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EXECUTIVE SUMMARY

In Marin County, it is unlawful to restrict housing choice on the basis of race, color, disability, religion, sex, familial status, national origin, sexual orientation, marital status, ancestry, age, and source of income. This Analysis of Impediments to Fair Housing Choice (AI) broadly identifies the actions, omissions, and conditions in the county that may have the effect of restricting housing choice for people protected under state and federal fair housing laws. The AI not only identifies impediments to fair housing choice, but also makes recommendations to overcome the effects of those impediments. It is the authors' hope that this AI will serve as the basis for fair housing planning, providing essential information to County staff, policy makers, housing providers, lenders, and fair housing advocates, and assisting with garnering community support for fair housing efforts. Caroline Peattie and Jessica Tankersley of Fair Housing of Marin prepared the 2010 AI under contract to the County of Marin.

Summary of Findings and Recommendations

This Analysis of Impediments concludes that there exist substantial impediments to housing choice across the rental, sale, and lending markets throughout Marin County. Hispanic, Asian, and particularly Black households are not moving into Marin County in appreciable numbers; and those who live here may face differential treatment and limited housing choices. Black and Latino renters experience differential treatment in the housing market. Families with children also experience discrimination. People with disabilities face barriers ranging from housing providers' unwillingness to rent to "troublesome" tenants who will need reasonable accommodations to physically inaccessible housing. As the generation of baby boomers ages, there is an increasing demand for a limited number of beds in residential care facilities for the elderly (RCFEs). Studies have shown that people with disabilities, particularly people of color, have unequal access to senior housing, RCFEs and continuing care facilities. Discriminatory advertising, particularly on internet sites such as Craigslist, limits housing choice for people across protected classes.

Affordable housing frequently serves a range of protected classes. Limiting the development of affordable multifamily housing reduces housing options for those protected groups. Current zoning ordinances impose onerous restrictions on the development of high-density, multifamily housing, which limits the stock of available rental housing. Inclusionary

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zoning policies require housing developers to set aside a portion of new units for below-market-rate occupancy, but inclusionary zoning alone is insufficient to produce the amount of affordable housing needed in the county, especially during economic downturns when there is little market-rate development and an increased need for affordable housing. Similarly, second units alone will not meet the county's affordable housing need, because they are less likely than units in conventional apartment buildings to be broadly marketed. As a result, second units in practice may have limited availability to those who need affordable housing, particularly minorities. In addition, many second units that are on the rental market are inadequate housing for minorities, people with disabilities, and the elderly, as many units do not meet accessibility standards or cannot pass Section 8 housing choice voucher inspection requirements. While second units are a viable option in some neighborhoods, they should not be relied upon as the sole source of affordable housing in Marin.

There are few opportunities for major redevelopment projects and County and city redevelopment funds are often committed to redevelopment project areas that are already highly segregated, perpetuating the concentration of minorities in certain neighborhoods and cities.

After initial occupancy, the County does not update its data on the race and ethnicity of residents of affordable housing projects, and therefore cannot measure whether developments have the long-term effect of further concentrating racial minorities in certain localities.

Disproportionately high numbers of Black residents receive Section 8 housing voucher subsidies or reside in Marin City Public Housing. Although public housing applicants with families express the desire to live outside Marin City, there is no other family public housing in the county. Public housing effectively perpetuates segregation based on race and familial status, although there has been some increase in racial diversity in the family public housing in the last 15 years, and the most recent redevelopment project has made Marin City a more diverse community. Section 8 voucher holders are disproportionately represented in localities with higher-than-average proportions of minorities, which may perpetuate patterns of segregation because many Section 8 voucher holders are people of color, people with disabilities, and families with children. However, these are also the localities where there are higher-than-average concentrations of rental housing and greater availability of public transit service. Many landlords are reticent to participate in the Section 8 program, in part due to negative stereotypes

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about recipients of public assistance, which exacerbates the concentration of protected classes in certain neighborhoods and communities.

Choices for families are further limited because the affordable housing developed by non-profit developers is disproportionately senior housing or studios and one-bedroom units – generally inappropriate for families with children.

The Marin Housing Authority (MHA) is the largest supplier of affordable housing in Marin, but a number of their policies may act as barriers to furthering fair housing. The Housing Authority’s “One-Strike” Policy, if implemented as written, could disproportionately affect Black residents, women who are victims of domestic violence, and people with mental disabilities, jeopardizing their tenancies and destabilizing housing opportunities. The MHA’s program for outreach to Limited English Proficient communities is insufficient. Large numbers of Spanish-speaking and Vietnamese-speaking households could benefit from Housing Authority programs, yet information about those programs is not always easily accessible in a language other than English.

Almost all affordable rental properties identified as appropriate for people with disabilities are at capacity, and many properties have closed their waiting lists completely. Additionally, many properties for people with disabilities are not wheelchair accessible. The properties for people with disabilities are concentrated in certain localities; only two properties exist in West Marin. Further, the aging housing stock limits accessibility of many privately-owned units to people with disabilities, despite new construction’s compliance with contemporary building codes.

Public transportation resources are clustered in a few densely populated and more segregated communities, effectively perpetuating the concentration of minorities, women with children, and the disabled in certain neighborhoods.

Black and Latino home loan borrowers are subjected to higher denial rates, as are borrowers in minority census tracts. Blacks and Latinos also receive a disproportionately small share of prime loans, as compared to their share of Marin County’s households. The share of prime loans issued to Hispanic or Latino borrowers in 2008 registered a notable drop from 2006. Latino borrowers in Marin County receive a disproportionately high share of high-cost loans. Therefore, Latinos face greater risk of defaulting on their loans, particularly during an economic downturn. Evidence suggests that a disproportionately large number of monolingual Spanish-

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speaking Latinos in Marin are at the delinquency, default, or foreclosure stage. Borrowers residing in predominantly minority neighborhoods in Marin County are more likely to get a high-cost loan than borrowers residing in predominantly White tracts. Below-market rate homeowners fall prey to predatory lending and may ultimately lose their homes for failure to abide by their deed provisions restricting additional encumbrances.

These findings apply to local jurisdictions throughout Marin County. The scope of this report was focused on County policies rather than an individualized analysis of each jurisdiction within the County. There may be unique circumstances which do not apply to every jurisdiction; however, the barriers and recommendations identified apply to each jurisdiction, unless otherwise specified.

To effectively combat housing discrimination and affirmatively further fair housing, the County and other local jurisdictions should undertake a multi-pronged approach that includes implementing the following recommendations:

1. The Marin County Task Force on Housing Discrimination was established in 1998 by the Marin County Supervisors and Fair Housing of Marin. Since its inception, the Task Force has analyzed a number of different housing discrimination issues. In recent years there has been some loss of momentum; FHOM has continued to present fair housing issues to any of the players wanting to participate, but without the consistent involvement of community representatives. Given the County's mandate to affirmatively further fair housing, the Supervisors and other advocates can use the Task Force as a forum to address some of the impediments identified in this document and encourage broader involvement from the community in addressing these impediments.
2. Additional affordable rental housing is needed, but current zoning ordinances impose onerous restrictions on the development of high-density, multifamily housing. In its analysis of efforts at residential development in commercial zones, Public Advocates found that zoning regulations related to density, height, parking, and limitations of ground-floor space to commercial uses act as a significant hurdle to development of affordable housing.¹ The County and other local jurisdictions should undertake comprehensive reviews of zoning regulations, taking into consideration research already

¹ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 27 (2009).

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conducted on the matter. The County and other local jurisdictions should consider adopting design guidelines for multi-family developments that could be used to review and permit affordable housing projects either “by right” (meaning ministerial review) or through a streamlined process of discretionary design review limited to design aspects of the site and the proposed improvements. Local jurisdictions should consider the creation of affordable housing overlay zones. Local jurisdictions can establish a list of sites where affordable developments may benefit from increased residential density standards, fee waivers, and relaxation of other development standards such as parking requirements.² Further, all jurisdictions should ensure that within the overlay zone, the general zoning code permits either “by right” development of multifamily dwellings or allows such development through a streamlined discretionary review process that is limited to site and building design considerations based upon multi-family design guidelines. Marin can look to the Town of Corte Madera’s Affordable Housing Overlay (AHO) zone and San Rafael’s Transit Overlay District as successful exemplars.³ None of the jurisdictions with high-density multifamily “by right” zoning districts currently has a minimum density requirement; the effect is that sites zoned to permit higher-density residential use may instead be used to develop low-density housing. Local jurisdictions should consider imposing zoning restrictions that include a density floor to prevent lower-density development of a site.⁴

3. Countywide, most jurisdictions have inclusionary zoning, which requires a percentage of new development to be set aside as below-market-rate housing. A number of jurisdictions still do not have inclusionary policies, while others have policies that are in need of updating to ensure they are promoting fair housing. The jurisdictions that do not have inclusionary zoning policies should evaluate the potential effects of adopting inclusionary zoning ordinances as a strategy for developing more affordable housing. Current inclusionary zoning regulations should be studied and changed if necessary to

² *Marin County Housing Study: Analysis of Best Practices to Meet the Housing Needs of Homeless and Precariously Housed People in Marin County*, Kate Bristol Consulting, 02/05/10, pg. 18.

³ *Ibid.*

⁴ Marcantonio, Richard, *Zoning for Affordable and Sustainable Communities: A Case Study in the Implementation of Housing Elements in Marin County*, Public Advocates, Inc., pg. 24 (2009).

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remove policies which may act as a barrier to increasing housing options for low income and minority households. For example, in the County, inclusionary units may be allowed to be developed off-site if they do not fit with the “overall project character.” This exception may be exercised as a pretext for discrimination against very-low and low-income residents, predominantly people of color, families, and people with disabilities. Local jurisdictions should define “overall project character” and develop clear criteria for determining when inclusionary units would not fit with overall project character and therefore may be built off-site, so that the regulation is applied consistently and not in a manner as to disparately impact minorities, families, and people with disabilities. Finally, in-lieu fees should be assessed in direct proportion to the cost to construct a unit.

4. Inclusionary zoning requirements are only effective at creating affordable housing during times when substantial market-rate development takes place; inclusionary zoning requirements are, however, ineffective during a real estate downturn. Other options for providing affordable housing and funding for local housing trusts should be explored, including considering adopting affordable housing impact fees, similar to the County’s fee. More generally, local schedules of in-lieu fees and impact fees should be periodically reviewed to determine whether they should be adjusted.
5. Second units can supply only a limited portion of needed affordable housing, as the units are often small. Some second units are not broadly marketed, and those that are on the rental market are often inadequate housing for people with disabilities and the elderly, as many units do not meet accessibility standards or cannot pass Section 8 housing choice voucher inspection requirements. While second units are a viable option in some neighborhoods, they should not be relied upon as the sole source of affordable housing in Marin. The County and other local jurisdictions must diversify development of affordable housing beyond second units.
6. Redevelopment funds are often committed to project areas that are already highly segregated, which might perpetuate the concentration of minorities in certain communities. However, redevelopment funds have also been used for projects which increase neighborhood diversity. Further, affordable housing is disproportionately senior housing. Senior housing comports with the idea of a “deserving poor,” whereas housing

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for minorities and families does not.⁵ Finally, affordable housing development tends to be studios and one-bedroom units – generally inappropriate for families with children. The County and its jurisdictions should encourage and facilitate the development of more subsidized and affordable housing for families with children, particularly in areas with low concentrations of minorities. Substantial investment in acquisition and rehabilitation may also be a successful strategy for developing more affordable housing for families outside impacted areas; the County and other local jurisdictions should also consider working with community advocates and developers to develop non-traditional housing arrangements such as shared housing. However, the market for shared housing may be limited to tenants who prefer more involvement with their neighbors than occurs in traditional housing.⁶

7. Almost all properties identified as appropriate for people with disabilities are at capacity, and many properties have closed their waiting lists completely. Additionally, many properties for people with disabilities are not wheelchair accessible. Further, the properties for people with disabilities are concentrated in certain localities; only two properties exist in West Marin. The Housing Authority should review information it provides regarding accessibility to ensure accuracy. Funders and the County should devote resources to developing more housing for persons with disabilities in diverse geographic locations, especially underserved communities such as West Marin.
8. Local public transportation service is concentrated in low-income communities where current demand and current ridership are greatest, but this can perpetuate the segregation of minorities in those neighborhoods. A way forward would be the pursuit of transit-rich development in non-impacted neighborhoods (for example, the “Green Hubs” concept), but that would require local governments to allow development at densities high enough to create sufficient demand for public transportation. The Transportation Authority of Marin should approve and implement the Marin City transportation plan it commissioned in 2007. The Transportation Authority of Marin should work with local public transit providers to increase transportation options in higher-income, less impacted communities as well as to broaden opportunity for all residents.

⁵ Interview, Richard Marcantonio, Public Advocates.

⁶ Interview, Roy Bateman, Marin County Community Development Agency.

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9. The County does not regularly update data collected on the race or ethnicity of residents of affordable housing projects, and therefore cannot measure whether these developments have the long-term effect of further concentrating racial minorities in certain localities. Marin County should institute a system for tracking the racial and ethnic demographics of residents of all housing developed with County funds and federal funds that pass through the County. The County should consider conducting regular surveys of those privately developed affordable housing properties which are subject to local government restrictions on household income, to determine racial and ethnic demographics of residents.⁷
10. All tenants in Marin Housing Authority properties must sign a lease before they can live in public housing; the dwelling lease sets forth rules and requirements for tenancy. MHA should ensure that its public housing lease and rental notices are translated into Spanish and Vietnamese and should make them available on a consistent basis when needed. MHA should have a procedure to access interpreters if oral discussion is necessary.⁸
11. When the Section 8 Housing Choice Voucher or Public Housing wait lists are open, MHA should affirmatively market the availability of units to all families within the jurisdiction by placing a public service announcement in English, Spanish, and Vietnamese in local circulation language-specific newspapers, radio, and/or television.⁹
12. Section 8 voucher holders are disproportionately represented in localities with higher-than-average proportions of minorities¹⁰, which may perpetuate patterns of residential segregation. However, these are also the localities where there are higher-than-average concentrations of rental housing and greater availability of public transit service. As many Section 8 voucher holders are people of color, people with disabilities, and families with children, this perpetuates patterns of segregation. Some landlords are reticent to participate in the program, in part due to negative stereotypes about race, ethnicity, and recipients of public assistance, which exacerbates the concentration of protected classes in certain neighborhoods and communities. The County and other local jurisdictions

⁷ This recommendation is also propounded in “Compliance” chapter.

⁸ See HUD Final Guidance at 2750.

⁹ *Ibid.*

¹⁰ HUD internal guidelines define areas with over 40% minority population as racially impacted.

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should collaborate with the Housing Authority and community housing advocates to strategize ways to encourage landlord participation and expand housing choice.

13. Disproportionately high numbers of Black residents receive Section 8 housing voucher subsidies or reside in Marin City Public Housing. In fact, the majority of Marin City public housing tenants are Black. Although public housing applicants with families express the desire to live outside Marin City, there is no other family public housing in the county. Public housing effectively perpetuates segregation based on race and familial status, although there has been some increase in racial diversity in the family public housing in the last 15 years, and the most recent redevelopment project has made Marin City a more diverse community. The County and other local jurisdictions should devote resources to developing more subsidized housing outside impacted areas. Given current funding patterns, new subsidized housing is unlikely to be public housing, and instead will most likely be owned or sponsored by non-profit organizations.
14. The MHA's "One-Strike" Policy, if implemented as written, could disproportionately affect Black residents, women who are victims of domestic violence, and people with mental disabilities, jeopardizing their tenancies and destabilizing housing opportunities. The Marin Housing Authority should consider modifying its written policy to make it clear that only residents who present a direct threat to the health or safety of others will be evicted from public housing or terminated from public housing assistance, and that there will be an opportunity for case-by-case review of specific circumstances. The MHA should include specific language in its lease alerting victims of domestic violence to their rights under the Violence Against Women Act. The administration of the One-Strike Policy should be monitored to ensure that it does not disparately impact any protected classes.
15. BMR homeowners may fall prey to predatory lending and may ultimately lose their homes for failure to abide by their deed provisions restricting additional encumbrances. BMR owners need advocacy and education. Local jurisdictions with BMR programs should be sensitive to this issue and assure that BMR homeowners receive adequate pre-purchase and post-purchase counseling and education.
16. Few resources exist to assist precariously housed persons with finding stable, permanent housing. Funders and local jurisdictions should consider providing funding for improved

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housing information and referral services, which might include reviving the Housing Assistline.

17. Outreach to English as a Second-Language communities is insufficient. Large numbers of Spanish-speaking and Vietnamese-speaking households could benefit from Housing Authority programs, yet information about those programs is not always easily accessible in a language other than English. For example, the MHA should include Spanish and Vietnamese translations on www.marinhousing.org, list contact information for staff fluent in Spanish and Vietnamese in prominent locations, and ensure compliance with federal regulations by publishing all relevant or vital documents relating to tenancy in Spanish, Vietnamese, and any other language as needed. Other housing and service providers should review whether their services are accessible in multiple languages as needed.
18. Developers cannot always take advantage of the available Low-Income Housing Tax Credit because of poor proximity of developments to public transportation. Further, commercial development is more appealing to many municipalities than residential development because of the increased sales tax revenue. Local jurisdictions should continue their inclusionary zoning policies to ensure that commercial developments include affordable housing units. The Transportation Authority of Marin should also secure more resources for developing transportation hubs outside racially-impacted areas so that properties located near those hubs which are suited for higher-density housing can qualify for the Low-Income Housing Tax Credit. Other public transportation improvements which would qualify infill housing opportunity sites for tax credits would facilitate the financing of needed affordable housing.
19. Some of the stated purposes of local jurisdictions' development codes may be interpreted as potentially conflicting with affirmatively furthering fair housing. For example, the County's Development Code includes language to "protect the character and social and economic stability" and maintain "community identity and quality development."¹¹ The County should consider amending its Development Code to limit the language that could be used as a pretext for discrimination against minorities, people with disabilities, and families with children, and add clarifying language noting that the code is intended to

¹¹ Marin County Development Code, Section 22.01.020.

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expand housing opportunities for all people, regardless of their membership in a protected class, as well as to implement other public policy objectives. Other local jurisdictions should undertake similar amendments where needed.

20. The aging housing stock limits accessibility of units to people with disabilities, despite new construction's compliance with contemporary building codes. The County and other local jurisdictions should consider providing incentives for property owners to make residential properties constructed before 1991 accessible, thus increasing the available housing stock for people with disabilities and the elderly. Incentives could take the form of financial rebates or credits, or education and outreach.
21. Given higher denial rates for Blacks and Latinos, it is important that consumer protection groups within Marin County work with County officials and Fair Housing of Marin staff to target marketing of responsible loan products and counseling targeted to communities and borrowers experiencing unequal access to loans, tapping into the expertise of organizations such as the California Reinvestment Coalition whenever possible.
22. Further fair lending investigations/testing into the disparities identified through the HMDA data analysis is crucial to understanding and addressing the inequities in lending across races and ethnicities.
23. More generally, HMDA data for Marin County should be monitored on an ongoing basis to analyze overall lending patterns in the county. In addition (and what has not been studied for this AI), lending patterns of individual lenders should be analyzed, to gauge how effective the CRA programs of individual lenders are in reaching all communities to ensure that people of all races and ethnicities have equal access to loans.
24. There is currently one certified HUD Housing Counseling agency in Marin County, Fair Housing of Marin, which employs a bilingual part-time foreclosure counselor. FHOM holds workshops and investigates possible predatory lending to ascertain if there are fair housing violations. Other agencies provide foreclosure assistance: Marin Family Action provides foreclosure advocacy, Legal Aid provides legal advice, and the District Attorney's office investigates criminal activity. The County should take a leadership role in encouraging collaboration among these agencies, particularly those focusing on protected classes targeted by predatory lenders. This includes outreach through the agencies serving the Latino and Black communities. Existing financial literacy education

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programs should incorporate predatory lending education, and the organizations offering those programs should become versed in recognizing predatory lending practices.

25. Currently, there are not enough legitimate and affordable resources for all victims of predatory loans to have their needs addressed, starting with negotiating and analyzing the confusing stacks of loan documents. Enforcement – prosecuting offenders after investigating them – is therefore difficult, particularly as many agencies and attorneys, purporting to be consumer advocates, further victimize borrowers desperate to save their homes by charging exorbitant rates to accomplish little. The return for the enormous investment of time makes it economically prohibitive for many attorneys to represent clients in these cases. It becomes extremely important, therefore, for consumer advocates to join with local and state enforcement agencies to coordinate an effective strategy to address predatory lenders.
26. The County should join consumer advocates in supporting any legislation that would help clarify the outreach, notice, and process that homeowners seeking loan modifications are due, as well as provide recourse to homeowners whose homes are foreclosed on improperly. In addition, the County and advocates should support legislation to prevent lending practices which can lead to abuse: prepayment penalties which trap borrowers in unaffordable loans; unsuitable loans that borrowers cannot afford to repay; extra payments that lenders make to brokers for giving borrowers higher interest rate loans; and loans that do not require proof of actual income.
27. The County, in cooperation with funders and consumer groups, should support local studies of foreclosure data in Marin County, to analyze foreclosures according to race and ethnicity, as well as neighborhoods. Such an analysis should also include the number of loan modifications across race and ethnic lines so as to better understand the fair lending implications of foreclosure trends in Marin.
28. The County and local funders should support the expansion of financial literacy and counseling programs. Nonprofit home loan counselors are on the front line for staving off foreclosures, working with borrowers and negotiating with lenders to modify unaffordable loans. These agencies need consistent financial resources to educate the public about financial matters. Most importantly, services should be available in

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languages other than English, particularly Spanish. The County should work with community groups to target neighborhoods of color in education efforts.

29. The County of Marin and other local jurisdictions should track the development of affordable housing towards meeting RHNA needs. Further, the County should require municipalities to report on actions they have taken to affirmatively further fair housing (AFFH). To ensure compliance, the County should be prepared to implement enforcement measures such as withholding funding from municipalities that it deems to be failing to affirmatively further fair housing.
30. The County of Marin should rank recommendations contained within the 2010 Analysis of Impediments and amend its Consolidated Plan 2010-2014 to incorporate those prioritized recommendations as part of its action plan.
31. Marin County should undertake to update its AI within two years of the release of the 2010 Census data.
32. The County should utilize the public hearing and AI adoption process to raise community awareness of the barriers to fair housing choice by publicizing the hearing and inviting all segments of the community to participate.
33. The County should include the community as part of the solution to fair housing rights education and monitoring, and should incorporate community recommendations in the final version of the AI.
34. The County should explore the expansion of the Marin County Task Force on Housing Discrimination to include fair housing advocates, governmental representatives, community and business leaders, Realtors, lenders, and academics to explore and lend urgency to fair housing issues and their potential effect on Marin County's economic and social future.
35. The County should ensure that one County department consistently monitors and tracks progress in meeting the AI recommendations.
36. As the 2010 AI is considerably more comprehensive than the 1994 AI, the AI should be updated every two to five years, with updates to be funded such that they do not detract from resources for fair housing counseling and enforcement.