REPORT ON REVOLVING LOAN FUND FEASIBILITY ASSESSMENT

In accordance with Paragraph 22 (e) of the Stipulation, below is an assessment of Westchester County's ability to implement mechanisms by which the monies made available pursuant to paragraphs 2, 3 and 5 can be placed in a revolving fund dedicated to the development of Affordable AFFH Units. This assessment also includes identification of the obstacles, and any steps which may overcome the obstacles.

Both paragraph 2 and 3 relate to a total of $21.6 million which is to be made available for development of new affordable housing units that will affirmatively further fair housing, subject to the requirements of the CDBG program.

Paragraph 5 includes a total of $30 million of County funds for direct costs of new affordable housing units that will affirmatively further fair housing.

Paragraph 2 and 3: $21.6 Million under CDBG Program

Regulations regarding use of these funds include provision of loans pursuant to CFR 24 §570.201. Any repayments of these loans will be used in accordance with these CDBG regulations and may again be re-loaned to assist in the development of additional units of Fair and Affordable Housing. Westchester County has a long history of utilizing CDBG funds as repayable loans deferred loans or grants since inception of the program, and anticipates that it will do so with these funds. However, in making a determination to provide funds, the priority will be placed on ensuring that fair and affordable housing will be developed. If the County's underwriting determines that the proposed housing sale or operation can remain affordable but still repay the loan, then it will provide such funds a loan. Attached is a listing of Westchester County Affordable Housing Loan Programs. All of these programs may be utilized with these funds.

Paragraph 5: $30 Million of County Funds

It is anticipated that these funds could be provided using County issued Government General Obligation Bonds. It is not currently anticipated that these funds would be used as loan funds, because sufficient resources are available under Paragraph 2 and 3 for this purpose. Also, the County anticipates that those funds will be the initial source used as loan funds where it is determined that such funding is feasible and the development can operate as affordable housing. If a determination is made that the Paragraph 5 funds will be necessary as loan funds, the County will undertake research in coordination with its Bond Counsel to determine if these funds may be used as loans. Such an evaluation will take into consideration a prohibition on any government lending its "credit" to a private concern, as outlined Article VIII, Section 1 of the New York State Constitution. Historically, it was understood that this prohibition has always been an obstacle to using County monies to support such things as septic system repair and other improvements on private property. Another consideration regarding administration of these funds is that the County would be acting as a bank, including risk and collection obligations, including the expense in administering these funds.

Obstacles to using Funds as Revolving Loan Funds

As noted above, there is no obstacle to use of the funds governed under the CDBG program as repayable loan funds. However, there may still be limitations to this use, as was outlined in the December 15, 2009 memorandum submitted as Appendix H-4 to the January 30, 2010 submission of the Housing Implementation Plan. This memo detailed the obstacles, the primary of which explained that by adding repayment of funds to the development cost of housing adds to the housing cost borne by the low-income household, where the cost is either not affordable to those households, or the project becomes not feasible:

- For homeownership, the household would have to add repayment of the CDBG loan on top of their mortgage payment and other ownership housing costs.

- Rents would have to be set at an affordable level, but if repayment of a loan is included in the operating cost of the rental development and not passed onto the tenant in the form of higher rents, the project would be infeasible.

Because the housing developments in Westchester County are so costly, it is frequently infeasible to provide these funds as repayable loans.

The obstacle to using the Paragraph 5 funds as loan funds is clearly stated above.

The December 15, 2009 memorandum is attached.

Steps to Overcome Obstacles

The County fully intents to maximize use of CDBG funds as repayable loan funds wherever possible, given the above discussed limitations. But, there are other approaches to assisting affordable housing that will ensure all funds are leveraged to the extent possible. A review of previously funded housing developments in Westchester County show that by providing 10% to 20% of County funds towards the acquisition and/or infrastructure cost, fair and affordable housing developers have been able to access other public and private funding to cover the total cost to complete an affordable housing development. In this approach, the County will review the proposed total cost to develop the housing, compared to other funds available for the development. The difference between the cost and amounts available is the “gap” that the County will fund to assure viability of the proposal. A more detailed discussion of this financing approach is in the attached December 15, 2009 memo.

The County has met with both NYS Division of Housing and Community Renewal and with the NYS Housing Finance Agency. Representatives of both agencies have indicated that housing proposals submitted showing County funding are viewed favorably in their funding decision making.

Conclusion

The $21.6 Million available under the CDBG program regulations provides sufficient resources to employ the use of repayable loans where feasible. The County’s underwriting process will assess every opportunity to use these funds as loans. The remaining funds are best used as “gap” funding which will leverage other public subsidies and private investment.

<u>Westchester County Affordable Housing Loan Programs</u>:

- **Low interest Conventional Loans** – provided with the interest rate and payment term adjusted based on the ability of the borrower to repay. Loans provided include home improvement loans to low income homeowners and property improvement loans to operators (usually nonprofit) of rental housing developments occupied by low income households.

- **Deferred/Repayable Loans** – provided to developers of fair and affordable housing in order to facilitate the development of new units through new construction or adaptive reuse of property. Typically the terms can include accumulated simple interest for a specified term (often 15 years or longer) with the both principal and interest to be repaid at some point in the future per the terms of the loan.

- **Deferred Loan** – funds provided on a long term basis where it has been determined that repayment is unlikely under the development's current financing and operating structure, but that funds can be repaid upon the sale or transfer to a new owner.

- **Construction Loans** – provide temporary loans to assure availability of construction funding for housing (or other purposes). In these cases, funds are provided only for work completed (progress payments). Upon completion of this work, (usually upon the issuance of a Certificate of Occupancy) the entire amount advanced may be repaid; a portion repaid with the remainder left in to assure affordability (secured by a mortgage or deed restriction); or all left in to assure affordability, secured as provided in the original documents. The underwriting conducted prior to issuing an agreement to fund the development will determine the repayment terms, if any.

- **Acquisition Loans** – provide temporary loans to acquire property for use as affordable housing. Similar to the Construction Financing, upon completion of the development all may be repaid, a portion repaid or all remain with the development to assure affordability. The underwriting conducted prior to issuing an agreement to fund the development will determine the repayment terms, if any.

Appendix F-2

Memorandum

Westchester gov.com

Department of Planning

432 Michaelian Office Building
White Plains, NY 10601

To: Susan Gerry

From: Deborah DeLong dd

Date: December 15, 2009

Subject: **Response to the Comments of the ADC regarding the Use of Revolving Loan Funds to Support Fair & Affordable Housing Development**

The Planning Department has reviewed the letter from the Anti-Discrimination Center regarding use of Fair and Affordable Housing funds as a Revolving Fund, and considered the ideas and concepts conveyed in the letter, since such approaches can help to maximize public funds. As you know, in reviewing all proposed options, our ultimate goal is to provide fair and affordable housing through the best use of the funding. Below are an analysis and findings for the County's options to set up and put into operation a revolving loan fund as suggested in the letter and in the Stipulation.

Westchester County has a long history in utilization of revolving loan programs as one approach to maximizing public funds. Other ways to use funding to ensure creation of affordable housing while also conserving public funds include leveraging other funding available for affordable housing development and funding only the "gap" between the cost to acquire, construct or rehabilitate housing, the availability of other funds for the development and the amount low income households can afford to pay for rent or purchase of the homes.

At least $30 million of the funds to be made available for the Fair and Affordable Housing program will be bonded to cover a portion of the cost for each project. This investment in each project is long term so bonding is a practical way for the County to assist. If the funds were to be used as a loan rather than an investment, the repayment would go back to repay the bond investors since the purpose of the funds was to cover the cost of a specific affordable housing development. It is our understanding that funds bonded by Westchester County cannot "revolve" to cover the cost of another project because bond authorizations are, by law, project specific.

We also understand that there is a NYS Constitutional prohibition on the gift or loan of public funds to private entities. This prohibition has always been an obstacle to using County monies to support such things as septic system repair and other improvements on private property. It also turns the County into a bank with higher risk and collection obligations which is very expensive and would, as noted above, increase the costs to the low income residents of the housing beyond an affordable level.

Nor would a scenario to revolve all of the funds be practical. If all funds were to be provided as loans, even low interest and repayable loans, the rents or purchase price of the units would have to be increased to cover the repayment cost. Because we only fund the "gap" between the cost to build the property and the price the low income household can afford to pay in rent or for purchase, such an increase will make the project un-affordable, or infeasible, and defeat the underlying program purposes. Historically, we have found that the County's direct funding for land acquisition and/or construction of needed infrastructure results in leveraging of significant other funds. Typically the County's assistance ranges from 10% to 20% of the total cost to build affordable housing. If the County were to provide loans instead, it is likely that fewer other funds could be leveraged overall since the projects would be either considered infeasible or other additional sources would be needed to subsidize the additional cost of the County funds.

Based on the above and our own experience in managing these projects, it is our opinion that the most effective approach to maximize the value of the $30 million in County-sourced funding within the scope of New York State law is to spend the money outright to leverage significant other funding available through federal, state and private sources. In this way, the County provides no cost and no repayment funds for a portion of the total outlay to create new affordable housing units. The use of the housing is then restricted as affordable for a period of at least 50 years.

Of the $21.6 million in funds that will be governed by CDBG program regulations, a portion or all of these funds can be used for repayable loans, which can be revolved as provided in the revolving fund provision. Over the years, the County has deployed CDBG funds with a variety of loan programs, based on the need for the funding, the benefit to low and moderate income persons such funding will provide, and the ability of the low income borrower or other borrower to repay. All repayments are deposited back into the CDBG trust account and made available for reuse in the program. Attached is a summary of the loan types and conditions and terms employed by the County with these programs. We anticipate that the funds made available through the Stipulation will be deployed in a variety of ways, including as revolving loans. Attached is a list of the types of loans utilized in the past which have helped in making projects viable, and also provided for some amount of repayment.

The major limiting factor in implementing County funds for fair and affordable housing development, used either alone or with other funding is the ability for the developer to gain building approvals from the city, town or village. The County expects to work collaboratively with all local governments towards the goal of gaining these approvals expeditiously, and this concept will be folded into the model zoning ordinance being developed as per the stipulation. Once approvals are in place, it is more likely that the other funding can be attracted to fund the proposed development. It should also be noted that the other primary funding sources are administered by New York State agencies, which are project specific and are used directly to fund the development - Westchester County does not receive or handle these funds, but instead participates in a Real Estate Closing where the County funds and all other funds are contractually obligated to fund project costs. The NYS agencies receive proposals from developers all over the State in competition with proposals for developments in Westchester County. In order to be competitive, we have reviewed and discussed the agencies review and selection process. It is significant to note that an important factor in the funding determinations by State agencies has been the funds made available by the County under the New Homes Land Acquisition and the Housing Implementation Fund programs; these programs can be the model for use of the $30 million in County funding.

A separate point made by the Anti-Discrimination Center is that overcoming zoning barriers will result in others investing in areas where such barriers exist. This is an area of research on a national scale – one which HUD has spent years studying and has established a website to share much information http://www.huduser.org/portal/rbc. We have found much of interest here that can inform our efforts in working with Westchester's 43 towns, villages and cities that regulate land use. This will build on the variety of efforts we have used to promote best practices regarding zoning, education and other programs to facilitate fair and affordable housing. However, as you well know, pursuant New York State Law, zoning is a matter of local authority for which the County currently has no jurisdiction.

Another concept several local governments in Westchester County employ to create affordable housing units is inclusionary zoning, where the development of market rate units requires that some number of affordable units be provided. This concept will be folded into the model zoning ordinance being developed as per the stipulation. In good real estate markets, a number of such units can be developed. However, today there is no market for any development with the exception of affordable rental projects and, even then, these developments require additional subsidy. This is why federal stimulus funds were included in the American Reinvestment and Revitalization Act of 2009 under the TCAP program. New York State has already awarded these funds to projects that are most ready to close and start construction.

As you are aware, the Stipulation requires that at least 50% of the fair and affordable housing units to be rental. We do not see this requirement as problematic due to the financing incentives currently in place, such as through the Low-Income Housing Tax Credit program and other sources that are directed toward the development of fair and affordable rental housing. In fact, a major portion of the fair and affordable housing units that have been funded by the County have been rental developments.

Please let us know if you have additional questions or need additional information.