiction; promote fair housing choice for all persons; provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability, and national origin; promote housing that is structurally accessible to, and usable by, all persons, particularly persons with disabilities; [and] foster compliance with the nondiscrimination provisions of the Fair Housing Act.”<sup>3</sup> **As detailed in these comments, the County has conducted an inadequate analysis to identify impediments and has proposed inconclusive and unsound actions to eliminate identified impediments and has failed to identify critical impediments and related actions. Further, the draft AI’s proposed actions do not promote fair housing choice or provide opportunities for inclusive patterns of housing occupancy.**

As the County acknowledges in the draft AI<sup>4</sup>, the Affirmatively Furthering Fair Housing Final Rule “clarifi[es] existing fair housing obligations.”<sup>5</sup> The Affirmatively Furthering Fair Housing Final Rule states that “affirmatively furthering fair housing” means “taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking 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.”<sup>6</sup> Meaningful actions are “significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.”<sup>7</sup>

The County must ensure that it and the Consortium municipalities take affirmative steps to further fair housing, using HUD funds and/or through other means. **A review of the draft AI makes clear that the proposed actions are not those reasonably calculated to overcome the impediment of historical racial segregation.** The County relies heavily on education and event attendance as the way it and its Consortium members will affirmatively further fair housing. These methods, with the few non-education, non-event actions proposed, are not

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<sup>3</sup> HUD Fair Housing Planning Guide, pg. 1-3 (<http://www.hud.gov/offices/fheo/images/fhpg.pdf> [last accessed April 18, 2016]).

<sup>4</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 6.

<sup>5</sup> HUD Rule on Affirmatively Furthering Fair Housing Executive Summary ([https://www.huduser.gov/portal/sites/default/files/pdf/AFFH\\_Final\\_Rule\\_Executive\\_Summary.pdf](https://www.huduser.gov/portal/sites/default/files/pdf/AFFH_Final_Rule_Executive_Summary.pdf) [last accessed April 18, 2016]).

<sup>6</sup> 24 CFR § 5.152.

<sup>7</sup> *Id.*

significant and cannot reasonably be expected to achieve a material positive change in eliminating housing discrimination and segregated living patterns.

The HUD Fair Housing Planning Guide states that a recipient should organize actions into a prioritized list “[w]ith milestones, timetables, and measureable results.”<sup>8</sup> The County’s draft AI does not adequately establish these measures and does not prioritize the actions that the County proposes.

**The County does not propose any significant actions to integrate low minority-populated areas of the County, many of which are in high-opportunity communities, by committing to the development of affordable unrestricted multi-family rental housing in those areas.** The County should require Consortium members to identify such development opportunities as a condition of receiving Consortium funds. The County should propose actions to both prioritize and set aside funding for the development of affordable multi-family housing in high-opportunity communities and to use its land for the development of this type of housing in these communities.

## II. The County’s monitoring plan is inadequate.

The County does not provide an adequate plan to monitor Consortium members’ compliance to affirmatively further fair housing. The draft AI states that the County will have a dedicated in-house person to monitor and implement fair housing initiatives with the Consortium members, including conducting an assessment of fair housing utilizing a “Fair Housing Activity Statement”.<sup>9</sup> The County has not included in the draft AI or otherwise provided a draft of that document or any indication of what that assessment entails. Therefore, ERASE Racism reserves judgment of the required assessment document. At the very least, the Fair Housing Activity Statement should include components found in the Texas Fair Housing Activity Statement.<sup>10</sup>

The County’s monitoring plan involves “frequent” contact with Consortium members, two full Consortium meetings, periodic one-on-one meetings, and on-site visits to some projects.<sup>11</sup> These interactions between the County and its Consortium members is insufficient to ensure that County is conducting adequate monitoring. To be clear, effective communication between the County and the Consortium members is a component of an effective monitoring system. However, the County must objectively monitor all housing related policies and

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<sup>8</sup> HUD Fair Housing Planning Guide, pg. 2-6 (<http://www.hud.gov/offices/fneo/images/fhpg.pdf> [last accessed April 18, 2016]).

<sup>9</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 46.

<sup>10</sup> The “Fair Housing Activity Statement – Texas” is accessible at <http://texasrebuilds.org/Pages/Document-Listing.aspx> (last accessed April 19, 2016).

<sup>11</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 98.

practices of Consortium members without strict reliance on what those Consortium members provide the County. A review of the information included in the draft AI and the information not in the AI reveals that the County is not an objective monitor.

Proper oversight of Consortium members should include: (1) publication of Fair Housing Activity Statements for each jurisdiction; (2) a public comment period prior to the County's approval of the Statements; (3) the establishment of a complaint and grievance process through which any member of the public could provide information that a Consortium member is not abiding by its AFFH obligations, with an assurance that the County will investigate in a timely way and resolve complaints; (4) the County's periodic, no-notice monitoring of Consortium members to ensure compliance by all members; and (5) a requirement that Consortium members post information on their websites about how they are embracing and fulfilling AFFH obligations.

Further, while the County's monitoring plan indicates that Consortium members that are in noncompliance will be sanctioned, the draft AI does not state and ERASE Racism is not aware of any incidents in which the County found a Consortium member to be noncompliant. This is most troubling considering the many lawsuits against Consortium members, not to mention the County, alleging violations of the Fair Housing Act, as well as the restrictive zoning codes enacted in many Consortium districts, which have impeded the development of affordable multi-family housing, and sustained and, in some cases, exacerbated segregated housing patterns. The HUD Fair Housing Planning Guide states that an AI should include the evaluation of the jurisdiction's current fair housing legal status.<sup>12</sup>

**The draft AI is not an honest assessment of impediments to fair housing choice, in part, because it fails to provide necessary context to the status of fair housing in Nassau County by intentionally omitting from the draft AI on-going and settled fair housing lawsuits against the County and/or Consortium members.** A non-inclusive list of fair housing lawsuits related to discrimination based on race, color or national origin against the County and/or Consortium members include: *MHANY Management, Inc., et al. v. County of Nassau, et al.*, 2016 US App. LEXIS 5441 (2d 2016); *U.S. v. Town of Oyster Bay*, 66 F.Supp.3d 285 (EDNY 2014); *Long Island Housing Services, et al. v. Village of Great Neck Plaza, et al.*, 14-CV-3307 (EDNY 5/29/14); and *Rivera v. Village of Farmingdale*, 2016 US Dist. LEXIS 16526 (EDNY 2016). Additionally, ERASE Racism filed an amended administrative complaint with HUD against Nassau County in May 2014, alleging that “[t]he County discriminates on the basis of race and color, and perpetuates racial segregation by its actions or omissions....” The County should detail fair housing lawsuits against it and/or Consortium members, including but not limited to those aforementioned, to convey that fair housing violations have

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<sup>12</sup> HUD Fair Housing Planning Guide, pg. 2-30 (<http://www.hud.gov/offices/fheo/images/fhpg.pdf> [last accessed April 18, 2016]).

been alleged and/or proven. Further, for allegations against Consortium members, the County should explain the process it went through in assessing whether those members failed to affirmatively further fair housing, the actions the County took in the event those members did not affirmatively further fair housing, and the steps the Consortium members took to address the problems.

III. The County was deficient in its outreach and public comment process.

**The County was deficient in its outreach in the creation of the draft AI and in the public comment process.** The County, noting the importance of public participation in the draft AI planning process, listed the committee that provided input with the preparation of the draft AI.<sup>13</sup> All of the representatives on the committee were from County offices or Long Island Housing Services, which contracts with the County to provide housing activities. During the preparation of the draft AI, the County should have provide housing advocacy organizations and other stakeholders with more opportunities to provide input on the draft AI.

In terms of public participation in the draft AI process, ERASE Racism, which has operated in Nassau County since 2001, received the Notice of Public Hearing related to the Consolidated Plan and the Notice for Public Comment related to the draft AI from the County and a housing survey from Long Island Housing Services. ERASE Racism was not otherwise provided with opportunities to provide input or notices of meetings or hearings prior to the submission of the draft AI.

While Long Island Housing Services sent a housing survey to stakeholders, the survey asked ten specific questions that did not allow respondents to provide elaborative answers. For example, Question 4 asked respondents the type of housing residents need and provided seven housing types and an “other” choice, in which respondents could write in a type. None of the choices included affordable non-senior rental housing, multi-family housing, or affordable multi-family housing. By not including any of those as one of the seven housing types and, instead, relying on respondents to write one of those in as the “other” choice, the County assumed that affordable multi-family housing would not be the housing need identified by respondents and the format of the survey did not permit such a response.

As scheduled, the County’s public comment process will not provide adequate public hearings, in terms of frequency and time, in order to allow members of the public to be heard by the public and the County. The County held one public hearing on Tuesday, April 12 at 10:00 AM. The County should have held at least two public hearings, and at least one of them should have been after 5:00 PM to accommodate people who work during the daytime.

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<sup>13</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 6.

IV. The County is not becoming more integrated.

**Nassau County is misleading in its assertion that the County is “becoming increasingly more integrated.”**<sup>14</sup> A review of the Table 4 on page 29 of the draft AI reveals that many communities that are overwhelmingly White have not become more integrated in terms of greater percentages of African American and Hispanic populations. Further, certain jurisdictions that have low shares of African American residents are in close proximity, or even border, jurisdictions with much larger shares. For example, African Americans and Hispanics constitute 1.3% and 8.8%, respectively, of the Village of Floral Park’s population. However, in the bordering Village of South Floral Park, African Americans and Hispanics constitute 57.5% and 17.9%, respectively, of the population. Likewise, in Rockville Centre, African Americans and Hispanics, make up 4.6% and 9.0%, respectively, of the Village’s population. In nearby Freeport, African Americans and Hispanics constitute 33.3% and 41.7% of the population. These statistics may be evidence of barriers that the County and Consortium members are required to address moving forward.

The County also fails to provide the full picture in touting percentage decreases of African American populations in communities with a disproportionately large African American population. While the African American population share has decreased from 52.5% in 2000 to 48% in 2010, the Hispanic population share has increased from 31.8% to 44.2% and the overall minority population share has increased from 84.3% to 92.5%. Similarly, in South Floral Park, the County’s other example, though the African American population share has decreased by 1.6 percentage points, the Hispanic share and overall minority share have grown 4.3 and 2.8 percentage points, respectively. Contrary to the County’s assertion of a decrease in segregation, this suggests greater and growing segregation in many areas of Nassau County.

The dissimilarity index provides a measure of the level of segregation on Long Island, including Nassau County. The index reveals that white-black segregation on Long Island continues to reflect severe segregation.<sup>15</sup> In fact, Long Island is the tenth most segregated metropolitan area in the United States in terms of black-white segregation.<sup>16</sup> Regionally, Hispanic-white segregation, though not considered severely segregated, is increasing. The County should provide a comprehensive assessment of segregation within the County and within each Consortium member. This assessment should include extensive analyses of racial

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<sup>14</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 28.

<sup>15</sup> Nassau-Suffolk, NY Metropolitan Division prepared for Project US2010 (<http://www.s4.brown.edu/us2010/segregation2010/msa.aspx?metroid=35004> [last accessed April 19, 2016]).

<sup>16</sup> John R. Logan and Brian Stults, *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census*, Census Brief prepared for Project US2010 (<http://www.s4.brown.edu/us2010> [last accessed April 19, 2016]) at 6.

and income concentrations in each Consortium community, including the degree to which areas are concentrated.

- V. The County's analysis of Impediment #1 (housing discrimination) is inadequate.

**The draft AI lacks the appropriate breadth and depth of a baseline of housing discrimination in Nassau County to allow the County to provide a thorough analysis. The draft AI does not provide an analysis of housing discrimination based on disparate impact, including discriminatory policies and practices by Consortium communities.<sup>17</sup>**

Further, the draft AI does not contain statistics of housing discrimination complaints filed with HUD or the NYS Division of Human Rights, and, therefore, understates the number of complaints filed. In 2010 alone, for example, 34 housing discrimination complaints were filed with the New York State Division of Human Rights. Of those, 30 were filed without an advocate, attorney or housing representative. **Therefore, the County's evaluation of fair housing complaints is not an accurate assessment of the severity of intentional discrimination.** A more complete assessment may necessitate more significant planned actions related to enforcement activities. In order to determine whether there are trends in the number of complaints filed, the draft AI should have provided the yearly number of housing discrimination complaints filed with each entity receiving such complaints, as opposed to providing the 5-year total for the County Human Rights Commission. After an analysis of whether trends exist, the draft AI could propose actions related to those trends.

**The draft AI does not provide information on the bases for which people filed housing discrimination complaints and comprehensive information on the outcomes of housing discrimination complaints.** The draft AI should include the protected class bases for which people filed housing discrimination complaints with the Nassau County Human Rights Commission, the NYS Division of Human Rights, and HUD. This information would provide insight into which bases are most prevalently reported and better inform the County's draft AI in terms of planned actions to target enforcement activities and education. While the draft AI provides limited information on outcomes of complaints filed with the County Human Rights Commission, i.e., overall numbers of the basic dispositions of complaints, the AI does not provide more specific information on outcomes. The draft AI should include comprehensive information on the outcomes of housing discrimination complaints in order to: (1) increase transparency; (2) determine if there are trends in outcomes (e.g., if a high percentage of complaints were found to be beyond the statute of limitations, then the draft AI could propose actions to support the timely submission of complaints); and (3) determine if there are

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<sup>17</sup> ERASE Racism recognizes that disparate impact is briefly mentioned on page 64 of the Draft AI.

geographic or other trends in complaints (e.g., if a high percentage of complaints originate in one geographic area, then the draft AI could analyze the cause for this and propose actions to address this).

The draft AI does not suggest that there is a need for increased enforcement activities, yet ERASE Racism believes there is. As the draft AI states that “it can be extremely difficult to detect unlawful discrimination” when you are the victim of discrimination<sup>18</sup>, it is reasonable to conclude that housing discrimination is underreported. Further, there continues to be Nassau County-based lawsuits that document housing discrimination.<sup>19</sup> Therefore, increased enforcement activities is necessary, including testing for discrimination.

While education is important, the County places too much emphasis on it. **As part of its AFFH activities, the County should increase funding to test for discrimination, especially for discrimination based on source of income, which is a protected class under the County’s Human Rights Law and may serve as a veil for other forms of discrimination, and for discrimination based on color/race, since racially segregated housing patterns continue, and in some areas are worsening, in Nassau County.**

- VI. The draft AI does not propose adequate actions to affirmatively further fair housing with the funds it receives. Impediment #4 - Limited availability of funds

While ERASE Racism recognizes the limited availability of funds, as mentioned in Impediment #4<sup>20</sup>, **the County does not propose adequate actions to eliminate impediments to fair housing choice and promote integration with the funds it receives and the funds it generates.** The draft AI lacks a detailed or convincing analysis to determine the reasons that it has not received many applications to build affordable housing in areas that do not have low and moderate income minority population concentrations, i.e., in higher opportunity areas.

The draft AI alludes to the HUD-allowed subsidy being too low to build affordable housing in areas in which LMI households are not concentrated.<sup>21</sup> However, the draft AI provides no analysis that this is the reason, and does not consider that other reasons may exist, for the lack of applications.

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<sup>18</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 36.

<sup>19</sup> E.g. *ERASE Racism, et al. v. LLR Realty, et al.*, 13-CV-4821 (EDNY 2013) (alleging housing discrimination on the basis of color and/or race in violation of the Fair Housing Act and the Nassau County Human Rights Law against an owner and superintendent of a Mineola, NY apartment building).

<sup>20</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 67.

<sup>21</sup> *Id.*

The establishment of a set aside of up to 5% of HUD funds for affordable housing<sup>22</sup>: (a) will not provide an amount of funds to produce a significant number of affordable housing units; (b) does not ensure that affordable housing is being produced in higher opportunity communities; and (c) as proposed, allows the County to provide less than 5%. **The set aside should be a “hard” percentage of not less than 20%. Further, the set aside should explicitly be for affordable housing in high-opportunity communities.**

**Additionally, the County should establish an affordable housing trust fund for the development of new multi-family rental units in high-opportunity communities and reconsider the use of the funds from zombie homes to prioritize funds for affordable housing in high opportunity areas.** The County had an opportunity to use zombie homes for affordable housing.<sup>23</sup> However, over raised concerns from Legislator Bynoe<sup>24</sup>, the Nassau County Legislature approved Ordinance 87-2015, which created a land bank in Nassau County without any prioritizations for use of the land for affordable housing purposes.<sup>25</sup>

The County states that the limited availability of funds inhibits the development of affordable unrestricted multi-family housing in high-opportunity communities.<sup>26</sup> While the County asserts it will identify county-owned vacant parcels that may be available for multi-family housing development<sup>27</sup>, the County should go beyond merely identifying parcels. **The County should establish a special priority to use County-owned property located in high-opportunity communities for affordable unrestricted multi-family housing.**

- VII. The County does not provide actions to address Impediment #5, suggesting, without adequate analysis, that public policy, zoning and local opposition are not impediments.

**The draft AI strongly suggests that public policy, zoning and local opposition are not impediments to fair housing choice in Nassau County, as evidenced by the absence of any implementation strategies or actions to overcome Impediment #5. However, the draft AI lacks a cogent analysis to justify the County's conclusion that public policy, zoning and local opposition are not impediments.**

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<sup>22</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 68.

<sup>23</sup> Nassau County Legislators Bynoe and Curran introduced a proposed local law in 2015 that would establish the Nassau County Land Bank Corporation to acquire zombie homes and prioritize the use that property first for affordable housing, pursuant to New York Not-for-Profit Corporation Law § 1609 (e).

<sup>24</sup> Minutes of Nassau County Full Legislative Committee meeting (July 13, 2015), pg. 92.

<sup>25</sup> ERASE Racism is unaware if the Land Bank has been approved by NYS Empire State Development Corporation, as required.

<sup>26</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 67.

<sup>27</sup> *Id.* at 65.

In addressing local opposition, the County chose selections from an outdated report of a public opinion survey in 2005 to imply that local opposition is not an impediment to fair housing choice. While the County quotes the 2005 report, which indicates that NIMBYism is “overestimated,”<sup>28</sup> the report on which the County relies does not represent its data in a manner to suggest that Long Islanders support affordable multi-family rental housing and that NIMBYism does not exist. For example, the County places a chart from the report in its AI to show that 50% of respondents support allowing “rental apartments/two-family homes” within one mile of where they live and 55% support allowing “rental apartments/two-family homes” in their county.<sup>29</sup> By placing rental apartments and two-family homes together, the statistics do not show the percentage of respondents that would support rental apartments alone. Additionally, the statistics do not indicate the percentage of respondents that would support affordable multi-family rentals. Even reviewing the Long Island Index report without the aforementioned concerns of how data is presented does not lead to a conclusion that NIMBYism does not exist. The chart of support for “rental apartments/two-family homes” within one mile and within the county of respondents shows support at 50% and 55%, respectively. Missing from this analysis is that up to 50% of respondents oppose these types of housing within one mile and up to 45% of respondents oppose these types of housing in their county.

Further the draft AI provides no research or analysis to suggest that NIMBYism does not exist within areas of the Consortium. In fact, many newspaper articles<sup>30</sup>, anecdotal evidence, and lawsuits, including *MHANY Management, Inc., et al. v. County of Nassau, et al.*, indicate that NIMBYism exists in Nassau County. Finally, the draft AI provides no research from the past 10 years to suggest that NIMBYism does not exist. The County’s recognition of concerns and perceptions related to multi-family development<sup>31</sup> does not address the falsities of those perceptions and the draft AI does not state actions to address those false perceptions. Many of these perceptions may serve as thinly veiled NIMBYism.

**The County’s methodology for analyzing the effect of zoning provisions as those provisions relate to concentrations of low- and moderate-income,**

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<sup>28</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 71.

<sup>29</sup> *Id.* at 72; see also Long Island Index, *Long Island Index Report, 2005: Setting Goals, Measuring Progress for the Long Island Region*, pg. 19.

<sup>30</sup> Lisa W. Foderaro, *Housing Bias Outlasts Ruling in a Long Island Village*, NY Times, April 23, 2016, <http://www.nytimes.com/2016/04/24/nyregion/housing-bias-outlasts-ruling-in-a-long-island-village.html> (last accessed April 27, 2016) (“Using what the appeals court [in the Garden City housing discrimination lawsuit] called code words, residents said that multifamily housing would change the ‘flavor’ and ‘character’ of the village and would lead to ‘four or 10 people in an apartment,’ and demanded a guarantee that the housing be ‘upscale.’”).

<sup>31</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 70 (“New housing development often raises concerns about the impact on both traffic and school taxes. Multifamily housing is often perceived as having a more severe impact on a community in terms of creating additional traffic and adding more children to the school district. Additional, multistory housing (i.e. mid-rise construction) is perceived to diminish the suburban character of a community.”).

**African American, and Hispanic populations is too simplistic to yield a meaningful conclusion.** The County should, but fails to, address how Consortium members' zoning affects the opportunity to build apartment-style multi-family housing. Until it does so, it cannot begin to solve or require Consortium members to solve the problem of lack of housing choice, especially high-density multi-family housing. Instead, the County's zoning analysis defines multi-family housing as housing with three or more units. Zoning for three units will not support the density required to bring down unit cost and to permit rental rates that are within the payment standards allowed under the Housing Choice Voucher Program. **The County should conduct a thorough zoning analysis to differentiate between lower and higher density multi-family housing. Zoning that allows as of right multi-family buildings with 25 or more units is imperative in order to provide the necessary economies of scale.**

The County's zoning analysis misrepresents/obfuscates the housing types allowed in zoning districts by: (a) excluding from its analysis restrictions (e.g., density, height, etc.) that hinder the development of multi-family homes; (b) obscuring which districts allow multi-family housing as of right, which allow it through special use permit, and which prohibit it outright; and (c) providing misleading analysis of what constitutes multi-family housing<sup>32</sup>. Further, by placing all zoning districts into one of four categories<sup>33</sup>, without factoring in whether those districts allow a type of housing (e.g., multi-family housing) as of right or by special use permit, or whether restrictions exist which make a type of housing, which is technically allowed, impossible to develop in practice, the County's analysis is flawed from the onset.

- VIII. The proposed action, related to Impediment #7, to prioritize affordable housing for high cost burden groups provides no analysis or data to support that action.

**The draft AI provides no analysis or data that supports its contention that elderly, physically disabled, and disabled populations with non-physical disabilities are populations with a high cost burden, and that other populations, specifically African Americans and Hispanics, do not have a high cost burden.** Data from the 2010-2014 American Community Survey 5-Year Estimates (ACS) show that while African Americans and Hispanics constitute 11.2% and 15.4%, respectively, of the Nassau County population, they make up 17.1% and 23.7% of householders in renter-occupied housing, respectively. The White-only population constitutes 63.7% of the County's population. Additionally,

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<sup>32</sup> See e.g. Appendix P to the draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 6 (“[T]he City of Glen Cove provides variety of opportunities for multi-family housing, in numerous formats, including new residential buildings, accessory apartments, and two-family units...”); cf. Appendix P to the draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 2 (“Three or more family residences [multi-family residences]”).

<sup>33</sup> Draft Nassau County Analysis of Impediments and Fair Housing Plan, pg. 76.

35% of African American households and 43% of Hispanic households are in renter-occupied units. Only 14% of White-only households are in renter-occupied units. ACS data also show that 53.6% of renter-occupied housing units have a high housing cost burden with 30% or more of household income going to housing costs. Broken down by income, 89% of rental households with incomes less than \$20,000 are high-cost burdened. 90% of rental households with incomes between \$20,000 and \$34,999 are high-cost burdened. 82% of rental households with incomes between \$35,000 and \$49,999 are high-cost burdened. 55% of rental households with incomes between \$50,000 and \$74,999 are high-cost burdened. Data further demonstrate that 23.4% of African American households and 22.5% of Hispanic households have incomes of less than \$35,000. Additionally, 9.4% of African American households and 12.5% of Hispanic households have incomes between \$35,000 and \$49,999. These percentages are higher than those for White-only households.

The data suggest that since African Americans and Hispanics constitute disproportionate shares of the population who resides in renter-occupied housing units and have higher rates of households with incomes under \$50,000 than White-only households, **African American and Hispanic renters have a disproportionate share of high housing cost burden. Further, since African Americans and Hispanics constitute disproportionate shares of the population who reside in renter-occupied housing units, restrictive zoning codes, especially those which do not allow multi-family housing as of right, have a disparate impact on families of color in Nassau County.**

## IX. Conclusion

The creation and implementation of Nassau County's AI are an opportunity for the County and its Consortium members to commit to (1) the establishment of an inclusive County with inclusive municipalities, and (2) the reversal of decades-long discrimination and segregation in Nassau County that have deprived people of color opportunities to live in areas of opportunity. Instead, the draft AI is deficient in providing the full set of data and facts of the true landscape of Nassau County – a landscape in which there continues to be segregated housing patterns, discrimination against people of color, and a lack of affordable multi-family housing in higher opportunity communities as a result of, *inter alia*, restrictive zoning practices. Restrictive zoning has a disparate impact on African Americans and Hispanic populations. Due to its lack of comprehensive and accurate data, the draft AI provides analysis that is deficient and skewed, resulting in the exclusion of important impediments to fair housing choice, the exclusion of necessary actions to overcome impediments to fair housing choice, and inadequate proposed actions to overcome stated impediments.

The deficiencies in the draft Nassau County Analysis of Impediments and Fair Housing Plan, as highlighted in these comments, need to be remedied prior to

finalizing the AI and submitting it to HUD. In the event that these inadequacies are not remedied, ERASE Racism will have no choice but to ask HUD to find the AI “not satisfactory to the Secretary.” Such a finding may lead to a cutoff of CDBG and HOME funding to the County and Consortium members.

Sincerely,



V. Elaine Gross  
President, ERASE Racism





April 29, 2016

John R. Sarcone, Director  
Nassau County Office of Housing & Community Development  
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Kristen Clarke

RE: Nassau County's Draft Analysis of Impediments to Fair Housing Choice,  
Federal Fiscal Years 2015-2019

Dear Mr. Sarcone:

As counsel for the plaintiffs in *Mhany Management, Inc. v. Village of Garden City*, we write to provide comments on Nassau County's Draft Analysis of Impediments to Fair Housing Choice (AI), Federal Fiscal Years 2015-2019. Although, on the surface, the draft AI appears to be more exhaustive in its scope than the County's deficient 2010 AI, the measure of a valid AI that meets the requirements of the U.S. Department of Housing and Urban Development (HUD) and truly furthers fair housing choice is quality, not quantity. The draft AI falls far short of the mark and fails to address the most pressing housing equity challenges facing Nassau County, Long Island, and the New York metropolitan region. This letter identifies the areas where significant revisions are necessary and provides recommendations for steps that Nassau County must take to ensure that its AI provides a robust fair housing analysis with the potential to effectively guide resource allocation decisions and policy reforms. Those key areas are: (1) Nassau County's role in the steering of housing and community development resources; (2) the geographic scope of the analysis; (3) the scope and methodology of the zoning analysis; (4) the nature of incentives for affordable housing developments in high opportunity areas; (5) meaningful action steps to reform zoning ordinances; and (6) community participation.

MHANY Management Inc. is a not-for-profit community-based developer of affordable housing. MHANY seeks opportunities to develop housing affordable to low and moderate income families in Nassau County in a manner that fosters truly inclusive and integrated communities. When MHANY sought to do so on County-owned land in the Village of Garden City, its efforts were stymied by Garden City's enactment of an exclusionary zoning ordinance designed to block affordable housing, motivated by discriminatory intent (as found by Judge Arthur D. Spatt of the Eastern District of New York, and as recently affirmed by the United States Court of Appeals for the Second Circuit). The County folded in the face of Garden City's opposition – a prime example of a major and continuing impediment to fair housing in majority-white communities throughout Nassau County, in which the County has been complicit. The County-owned land in Garden City, at the former site of the Department of Social Services, represented a major opportunity for the County to affirmatively further fair and integrated housing, and the County not only let that

opportunity go in the face of acknowledged race-based opposition, but made sure the opportunity would remain lost by moving forward with a courthouse project on that property instead.

New York Communities for Change, Inc. (NYCC) is a not-for-profit membership organization devoted to improving the quality of life for members of low and moderate income communities in New York, fighting for social and economic justice throughout the state. NYCC's members in Nassau County fight for fair and affordable housing, and seek to live in integrated communities with the same access to quality schools, public amenities, safe neighborhoods and transportation as those who live in Nassau County's nearly exclusively white communities. NYCC's members would have benefited from the availability of affordable multi-family rental housing at the County-owned Social Services Site in Garden City. By capitulating to community-based opposition to affordable housing as the County did in Garden City, and continuing to site affordable housing almost exclusively in low income, majority-minority communities in Nassau County, the County is ignoring the fair housing needs of NYCC's members and those in Nassau County on whose behalf NYCC fights – and is not affirmatively further fair housing, as the County is obligated to do.

Addressing the deficiencies in the draft AI that we identify here – and then acting on the needed policy changes – will be a much needed step away from the unfortunate events and policies that led MHANY and NYCC to bring suit in the first place.

**I. Nassau County must address the Second Circuit's reversal of the District Court's summary judgment decision with respect to the county's steering of housing and community development resources to African American and Latino communities.**

Remarkably, the draft AI does not mention the fact that the U.S. Court of Appeals for the Second Circuit recently reversed a District Court decision granting summary judgment to the county on the undersigned organizations' claim that the county had violated the Fair Housing Act and Title VI by intentionally steering affordable housing in the county and affordable housing and community development resources to low-income communities of color, and away from white communities, with the effect of perpetuating segregation. Any effective AI must address substantial allegations of racial discrimination in housing against the grantee preparing the analysis. The receipt of federal housing and community development funds is what triggers the county's duty to affirmatively further fair housing and to conduct this AI. How those funds are used is incredibly important to ensuring to promoting integration within the county, particularly where those allegations implicate the county's compliance with its duty to affirmatively further fair housing.



**II. Nassau County must broaden the geographic scope of the draft AI to assess villages within the county that are not consortium members and to evaluate fair housing conditions in a regional context.**

*a. Non-Consortium Members*

Inexplicably, the draft AI does not address fair housing conditions within communities that are not members of the Nassau Urban County Consortium and, in fact, disclaims all responsibility for considering those communities. On page four of the draft AI, the County states that the “non-participating communities are solely within the jurisdiction of the New York State ‘Participating Jurisdiction’ and are subject to the Analysis of Impediments for Fair Housing Choice prepared by New York State Homes and Community Renewal.” Although New York State must consider non-participating communities as well as participating communities in its AI, this view of the scope of the County’s obligation is incorrect both with regard to HUD regulations and as a necessary consequence of what would be necessary to conduct an effective fair housing assessment of conditions within the participating communities.

First, the applicable version of 24 C.F.R. § 91.225(a)(1) states that “[e]ach jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis of impediments to fair housing choice within the *jurisdiction*, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard (emphasis added).” Further, 24 C.F.R. § 91.5 defines a jurisdiction as a “State or unit of general local government” and a unit of general local government as a “city town, township, county, parish, village or other general purpose political subdivision of a state; an urban county; and a consortium of such political subdivisions recognized by HUD in accordance with the HOME program (24 CFR part 92) or the CDBG program (24 CFR part 570).” Notably, this definition includes the term “county” in addition to the term “urban county.” Even if the definition of an urban county is more limited than the definition of a county and may exclude the non-participating communities, Nassau County remains a county in addition to being an urban county and must analyze conditions throughout its jurisdiction as a county, which unambiguously includes the non-participating communities, alongside conditions in the participating communities.

Second, even if the language of the regulation did not directly require an analysis of conditions in the non-participating communities, such an analysis would be necessary because it is impossible to effectively assess conditions within the participating communities without considering the non-participating communities. This is especially true in Nassau County, which, as the draft AI acknowledges in Impediment #1, is segregated by race and national origin. The draft AI further notes that there are significant correlations between race and national origin and household income across participating communities. This conclusion, while valid, significantly understates the extent of the problem of segregation because the non-participating communities prove the point much more dramatically. Of the 37 villages that do not participate in the consortium, not a single one is either more heavily Latino or more heavily African American than the county as a whole. 22 out of the 37 are less than 1% African American. Only one of the



37 has a median household income that is below that of the county as a whole. This pivotal data, which is omitted from the draft AI, reflects the depth of segregation within the county and the key role that the non-participating communities play in contributing to segregation in Nassau County.

*b. Regional Analysis*

In addition to its omission of the non-participating communities, the draft AI does not ground its analysis of fair housing issues within Nassau County in the context of the broader New York-Newark-Jersey City, NY-NJ-PA Metropolitan Statistical Area. HUD recognized the importance of the regional dimensions of fair housing issues in its new Affirmatively Furthering Fair Housing regulation and supporting assessment tools. 80 Fed. Reg. 42771 (July 17, 2015). Throughout the new Assessment of Fair Housing created under that regulation, program participants, like Nassau County, are required to discuss and analyze conditions both within their jurisdictions and within their regions. Although Nassau County prepared this draft AI under the prior fair housing planning regulation, a regional scope is still critical to understanding segregation and other fair housing issues within the county.

In particular in light of their shared border, the contrast between Queens and Nassau County is revealing. While Nassau County has a population that is 62.3% non-Latino white, Queens is only 26.2% non-Latino white. The percentages of the borough's population that are African American, Asian American, and Latino far exceed the comparable percentages in Nassau County. Proportionally and in absolute terms, Queens has vastly more rental housing and multi-family housing, which are more accessible to African American and Latino households, than does Nassau County. The effects of the factors that constrain the ability of African American and Latino households in communities like Hempstead and Roosevelt to live in predominantly white communities within Nassau County do not stop at the county line. To fully understand those effects and to devise effective strategies for overcoming them, a truly regional analysis is necessary. Without that analysis, it is not possible for a county in a metropolitan region like Nassau County to produce a valid AI.

**III. The methodology of Nassau County's analysis of zoning ordinances is too narrow in scope, results in false negatives because of methodological flaws, and ignores Garden City's racially discriminatory conduct.**

*a. Consideration of Non-Participating Communities*

As explained above, it is critical that Nassau County consider the villages that are not participating communities in its AI. This is particularly true in connection with the issue of zoning and land use regulations. At a high level, it appears that these 37 villages have disproportionately restrictive zoning ordinances that limit the development of multi-family housing and rental housing that may be more accessible to African American and Latino families in the county and in the region. 28 of the 37 non-participating communities have a higher share of detached single-family homes than the county as a whole. In 26 villages, over 90% of housing



units are detached single-family homes. Moreover, 33 out of the 37 villages have higher homeownership rates than the county as a whole. These statistics reflect the reality that the decision not to join the Nassau Urban County Consortium is significantly correlated with exclusionary practices that restrict fair housing choice for lower income minority households and may violate the Fair Housing Act. These practices have resulted in an extremely imbalanced housing stock and stark residential segregation. Given that many of these non-participating communities are clustered geographically on the North Shore, the aggregate effect of their likely exclusionary policies is to render a significant, largely contiguous portion of the county off-limits to low-income people of color. Nassau County must revise its AI to include an analysis of zoning and land use regulations in communities that do not participate in the consortium.

*b. Flawed Methodology*

There are at least two notable flaws in the methodology utilized by Nassau County in the zoning analysis in the draft AI. First, the analysis appears only to discuss segregation within villages and towns by comparing, for example, one portion of an individual village to another portion of that same village. An appropriate analysis should layer a comparison of villages and towns to the broader region on top of that intra-jurisdictional focus. When a jurisdiction utilizes zoning and land use controls to exclude African American and Latino households, as two federal courts have held that Garden City did, that discrimination is not discernible from a comparison of the single-family zones within such communities to their rare multi-family zones. Instead, the segregative effect of Garden City's zoning becomes apparent when one considers the extremely limited supply of land zoned for multi-family housing in that community to more diverse communities like the Village of Hempstead and like much of Queens that allow for more multi-family housing. Indeed, the reference point for determining whether exclusionary zoning exists is not merely a comparison of two zoning maps. Rather, it must also consider regional data reflecting housing tenure by race and ethnicity. When a municipality, like Garden City, places severe constraints on the development of multi-family housing, particularly renter-occupied multi-family housing for families, and African American and Latino households in the region are disproportionately likely to both rent and to live in multi-family housing that is the very essence of exclusionary zoning.

Second, in addition to the shortcomings of the county's narrow intra-jurisdictional framework, the zoning analysis fails to grapple with other, more specific ways in which zoning and land use regulations can impede fair housing choice by targeting specific groups for adverse treatment, particularly families with children and persons with disabilities. The zoning analysis indicates that many participating communities have zoning designations in their ordinances that are specific to senior housing; however, the draft AI does not analyze the effects of these zoning designations on families with children, a protected class under the Fair Housing Act or on African American and Latino families under a disparate impact analysis. Although the Fair Housing Act contains an exemption that limits liability for familial status discrimination for housing providers who operate housing for older persons, that exemption protects the housing itself, not the zoning regulations, from scrutiny. A thorough and effective analysis of zoning in



Nassau County needs to consider the wisdom and legality of zoning classifications that require senior housing.

With respect to persons with disabilities, there are multiple types of housing that are disproportionately or even exclusively resided in by persons with disabilities. These types may include residential care facilities, transitional housing, and permanent supportive housing. Across the country, many municipalities have zoning regulations that explicitly target these types of housing for adverse treatment. These ordinances often run afoul of the Fair Housing Act and constitute a major, recurring issue in fair housing law and policy at the local level. Nassau County's zoning analysis contains no discussion of these types of restrictions. In order for the county to produce valid and effective AI, it must do so.

*c. Omission of Garden City discrimination finding*

As noted at the outset of this letter, Judge Arthur Spatt of the U.S. District Court for the Eastern District of New York found that the Village of Garden City engaged in racial discrimination in zoning in violation of the Fair Housing Act and the Equal Protection Clause of the U.S. Constitution when it rejected a zoning classification that would have made the development of affordable multi-family housing on county-owned land feasible because of racially-motivated community opposition. The U.S. Court of Appeals for the Second Circuit upheld Judge Spatt's finding of discriminatory intent on appeal. This case, in fact, is the reason why Garden City is a consortium member, as the village was required to join the consortium by Judge Spatt's remedial order. Garden City's racially discriminatory zoning decision and the subsequent federal court decisions comprise one of the most vivid illustrations of the continuing salience of fair housing in hyper-segregated Nassau County. The county's failure to grapple with the episode in its analysis of zoning in Garden City is totally unacceptable.

**IV. In order to be meaningful, Nassau County's proposal to prioritize the use of HOME and CDBG funds in high opportunity areas must be more concrete in order for community members to assess its likely effectiveness.**

In both the draft AI and in Nassau County's HOME program guidelines, the county references a new policy of prioritizing funding for affordable housing development in high opportunity areas. Appendix M of the draft AI identifies the location of those areas and explains the methodology for that identification. It is critical that the county more clearly articulate (1) the value of the priority in terms of the minimum proportion of total resources that will be invested in high opportunity areas under the new Consolidated Plan, (2) that it will only allocate funds to family-occupancy affordable housing developments under the priority for projects in high opportunity areas, and (3) that it will prioritize the development of housing that is affordable to very low- and extremely low-income households through the priority. From the perspective of translating policy into meaningful action, developers, both non-profit and for-profit, need to have the confidence that the county is weighing project location in high opportunity areas heavily enough to justify a significant investment in pre-development costs that are a necessary precondition to submitting an application to the county. If the priority is amorphous, developers



may lack that sense of confidence, and little affordable housing that would have an integrative effect may be developed. From the standpoint of promoting integration and providing a countervailing force to community opposition, focusing on family-occupancy housing as opposed to senior housing is absolutely essential. On Long Island, local opposition to affordable senior housing is typically considerably less strident than opposition to housing for families, and that housing tends to be more equitably distributed, as reflected in the proliferation of senior housing-specific zoning designations discussed above. Family housing, by contrast, has been shut out of communities of opportunity in Nassau County. Lastly, nominally affordable housing that is available only to households earning between 50% and 120% of the Area Median Income for Nassau County is less likely to meaningfully foster residential integration than is housing that is affordable to households earning less than 50% of the Area Median Income

**V. Needed zoning reform must allow for increased density across a broad range of communities.**

At various junctures, the draft AI focuses on the need for zoning to facilitate affordable multi-family housing near transit or on county-owned land and includes the Nassau County Infill Redevelopment Study as Appendix F. These references to changes in zoning and land use regulations do not go nearly far enough and do not reflect a fair housing perspective. Notably, Appendix F does not reference segregation in Nassau County or the need to promote integration. With respect to Garden City, the study rates the infill opportunities near transit stations in the village relatively lowly, relying in part on lack of community support as a justification. Consistent with the omission of any mention of our litigation against Garden City and Nassau County, the study does not note that a federal court found that community opposition to multi-family housing in Garden City was racially discriminatory just five and a half months before the publication of the study.

Additionally, given the lack of undeveloped land in Nassau County and, in particular, in historically exclusionary high opportunity communities, there is a pressing need for villages and towns to rezone land that has been built out at low density but that could be reused for multi-family housing, including affordable housing. Prospective upzoning, accompanied by appropriate consideration of the effect of such upzoning on surrounding communities, is critical to creating the economic conditions in which Nassau County can truly address the twin challenges of housing affordability and residential segregation. The county has an obligation under the duty to affirmatively further fair housing to use its leverage as a grantor and its negotiating position with respect to cooperation agreements to incentivize municipalities to rezone land for higher density.

**VI. The community participation process for this AI has been inadequate.**

HUD's *Fair Housing Planning Guide* calls for effective, ongoing communication and relationships with all segments of the community during the AI process at p. 2-12. HUD's new Affirmatively Furthering Fair Housing regulation places increased emphasis on meaningful community participation. See 24 C.F.R. 5.158. The serious flaws in the draft AI are indicative of



a process in which Nassau County included minimal community participation and did not solicit input from community stakeholders at an early enough stage. It appears that the county did little more than to hold one public hearing during the middle of the day on a week day, a time at which it would be difficult for many people to attend due to their work schedules. Aside from that public hearing, the acceptance of written public comments, of which the submission of this letter is a part, appears to be the remainder of the community participation process. The county took both of these steps after it had a completed draft thus preventing stakeholders from informing the drafting process before significant resources were devoted to methodologically unsound approaches. Although the county was right to do both of the two things that it did do to solicit input, much more was needed. In addition to having additional public hearings at different times and in different locations that would be accessible to a broader cross-section of stakeholders in the county and the region, the county should have begun to meet with stakeholders before the beginning of the drafting process. If they would have done so, MHANY and NYCC would have been able to provide much of the input contained in this letter before a word of the draft AI was written.

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Thank you for the opportunity to submit comments on this draft AI. We are hopeful that, if Nassau County devotes the time and care necessary to revise the draft, it can produce a fair housing planning document that would satisfy HUD regulations and provide as a meaningful policy roadmap for dismantling the pernicious residential racial segregation that has held Nassau County and the region back for far too long. We request that the county engage with MHANY and NYCC to identify and work with the stakeholders that will be essential to ensuring that the duty to affirmatively further fair housing is effectively implemented in Nassau County. If you have any questions about the comments and recommendations in this letter, please do not hesitate to get in touch with our counsel in the matter of *Mhany Management, Inc. v. Village of Garden City*. You can reach Joe Rich of the Lawyers' Committee for Civil Rights Under Law at (202) 662-8331, Stan Brown of Hogan Lovells at (212) 918-3000, or Fred Brewington at (516) 489-6959.

Sincerely,

Joseph D. Rich  
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April 29, 2016

Mr. Kevin Crean  
Technical Director  
Office of Housing and Community Development  
40 Main Street  
1<sup>st</sup> Floor  
Hempstead, New York 11550

Re: March 30, 2016 Draft Analysis of Impediments

Dear Mr. Crean:

I am the Village Attorney of the Village of Sea Cliff ("Sea Cliff"), and, on behalf of Sea Cliff, submit the following comments to the March 30, 2016 Draft Analysis of Impediments. In particular, the comments below are submitted to address the section of Appendix P containing a the Sea Cliff zoning analysis (Appendix P, pages 180-185).

*Comment 1* – The United States Census Bureau percentages are incorrect and should be modified to reflect the correct percentages. As calculated currently, the total percentage equals 177.1%.

*Comment 2* – The Village does not have a "zoning ordinance". The Village's zoning regulations relating to use districts and permitted uses within those districts are contained in the Village Code, Chapter 138 entitled "Zoning".

*Comment 3* – The last sentence in the "Zoning Ordinance" section is incorrect. The Village Public Housing Authority guidelines provide for an expansion of accessible housing and contain no preferences that would limit that expansion opportunity.

*Comment 4* – In the "Summary" section, the Village requests that it be made clear that the lack of public sewer infrastructure and impacts from private sewers on Hempstead Harbor and Glen Cove Creek limit further development of housing opportunities in the Village. Only a small number of properties, located primarily on the border with the City of Glen Cove, are connected to operational public sewer facilities.

*Comment 5* – In the "CDBG Program Summary" section, the analysis is not correct. The Village was able to obtain funding to provide for sewer facilities to be constructed along Sea Cliff Avenue, but those facilities are not currently connected to a sewage plant and are not

Mr. Kevin Crean  
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currently operational. The Village continues to seek opportunities and funds to create the connection of the constructed sewer infrastructure to a sewage plant.

*Comment 6* – The Village offers many senior service opportunities and provision of those services remains a priority.

*Comment 7* – The term “Cesus Bureau” in charts 3 and 4 should be corrected.

Please consider these comments for use in the final version of the Analysis of Impediments.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian S. Stolar", written in a cursive style.

Brian S. Stolar

c: Mayor and Trustees,  
Village of Sea Cliff