

LAND USE AND ZONING AUDIT STUDY DESIGN AND METHODOLOGY

Introduction

This section first discusses the development of the audit tool and the audit process, including the selection of jurisdictions audited, the training of auditors and the method for conducting the audits and completing the audit tool. The next section concerns the development and refinement of the database for organizing and retrieving the information collected from the audits, followed by a review of the criteria for identifying jurisdictions supportive of housing for people with disabilities and those with significant barriers to fair housing. Finally, the limitations of the land use and zoning audit study are discussed.

The Audit Tool

The audit process focuses much of its inquiry on land use and zoning practices with respect to group housing. This is because group living arrangements are often necessary to enable people with disabilities to secure the supports they need to live in the community. Integration in the community has been found to enhance the quality of life and functioning of people with disabilities. However, congregate or group living arrangements are often prohibited or restricted by land use and zoning practices in violation of fair housing laws.

Compliance and noncompliance with the Fair Housing Act is documented using an audit tool. (See Appendix I) The instrument was developed by the Fair Housing Congress and the Campaign subcontractors, Protection & Advocacy, Inc. and Mental Health Advocacy Services, Inc., three organizations experienced in both fair housing and disability law.

The tool measures jurisdictions' compliance or noncompliance with fair housing laws based on 15 land use and zoning policies and practices that create potential barriers for housing for people with disabilities. Within each of the 15 areas, precise inquiries are made to identify the nature of the jurisdiction's policy or practice. The following indicators were used in the audit tool:

- Conditional Use Permit Process
- Restrictive Definition of "Family" in Zoning Ordinances
- Public Notice and Hearing Requirements Imposed by Jurisdictions
- Funding Procedures for Housing for People with Disabilities
- Limits on Supportive/Special Needs Housing

- Reasonable Accommodations in Land Use and Zoning Rules, Policies or Practices
- Spacing/Over Concentration/Density Regulations for Group Housing
- Moratoria on Group Housing for People with Disabilities or on Low Income Housing
- Licensing Requirements Imposed Specifically on Housing for People with Disabilities
- Fire Marshal Requirements for Group Homes for People with Disabilities
- The Building Permit Process
- Private Restrictive Covenants
- Self-Evaluation of Land Use and Zoning Practices for Compliance with the Americans With Disabilities Act (ADA) and Implementation of California Housing Element Requirements
- Social Restrictions Imposed on People with Disabilities in Group Homes
- Occupancy Standards for Group Homes

Each indicator is discussed in detail in the Findings Section of this Report. The audit tool includes a space where the auditor records the source of the information relied on for answering the inquiry. The source of a jurisdiction's policies was usually the local government's zoning ordinance or another written land use or planning document. Where the tool inquired as to actual practices, the information came from interviews with social service providers, advocates, housing developers and realtors.

The Audit Process

The audit process is the method by which information on land use and zoning practices is gathered and recorded for analysis and evaluation. The following is a discussion of the audit from the beginning work of selecting jurisdictions and training auditors through the auditing of the jurisdictions and the development of the database for storing the land use and zoning information obtained through the audit process.

Selection of Jurisdictions

Following the development of the audit tool, it was decided that the study would target jurisdictions in four geographically representative areas within the State: (1) Northern California; (2) the San Francisco Bay Area; (3) the Central California agricultural valley and (4) Southern California. Auditing jurisdictions in four geographic areas provides both a cross section of the state and representation of the diverse communities within California. Within these four geographic areas, specific jurisdictions were then selected for auditing. In most cases, cities were audited; however, in some rural areas, counties provided the most useful information regarding policies and practices in that locale. (See Appendix III for a list of the audited jurisdictions.)

Selection and Training of Auditors

The Congress and its subcontractors sought fair housing advocates to conduct audits in the advocates' own jurisdictions or other locations with which they had some familiarity with fair housing practices and interview sources. The Congress contracted with fair housing organizations throughout the state as well as several public interest legal organizations for completion of the audits.

Three large trainings held in northern, central and southern California, as well as several small group trainings, prepared the auditors for conducting the land use and zoning fair housing audits. Experienced fair housing and disability rights advocates and attorneys provided the auditors with a comprehensive review of federal and state fair housing laws and land use and zoning practices impacting people with disabilities. In the training, auditors practiced identifying fair housing violations using sample zoning ordinances. The auditors were provided instructions for the audit process, including how to identify respondents in the community and how to interview government staff, and how to complete the audit tool. (See Appendix IV, Training Materials.)

Conducting the Audits: Interviews and Completion of the Tool

Prior to conducting information-gathering interviews, auditors were requested to review the municipal zoning ordinance and other relevant planning and land use documents including the Comprehensive Affordability Strategy (CHAS), and the Comprehensive (General) Plan and its Housing Element and Land Use Element for the jurisdictions they were auditing. Auditors were encouraged to review planning documents prior to conducting the interviews to familiarize themselves with the jurisdiction's land use and zoning polices and practices. In some instances, it may also have been necessary to review planning documents after the interviews to check the accuracy of the information obtained in the interviews, and where necessary, supplement that information. The inside cover of the audit tool provides a checklist for indicating the source documents reviewed and/or collected by the auditor during the audit process.

As to the interview process, the initial task of each auditor was to identify two categories of people; those working for the local government knowledgeable about land use and zoning practices, referred to as "government officials" and those people within the community knowledgeable about fair housing for people with disabilities, referred to as "key informants." Auditors were requested to interview at least four people in each jurisdiction in which they were conducting audits. These interviews provided the information necessary for answering the questions in the audit tool.

The auditors tried to locate and interview at least one government official in the jurisdiction, usually in the planning department, who could respond to the questions on a standardized interview form. (See Government Interview Form, Appendix V) In some instances, auditors interviewed community development department or redevelopment agency staff in addition to planning department staff, usually at the suggestion of the planning department staff.

Key informant interviews included the following categories of people: social service providers, advocates, housing developers and realtors. The auditors conducted these

interviews using a "key informant form" which elicited information about the person's knowledge of land use and zoning practices in the jurisdiction, housing resources available in the area and any specific experiences with the development of housing for people with disabilities. (See Appendix VI, Key Informant Interview Form)

The auditors were requested to interview key informants first and then government officials so that if the first type of interview turned up information about certain discriminatory practices or specific instances of discrimination, the auditor could raise the problems with the government official. However, it was not always possible for auditors to schedule the interviews in the requested order.

Following the interviews, the auditor completed the audit tool and forwarded it to the Congress with the relevant source documents collected in the audit process. A fair housing consultant to the Congress reviewed the audit tools for completeness and clarity. Where necessary, auditors were contacted and requested to obtain additional information about a jurisdiction's policies or practices.

Database Development and Use

The database for the California Land Use and Zoning Campaign has two functions: it stores information about jurisdictions' land use and zoning policies and practices, and it provides reports for analyzing common practices and trends of audited jurisdictions statewide. The Campaign developed the database for compiling and analyzing information from the audits for this project and for future fair housing work. Advocates statewide can use the database when they are researching complaints of discrimination, determining necessary training sites, and identifying jurisdictions that provide examples of land use and zoning practices that promote housing for people with disabilities.

Developed in Visual Basic, the database has user-friendly data entry screens and summary reports are easily printing by selecting from a series of lists organized by topic. With the help of an experienced database developer, agencies can modify the program to suit their individual needs.

A coding form was created to ensure consistency in the reporting of data and to enable easier translation of audit information from the audit tool to the database. The fair housing consultant reviewed all the audits (which were conducted by a number of different people) and completed a coding sheet for each jurisdiction audited. The information obtained from the audits is not compromised by the use of the coding sheet. (See Appendix VII, Database Coding Sheet.)

Verification of Land Use and Zoning Information

Prior to finalizing this Report, the Congress sent a letter to the Planning Director of each audited jurisdiction requesting verification of the accuracy of the information obtained through the audit process. The Planning Director was requested to review two documents pertaining to the jurisdiction: a database report of land use and zoning policies and

practices information obtained from the audit interviews and review of key planning documents, and a summary of potential barriers to housing for people with disabilities. The Planning Director was asked to inform the Congress of any corrections to the data and provide copies of all documents supporting the changes or corrections. The Planning Director was advised that if the Congress received no response to its letter, it would print the information as drafted and that it would be included in a report to HUD.

A response form to be returned to the Congress was included with the letter, requesting the name of a contact person for the jurisdiction and inquiring as to whether the City wanted technical assistance or training on land use, zoning and fair housing issues. (See Appendix VIII for the sample letter and response form sent to the jurisdictions.)

The Congress received responses to the letter from about 69 of the 89 audited jurisdictions. Where a jurisdiction did not respond, a follow-up telephone call was made to the Planning Director to ensure that the letter had been received by the Department. Upon receipt of a response, corrections or additions to a jurisdiction's audit information were made to the data base.

Ranking the Jurisdictions

Following the verification of the audit information for the jurisdictions and completion of the data base reports, the Campaign identified the jurisdictions supportive of housing for people with disabilities and those with significant barriers to housing for people with disabilities based on land use and zoning policies and practices.

Supportive Jurisdictions

Land use and zoning policies and practices that are supportive of housing for people with disabilities include:

1. no conditional use permit (CUP) for group homes serving people with disabilities;
2. a definition of "family" that has no restrictions as to the number of unrelated people that may reside together;
3. no local spacing/dispersal restrictions for siting group homes for people with disabilities;
4. the absence of any other municipal policies or practices which act as barriers to housing for people with disabilities including but not limited to requiring a business license, excessive notice requirements for siting group homes for people with disabilities and curfews for residents of group homes.

Jurisdictions that meet the above criteria:

Culver City	Novato¹	San Rafael
Marin County	Salinas	

Jurisdictions with Significant Barriers

The following criteria was used to identify jurisdictions with significant barriers to housing for people with disabilities:

1. restrictive CUPs that conflict with fair housing laws including those that
 - a. single out group homes for people with disabilities in requiring a CUP and do not require it of other group homes; or
 - b. require CUPs for all group homes for people with disabilities, regardless of the number of residents at the dwelling;
2. a restrictive definition of "family" that limits the number of unrelated people that may reside together;
3. local spacing/dispersal requirements for siting group homes for people with disabilities that are more restrictive than the state law 300 foot rule;
4. other municipal policies or practices which act as barriers to housing for people with disabilities.²

Jurisdictions that meet the above criteria:

Baldwin Park	Indio	Sacramento
Burbank	Los Angeles	San Diego
Corona	Merced	San Francisco
Cupertino	Modesto	San Jose
Davis	Monterey Park	Visalia
Fountain Valley	Riverside	Weaverville/Trinity County

¹ Novato makes a distinction between licensed and non-licensed group homes. Licensed group homes are not required to obtain a CUP, while non-licensed group homes must obtain a permit before being allowed to operate.

² For example, the requirement to obtain a business license, the imposition of social restrictions, and restrictions on zone locations.

Meetings With Jurisdictions

The Campaign identified ten jurisdictions with problematic land use and zoning practices and met with representatives for a discussion of fair housing laws and barriers to housing for people with disabilities. The jurisdictions were selected prior to verification of the audit survey data. In selecting the ten jurisdictions to meet with, the Campaign also considered the following criteria: geographic balance representative of the four areas audited; cities with large populations because they are often "trend setters" for the smaller jurisdictions and their practices impact greater numbers of people; and cities currently revising their zoning codes in a manner that is potentially inconsistent with the Fair Housing Act.

The Campaign met with the jurisdictions listed below.

Bakersfield	Monterey Park
Burbank	Sacramento
Fountain Valley	San Diego
Huntington Beach	San Francisco
Los Angeles	San Jose

Meetings were held with Planning Department Staff, and generally, two people working on the Campaign. The meetings were informal and provided for a healthy exchange of ideas regarding zoning provisions and fair housing concerns. At the meetings, planning staff in attendance were provided with a HUD Memorandum on fair housing zoning issues and two municipal zoning ordinances that comply with fair housing laws. The meetings with the jurisdictions are discussed in greater detail in the final Project Report to HUD.

Study Limitations

The audit process was designed to assess the extent to which jurisdictions' land use and zoning policies and practices comply with fair housing laws. The complexity of this task is not surprising. A tool for measuring compliance and noncompliance was created, auditors were trained to gather information about jurisdictions' policies and practices through the interview process and by researching key planning documents, and finally, the audit tool had to be completed by the auditors.

One of the limitations of the study was the identification of knowledgeable government staff and their availability to participate in the interview process. In numerous jurisdictions, it was difficult for auditors to find the person with the most knowledge about land use and zoning practices and the impact on people with disabilities. Sometimes auditors had to interview several people in different city departments to complete the audit and this resulted in conflicting information.

In a few jurisdictions, staff refused to participate in the interview process for a variety of reasons. Some planning departments stated they had insufficient staff and too much work to give an interview. At least one planning director stated that he thought the audit was "a waste of time." A few jurisdictions were reluctant to participate in an interview that might reveal discriminatory practices toward people with disabilities. In sum, the study could not always capture information on land use and zoning practices from the most knowledgeable person(s) in the jurisdictions.

Similar caution is necessary for the key informant interviews conducted by auditors. Some auditors had difficulty locating the advocates, social service providers, housing developers and realtors most knowledgeable about land use practices and housing for people with disabilities. This was most often a problem in rural areas and jurisdictions which were not the home base of the auditor. Locating interviewees was often the most difficult in jurisdictions with the least housing resources for people with disabilities, suggesting that necessary fair housing advocates might also be lacking in the area.

As part of the audit process, auditors were instructed to review key land use and planning documents to educate themselves, verify information obtained in the interviews and complete certain parts of the audit tool. Auditors were to review, at a minimum, a jurisdiction's zoning ordinance and Housing Element. In some jurisdictions, staff refused to provide the documents for review and/or refused to make copies for the auditors, thus limiting the comprehensiveness of the audit.

The audit tool records some complex land use and zoning practices information, and like all documents, the language is subject to the interpretation of the reader. For those considering duplicating the audit process, it is suggested that the tool be field tested and then reviewed for any necessary revisions. This process would allow refinement so that misinterpretations would be eliminated from the gathering and recording of the information.

For example, in the Campaign, it became apparent that the audit inquiry as to the application requirements for public funding did not capture the information sought by the tool. The question presented was whether the jurisdiction imposes different application requirements upon providers of housing for people with disabilities from those imposed on providers of comparably sized housing for people without disabilities. Many jurisdictions correctly interpreted this question as an attempt to uncover discriminatory practices. However, in responding to the inquiry, they brought to the auditors' attention that certain funding sources require additional information specific to housing for people with disabilities. For instance, some jurisdictions informed us that funding sources require that developers of housing for people with disabilities demonstrate the financial capacity to provide supportive services on site. See the section, *Suggestions For Drafting Audit Inquiries*, infra.

Finally, the audits were prepared over one year prior to the issuance of this Report and some of the information obtained may have since become outdated. For example, where a jurisdiction indicated that it had not completed its Housing Element, one year later, it may have done so. Additionally, some cities may have revised zoning ordinances or made new commitments to develop housing for people with disabilities. Before acting on any of the

information presented in this Report, it is advised that the reader contact the jurisdiction to learn of any recent developments in that city or county.

AUDIT FINDINGS AND DISCUSSION

Introduction

This section of the Report explains each audit tool indicator and the findings from that indicator, including the most common policies and practices in the jurisdictions audited throughout the state. Following the presentation of findings, this section provides suggestions for drafting audit inquiries.

I. The Conditional Use Permit Process

A CUP is an authorization from a municipality to use land in a certain manner and under specific conditions, granted after public notice and a hearing. To obtain a CUP, the applicant must give notice of the proposed use to adjacent neighbors. Additionally, the CUP process almost always requires a public hearing before the Planning Commission where interested persons are given the opportunity to express their opinion about the proposed use. In the case of a proposal to develop housing for people with disabilities on a particular site, the CUP notice and hearing process provides an opportunity for neighbors to express their views on the proposal. Discriminatory comments concerning the disabilities of the residents should neither influence nor be the basis for the denial of a CUP for the use at that site.

In interpreting the Fair Housing Act, courts have held that local governments may not deny, and in some cases may not require, special or CUPs for group homes or other types of housing for people with disabilities that are operating in a manner similar to a family when the same are not required of families. As noted earlier, California law provides that no CUP may be required of residential care facilities serving six or fewer residents which is not required of family dwellings of the same size in the same zone. Health & Safety Code § 1566.3.

The audit tool records whether a jurisdiction has a CUP requirement for group homes specifically for people with disabilities or group homes, generally, some of which may be for people with disabilities. Additionally, the audit records whether the CUP requirement applies to group homes for six, seven or more, or ten or more residents.

Finding 1 : Two-thirds of jurisdictions audited require a CUP for group homes for more than six residents.

Of the 89 jurisdictions audited, more than two-thirds require a CUP for group homes for more than six residents. This finding indicates several common practices in the regulation of group homes. First, essentially all jurisdictions comply with the state law requirement that group homes for six or fewer residents be treated like a single family. Homes of this size are permitted in single family residential zones as a matter of right and are not subject to a CUP.

However the imposition of a CUP for group homes for seven or more residents indicates that many local jurisdictions are misinterpreting the state law prohibiting regulation of group homes serving six or less residents as well as state and federal fair housing laws. While under the Fair Housing Act jurisdictions may have reasonable restrictions on the maximum number of occupants permitted to occupy a dwelling, the restriction cannot be based upon the characteristics of the occupants; the restrictions must apply to all citizens, and are generally established based upon health and safety standards.³ Similarly, a CUP requirement triggered by the number of people with certain characteristics – in this case disability – who will be living in a particular dwelling, is illegal. Because licensed residential care facilities serve people with disabilities, imposing a CUP requirement on residential care facilities of a certain size and not on similarly sized housing for people without disabilities arguably violates the law.

Nine audited jurisdictions do not have any CUP requirement for group homes, including Amador County, Beverly Hills, Culver City, Gardena, Hillsborough, Marin County, Novato, Salinas and San Rafael. Several of these jurisdictions eliminated CUP requirements to comply with fair housing laws. Novato amended its ordinance so that it no longer requires a CUP for residential care facilities. However, unlicensed housing for people with disabilities is still subject to the CUP requirement. Jurisdictions that eliminated the CUP requirement in response to the enactment of fair housing laws are complying with the spirit of these laws by removing restrictions on housing for people with disabilities that are not applied to comparably sized families.

Some of the nine jurisdictions do not have a CUP requirement in their zoning ordinances because, for various reasons, they have not had any experience with group homes in their area. The County of Amador is rural and has had little, if any, experience with group homes. On the other hand, Hillsborough's zoning ordinance provides only for single family dwelling residential use, a limitation that inhibits the development of group homes for people with disabilities or any other type of group housing.

The City of Los Angeles does not use the CUP process, however, it requires a variance for group homes for more than six people. In order to obtain a variance, the applicant must make a showing of hardship. This process may actually be more burdensome on the applicant than that of seeking a CUP.

The audit reported only a few instances where jurisdictions require a CUP specifically for group homes for people with disabilities and not group homes for other resident populations. Imposing a CUP requirement for homes for people with disabilities, and not other similarly located and sized group homes, is contrary to fair housing laws. Because of limitations in the procedure for analyzing zoning codes it is likely that this inquiry did not uncover all of those jurisdictions that require a CUP specifically for group homes for people with disabilities. The anecdotal experience of staff, however, is that a larger number of jurisdictions discriminate between different types of group housing. See the section, Suggestions for Drafting Audit Inquiries, *infra*.

³ City of Edmonds v. Oxford House, 115 S.Ct. 1776 (1995).

Finding 2: Several jurisdictions audited require a CUP for all group homes, regardless of the number of people residing at the dwelling.

Several jurisdictions require a CUP for all group homes, regardless of the number of people living at the residence. This is contrary to California's Community Care Act which requires that residential care facilities serving six or fewer residents be treated the same as a family and prohibits jurisdictions from requiring a CUP for homes of this size unless the same is imposed on families. Health & Safety Code § 1566.3. If this requirement is specifically directed at group homes for people with disabilities and not other housing of a similar size, then it also violates the federal Fair Housing Act.

Finding 3: Many jurisdictions restrict the location of group homes serving more than six people to multi-family zones.

A substantial number of jurisdictions indicated that group homes for more than six people with a CUP are limited to multi-family and commercial zones. Location in single family residential zones is prohibited. These restrictions on siting are used to keep group homes for people with disabilities out of family districts. The proper inquiry as to the location of a group home for people with disabilities is whether the dwelling size and use is similar to that of a family and therefore appropriate for location in a family zone. For example, many older neighborhoods have large homes that are suitable for group homes as well as large families.

Likewise, restricting group homes for people with disabilities to commercial zones is contrary to the residential character of this type of housing, and the same constraint is not imposed upon similarly sized families.

In contrast to the foregoing restrictions imposed by a substantial number of jurisdictions, only a small number of cities permit group homes for more than six people to locate in single family districts. This policy conforms to the spirit of fair housing laws and it is recommended that other jurisdictions follow this approach.

Finding 4: Rural jurisdictions frequently have no written regulations for group homes, resulting in planning directors making land use and zoning decisions on a case-by-case basis.

A number of small rural jurisdictions have no regulation of group homes. These jurisdictions indicated that their zoning ordinance does not address any type of group housing and that the planning departments would have the discretion to make case by case land use and zoning decisions impacting housing for people with disabilities. In contrast, two rural communities have municipal codes that specifically address group homes. The audit identified at least one rural jurisdiction that follows county codes for making land use and zoning decisions, including the regulation of group homes.

The absence of local provisions specifically allowing group housing raises several problems, the most significant being the lack of predictability in the decision-making process and the arbitrary denial of land use and zoning authorizations for the development

of such housing. Housing developers have no way of knowing what is expected of them when they approach a jurisdiction with a proposal.

Finding 5: In some jurisdictions the CUP has been used in a discriminatory manner in attempts to block, close or otherwise alter plans for group homes for people with disabilities.

Auditors reported a number of instances where the CUP approval process seriously delayed a housing development for people with disabilities or caused the proposed housing to be substantially modified. The following are several examples received from audit interviews.

- In a small Northern California city, a 16-unit apartment complex for people with mental disabilities was subject to an approval process lasting more than 20 months. Initially, the City required only design review approval for the proposed project. But when community opposition to the project was expressed, the City then attempted to require a CUP, despite the fact that the proposed site had been zoned for 16 units for the past 10 years and the zoning code did not require a CUP at the time. After three months review, the City Attorney decided that the City could not require a CUP. Thereafter, the City Council required numerous additional studies not initially required of the developer including a soils study, a noise study and two traffic studies.
- In one Central Valley city, neighbors organized against the opening of a licensed residential care facility, seeking a more remote location than was originally proposed. A CUP was granted, but only after another site was found for the 30-person residence.
- An existing Bay Area group home for eight children with mental disabilities sought to expand its facility to an 18-bed residence. A CUP was granted but only for an expansion to 10 beds. The developers were subject to the CUP process just to add two more residents to the facility.
- A Southern California agency sought approval of an 18-bed shelter for people with mental disabilities, and seven years later, the facility was approved when the developers agreed to certain changes including a reduction in size to 12 beds.
- Necessary approval for siting a Bay Area group home for six residents diagnosed with HIV was delayed as a result of much community pressure. Approval was granted after the developers agreed to a change of location for the group home.
- One large Southern California city required a well-established nursing home to obtain a CUP for removal of a fence from an adjacent lot it owned so that the residents could use the open space. Neighbors expressed their desire that the home close, and thereafter, the City decided to revoke the original CUP for the nursing home and close the facility. The City's Zoning Appeals Board upheld the decision to revoke the CUP. Thereafter, a settlement judge mediated the dispute between the neighbors and the facility. Two to three years later, the nursing home was permitted to remain open but the permit for use of the open space was denied.

The foregoing examples also raise concerns about the influence that community or neighborhood opposition has in the CUP approval process.

Finding 6: Providers indicated that the CUP notice and hearing requirements have led them to limit their development strategies to homes for six or fewer residents to avoid restrictive conditions and community opposition.

Many key informants stated in interviews that they felt that the CUP notice and hearing requirement was a significant deterrent to developing group housing for people with disabilities for more than six residents because the process encouraged community opposition to a project. Additionally, the process often forced developers to make concessions in their plans for project approval that they would not have had to make but for the CUP process and community pressure.

For this reason, the key informants, advocates, social service providers and housing developers, develop group homes for six residents or less to avoid the time and expense of the CUP process and the opposition which arises at the public hearing. This sentiment was reported across the state, including the following jurisdictions; Alameda, Los Angeles, San Diego, San Francisco, San Leandro, Ukiah, Vacaville and Vallejo. One Bay Area city indicated that when the City itself initiated and funded a group home for people with developmental disabilities, it limited the size to six residents to avoid the CUP process. Information about housing resources for people with disabilities obtained from audit interviews strongly indicate that statewide small group homes with six or less people are most prevalent.

II. A Restrictive Definition of "Family" in the Zoning Code

A typical land use practice by jurisdictions designates districts as "single family residential," "multi-family residential" or "commercial" and restricts such districts to compatible uses. In limiting the use to single family residences, the land use laws must define what constitutes a "family." Definitions of "family" that restrict the number of unrelated people who may live together have the effect of discriminating against people with disabilities who choose to live in a group home setting and limiting broader housing opportunities. Restrictive definitions violate federal and state fair housing laws.

In 1980, the California Supreme Court in City of Santa Barbara v. Adamson struck down a municipal ordinance that permitted any number of related people to live in a house in a single family zone but limited the number of unrelated people who were allowed to do so to five. City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 164 Cal. Rptr. 539 (1980). The City had sought to exclude a group of 12 people living in a large single family dwelling in a single family zone because they were unrelated and thus did not meet the City's definition of "family." The Court held that the residents of the Adamson household were a single housekeeping unit that could be termed an alternative family because they shared expenses, rotated chores, ate evening meals together, participated in recreational activities together, and became a close group with social, economic, and psychological commitments to each other. As a single housekeeping unit or alternate family, the Adamson household could not be excluded from the single family zone nor made to apply for a CUP.

A restrictive definition of family not only discriminates against people with disabilities in violation of the Act, but the failure to modify the definition of family or make an exception for group housing for people with disabilities may also constitute a refusal to make a reasonable accommodation under the Fair Housing Act.

In addition to California case law, the state's Community Care Facilities Act requires that residential care facilities serving six or fewer related or unrelated residents be considered a family for any law or zoning ordinance related to the residential use of properties. Health & Safety Code § 1566.3.

The audit identifies jurisdictions that have a restrictive definition of family and the specific numerical limit on unrelated people. Additionally, the audit reports whether or not the definition is currently enforced by the jurisdiction.

Finding 7: Although one-third of the jurisdictions have a restrictive definition of "family" in their zoning code limiting the number of unrelated people that may live together, few of the jurisdictions enforce it.

The audits found that 30% of the jurisdictions surveyed have a definition of "family" that distinguishes between related and unrelated people and limits the number of unrelated people who may live together. The most common numerical limitation reported was five unrelated people.

However, few of the jurisdictions currently enforce their restrictive definition, recognizing that a legal definition of "family" is one which emphasizes the nature of relationship between those residing together. Many of the jurisdictions that reported that they are not enforcing their restrictive definitions indicated that they are either in the process of revising their definition of "family" to comply with the law or they intend to do so. These jurisdictions include, but are not limited to: Bakersfield, Fresno, Hemet, Los Angeles, Modesto, Mountain View and Riverside.

Examples of Audited Jurisdictions' Definitions of "Family" which Comply with Both Federal and State Fair Housing Laws.

1. Any group of individuals living together based on personal relationships. Family does not include larger institutional group living situations such as dormitories, fraternities, sororities, monasteries, nunneries; nor does it include such commercial group living arrangements as boardinghouses, lodgings houses and farm labor camps. (Salinas)
2. An individual or two or more people living together in a dwelling unit as a single housekeeping unit. (Monterey)
3. Family means any of the following:
 - a. One or more people living together as a single housekeeping unit in a dwelling unit;
 - b. The occupants of a residential facility serving six or fewer persons and licensed by the director of the State Department of Social Services. For purposes of this definition, "six or fewer persons" does not include the licensee, nor members of the licensee's family nor people employed as facility staff. (Vallejo)⁴

The definitions and the zoning code citations are included in Appendix IX.

III. Funding Procedures For Housing For People With Disabilities

A notice requirement tied to the funding process presents significant problems for developers of housing for people with disabilities. Although the Fair Housing Act prohibits public officials from relying upon the biased or stereotypic views of neighbors about people with disabilities to deny funding, this is often the result.

Similar to the CUP process, the public notice requirement may at the outset deter developers of housing for people with disabilities from seeking public funding if they believe that their clients will be subjected to a hostile hearing process and/or more burdensome application procedures. And, like the CUP notice and hearing procedure, the public funding process may force developers to make compromises that affect the quality of life for the residents in exchange for project approval and funding. These concessions might include the imposition of curfews on the residents of group homes for people with disabilities and restrictions on the use of the outside areas of the property.

The audit tool gathers information regarding the public notice requirement and whether application requirements imposed on providers of housing for people with disabilities are

⁴ As long as the terms "personal relationship" and "single housekeeping unit" are not narrowly interpreted to exclude people with disabilities who need to live in group settings.

different from those imposed on providers of comparably sized housing for people without disabilities. In determining whether a jurisdiction's procedures for public funding discriminate against people with disabilities, the audit tool also examines whether the criteria for awarding public funds change in response to community pressure.

Finding 8: Almost one-third of the audited jurisdictions have a public notice procedure for the siting or approval of publicly funded projects, separate and apart from CUP procedures, which could negatively impact housing for people with disabilities.

Approximately 24 of the 89 jurisdictions indicated that they require public notice prior to the siting and/or approval of a project that is publicly funded. The frequently stated rationale of jurisdictions for imposing this notice and hearing requirement was that the public has a right to know how its money is being spent. About 10% of the audited jurisdictions indicated that the criteria for awarding public funds change in response to community pressure. A number of the jurisdictions that indicated that criteria could change stated that this was "just part of the political process."

However, the "political process" is often used to restrict or deny equal opportunity in housing for people with disabilities. The subcontractors came across a particularly egregious example of how the public notice process was used to deny funding for the development of independent supportive housing because of stereotypic fears about people with disabilities. In a case which was ultimately settled with a large judgment in favor of two non-profit developers, a city councilmember from Fresno orchestrated, through incendiary public hearing notices, an outpouring of community opposition to the City's funding of housing for people with disabilities. After letting City staff know that he wanted them to quash the project slated for his district, he began a fear-based campaign to put public pressure on the other councilmembers to vote against the funding. The vote to deny the funding was 6 to 1. The subcontractors filed a federal lawsuit on behalf of the developers of the project and two potential residents. Eighteen months later, the case was settled and the City agreed to fund the project, in addition to paying for damages. The Consent Order also provides for injunctive relief, training of city employees and updating the City's analysis to fair housing impediments and housing element to include the needs of people with disabilities.

The audit process did not report jurisdictions imposing different application requirements for public funding upon providers of housing for people with disabilities from those that are imposed upon comparably sized housing for people without disabilities. Cities informed us, however, that some funding sources available to them have different requirements where the financing is specifically for housing for people with disabilities. See the section, Suggestions For Drafting Audit Inquiries, infra.

IV. Limits On Supportive/Special Needs Housing

The audit attempted to identify jurisdictions where housing/facilities that provide supports and/or services is treated differently from other housing of the same size or type.

Supportive services include, for example, a psychologist going to a group home on a weekly basis to offer counseling, or a vocational specialist providing job training information and assistance on site. Different treatment might include imposing additional licensing requirements or limitations on the hours of operation of the facility where supportive services are provided but not other housing of the same size or type. When the responses to this inquiry were reviewed, it became apparent that the interview question was subject to several different interpretations and therefore no findings were made. See the section, Suggestions For Drafting Audit Inquiries, infra.

V. Reasonable Accommodation

The Fair Housing Act creates an affirmative duty to provide reasonable accommodations in policies, practices or services that are necessary for people with disabilities to have equal opportunity to use and enjoy housing. 42 U.S.C. § 3604(f)(3)(B). Failure to provide reasonable accommodations is a violation the Fair Housing Act. "Rules, policies and practices" of local governments are subject to the reasonable accommodations requirement and courts have interpreted this to include land use and zoning actions.

Where a zoning ordinance or land use practice or policy is involved, one can request that a waiver or a modification of the rule or policy be made as a reasonable accommodation. Accommodations are not required where they pose an undue financial or administrative burden on local government or constitute a fundamental alteration in the nature of a program.

With striking consistency, people with disabilities have identified the reasonable accommodations requirement of the Fair Housing Act as being one of the most important aspects of the law for accessing housing. The audit inquires whether jurisdictions have specific provisions for providing reasonable accommodations in their land use and zoning policies and practices. The audit records any instances of actual denials of requests for reasonable accommodations for permitting housing for people with disabilities.

Finding 9: Jurisdictions uniformly lack specific written provisions to provide reasonable accommodations in rules, policies or practices for housing for people with disabilities.

In the land use and zoning context, reasonable accommodations in rules, policies and practices might mean waiving or modifying procedural requirements or policies to permit the development or siting of group homes for people with disabilities.

The audit inquired as to whether jurisdictions have written procedures through which people with disabilities may request reasonable accommodations in land use and zoning policies and practices for obtaining housing. Although the audit was initially interested in reasonable accommodations provisions in zoning ordinances, it considered provisions in essentially any planning document that a jurisdiction asserted contained such a procedure.

One jurisdiction, the City of San Jose, has drafted a specific reasonable accommodations provision, including a procedure for making an accommodation request. However, at the time of writing this Report, the provision had not yet been finalized.

Many jurisdictions asserted that they had written reasonable accommodations policies in their Housing Element, CHAS or other planning document. Although these provisions contain positive policy statements about fair housing goals or the provision of special needs housing, they are not reasonable accommodations provisions. Additionally, a number of jurisdictions indicated that their CUP requirement was a reasonable accommodations provision.⁵ Other cities pointed to density bonus provisions or their development of affordable or accessible housing as reasonable accommodation. These are not provisions that offer reasonable accommodations to land use and zoning policies and practices.

The foregoing responses indicate that there is confusion as to what the Fair Housing Act requires in terms of providing reasonable accommodations to people with disabilities. A written provision that creates a specific procedure for requesting accommodations and explains the decision-making and appeal process would further the goals of the Fair Housing Act.

⁵ This study indicates, however, that more often than not, communities use the CUP process to deny or limit housing opportunities for people with disabilities rather than as a tool to afford reasonable accommodations. See Findings 5 and 6.

Example Of A Reasonable Accommodations Provision

One example of a reasonable accommodations provision that includes many of the elements intended by the Fair Housing Act is found outside of California, in the City of Philadelphia. The City's reasonable accommodations regulations, which address code and procedural modifications, include the following: a notice requirement in the form of signs at all counters at which application is made for a license or permit, advising applicants that information is available as to their rights under the Fair Housing Act and the process to be followed in requesting reasonable accommodations; specific written procedures as to how to request accommodations and forms for making that request; an explanation of the decision-making process; and a statement of appeal procedures. See Appendix X.

Several jurisdictions indicated that they have unwritten reasonable accommodations provisions and this was usually based on an opinion or memorandum from legal staff that accommodations are necessary. However, the use and effectiveness of unwritten policies is difficult to evaluate. Unwritten policies are not recommended because they do not give notice to people with disabilities that accommodations are possible, the policies are subject to numerous interpretations and they are difficult to enforce.

VI. Spacing/Over Concentration/Density

In response to fears of over-concentration of group homes for people with disabilities, jurisdictions on a statewide and local basis have enacted various spacing rules to regulate the distance between group homes. First, the state has imposed a 300 foot spacing requirement on licensed residential care facilities. Health & Safety Code § 1520.5. Second, local jurisdictions have in some instances imposed greater spacing requirements than the 300 foot state law on group homes for people with disabilities. Additionally, some local jurisdictions have a policy of refusing to waive the 300 foot spacing requirement for location of group homes, an option which the state makes available to them. The state requires that the licensing department reject an application for a license for a residential care facility unless the local jurisdiction for the proposed siting grants a waiver of the 300 foot spacing requirement. Finally, some jurisdictions have considered, if not enacted, moratoria to stop all group homes within their boundaries. Moratoria are discussed later in the Findings Section of the Report.

Similar to spacing requirements, concentration limitations restrict the number of group homes per square mile. However, the audit tool did not specifically inquire as to concentration requirements because they are not commonly found in California. Both spacing and concentration limitations conflict with fair housing laws because their effect is to make housing of choice unavailable to people with disabilities.

The audit tool records whether jurisdictions impose either the state law 300 foot spacing requirement for group homes for people with disabilities, a local spacing requirement specifically for group homes for people with disabilities or, a spacing requirement for group homes in general which might impact housing for people with disabilities. Spacing requirements applied only to group housing for people with disabilities, and not other similarly sized group housing, discriminate against people with disabilities.

About 20% of the audited jurisdictions indicated that they either follow the state law 300 foot spacing requirement specifically for group homes for people with disabilities or they impose their own local dispersal rules. Of the jurisdictions that impose spacing requirements specifically for group homes for people with disabilities, the great majority follow existing state law. There were no reports of jurisdictions failing to waive the state law 300 foot spacing requirement. An additional ten percent of audited jurisdictions reported that they have spacing requirements for group homes, some of which may be for people with disabilities.

The following local spacing requirements for group homes for people with disabilities were reported in the audits; 500 feet; one-quarter mile; and 300 feet but only for homes for people with developmental disabilities.

Although the rationale of spacing requirements is to avoid over concentration, this type of regulation may often be motivated by a hostility toward group homes for people with disabilities. The audit reported that approximately one-third of the jurisdictions have some type of spacing requirement and this figure may actually be low. It is possible that the audit did not capture information on all of the jurisdictions imposing the state law requirement. The interview question asked if the city or county places any spacing or dispersal requirements on any types of housing for people with disabilities and a jurisdiction might have thought the inquiry was only asking about locally imposed regulations.

VII. Moratoria

Jurisdictions sometimes enact restrictions or prohibitions against particular types of housing developments through land use and growth controls. Moratoria are often used to exclude a particular segment of the population such as poor people or people with disabilities from specific locations or jurisdiction-wide. The audit inquires as to whether a jurisdiction enacted any moratoria on group housing or supportive housing for people with disabilities or low income housing as a way of measuring that community's attitude and identifying possible fair housing violations. No moratoria were reported from the audits. However, in providing technical assistance, the subcontractors learned that at least two cities in southern California have imposed moratoria on the siting of licensed residential care facilities for people with disabilities.

VIII. Overly Restrictive Licensing

In addition to the traditional CUP process, jurisdictions may also impose various licensing and fee requirements on housing developers. When these additional requirements are imposed in a neutral way they are permissible. However, in some instances local jurisdictions have imposed licensing and fee requirements in a discriminatory manner, exacting them from developers of housing for people with disabilities and not developers of housing for people without disabilities. One example of an additional licensing requirement that could be imposed in a discriminatory manner is a business license.

One response to discriminatory licensing and fee activity is the enactment of California's Community Care Facilities Act. The Act prohibits local governments from imposing business taxes, local registration fees or other fees on residential care facilities serving six or fewer residents if the requirements are not also imposed on other family dwellings of the same type in the same zone. Health & Safety Code § 1566.2.

The audit survey gathers information as to overly restrictive licensing as well as denials of requests for reasonable accommodations in the licensing process.

Finding 10: Approximately 15% of audited jurisdictions impose a business license requirement on group homes, including homes for people with disabilities.

While the audit did not uncover a variety of additional licensing or fee activities, it did report that 13 jurisdictions require that group homes obtain a business license for operation. The imposition of a business license on a group home for people with disabilities and not a similarly sized and located dwelling occupied by a family is contrary to fair housing laws. Additionally, the imposition of a business license requirement on group homes for people with disabilities is a mischaracterization of the residential nature of the dwelling.

In California, the imposition of additional licensing requirements specifically on developers of housing for people with disabilities is not a significant problem. One reason may be because Health & Safety Code § 1566.3 requires that residential facilities for 6 or fewer people must be considered a residential use of property and prohibits the imposition of requirements on such homes not imposed on family dwellings of the same type in the same zone. However, those interested in replicating this audit process outside of California may find discriminatory licensing practices a concern within their state.

IX. Fire Marshal Requirements

While state and local governments have authority to protect health and safety, that authority may not be used to restrict the ability of individuals with disabilities to live in the community. Regulatory authority involving housing which is justified on the basis of health and safety grounds must be based on an individualized inquiry, must not be over broad and cannot impose requirements greater than those imposed on similarly situated non-disabled people.

Although California's Community Care Facilities Act pre-empts much local regulation of facilities serving six or fewer residents, municipalities may apply their health & safety standards to these facilities. Health & Safety Code § 1566.3.

While on a nationwide basis there have been problems with overly intrusive fire marshal requirements, this audit did not uncover evidence in California. Though, through providing technical assistance, the subcontractors did encounter an instance where a group home was closed due to fire marshal requirements. In other states, the result might be different. Those replicating this audit in other states should consider additional ways of gathering information as to the imposition of burdensome fire marshal requirements on group housing for people with disabilities as such discriminatory practices are often difficult to identify.

X. Building Permit Process

The audit chronicles instances of land use, zoning or planning departments denying building permits for housing for people with disabilities for other than legitimate reasons of noncompliance with building regulations. The audit process did not uncover circumstances of jurisdictions using the permit process as a way of preventing the development of housing for people with disabilities. However, the absence of reports for this indicator does not necessarily mean that the building permit process does not act as a barrier to housing for people with disabilities. This type of information is most likely gathered from individuals who had specific experiences with their jurisdiction's permit process. Uncovering and verifying these types of violations with this audit tool is difficult.

XI. Private Restrictive Covenants

Restrictive covenants are provisions in deeds or other documents transferring title that provide specific limitations or prohibitions as to the use of the property. Violations of the Fair Housing Act may occur when neighbors and others seek to enforce the terms of restrictive covenants against the operation of housing for people with disabilities. This may arise where those opposed to the housing argue that the group or supportive housing is not residential in nature but a business which is a nonconforming use. In California, restrictive covenants may not prohibit residential care facilities serving six or fewer residents from locating in residential zones. Health & Safety Code § 1566.5.

The audit revealed two instances of attempts to enforce a restrictive covenant. In one example approximately two years ago, a Bay Area community's neighborhood association attempted to stop a group home for people with disabilities from opening by asserting that a "no business" restrictive covenant prevented the proposed siting of the dwelling. In Bakersfield, individual neighbors sued a group home provider to stop a proposed group home from opening. The Project subcontractors and the Justice Department brought an action in federal court claiming housing discrimination under the federal Fair Housing Act. In both cases, settlements were reached with the neighbors who desisted from efforts to block the opening of the homes. Additionally, at the time of this writing, the subcontractors are litigating a third case in the Bay Area in which a homeowners'

association asserts that a proposed home for four children with disabilities is a business and contrary to a restrictive covenant.

As enforcement of restrictive covenants is usually an issue between private property owners, and not government entities, it is possible that the audit process did not capture other information about attempts to enforce restrictive covenants in the audited jurisdictions. Those considering replicating the audit should consider additional ways of gathering information about private restrictive covenants, including interviews with realtors and conducting searches of lawsuit filings.

XII. The Americans With Disabilities Act and The Housing Element

Americans With Disabilities Act (ADA)

The ADA protects people with disabilities from being denied the benefit of services, programs or activities of a public entity. 42 U.S.C. § 12132. The ADA's broad mandate to eliminate discrimination against people with disabilities means that all activities of state and local governments are subject to the prohibitions of the Act including land use and zoning and decision-making.

The Department of Justice's implementing regulations require that public entities conduct a self-evaluation of their policies, practices and procedures for compliance with federal law and make modifications necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7). Jurisdictions should conduct self-evaluation of their land use and zoning policies and practices, including ordinances, administrative processes, hearings and decisions by zoning boards, as these activities are "policies, practices or procedures" of public entities.

The audit records whether a jurisdiction has conducted self-evaluation of land use and zoning under the ADA and implemented that self-evaluation plan. The self-evaluation process is included as a measure in the audit tool because through the process a jurisdiction may identify barriers to fair housing for people with disabilities and make necessary modifications to remedy discriminatory practices.⁶

Finding 11: Approximately 60% of the audited jurisdictions indicated that they have met their obligations to conduct self-evaluation of land use and zoning policies and practices under the Americans With Disabilities Act.

A significant number of audited jurisdictions have not conducted self-evaluation to identify land use and zoning barriers to fair housing for people with disabilities.

Housing Element

The Housing Element sets forth a jurisdiction's policies and strategies for meeting the housing needs of all types of households in its community. It is a state-mandated

⁶ A similar inquiry is required by the Analysis of Impediments to Fair Housing.

requirement and it must be reviewed and updated every five years. Government Code § 65580 - 65589.8. The Housing Element is a part of a larger planning document detailing land use and development policy, the General Plan. The General Plan is so fundamental to local governments that it has been referred to by California's highest court as the "constitution for development."

All jurisdictions must prepare a Housing Element in which the local government identifies and analyzes existing and projected housing needs as well as its goals, policies and scheduled programs for the preservation, improvement and development of housing. A jurisdiction's Housing Element may be a barometer of its fair housing compliance because state law requires that the Element analyze special housing needs including those of people with disabilities. Additionally, the Element requires that jurisdictions, through their programs, promote housing opportunities for all people.

In addition to an analysis of housing needs, the Housing Element must include a five year schedule of actions the local government is undertaking to implement policies and achieve its goals and objectives. California Government Code § 65583. The document must also address and remove governmental constraints to the development of housing.

A jurisdiction that does not have a state approved Housing Element is potentially violating fair housing laws. Additionally, because a jurisdiction's zoning ordinance must be consistent with its Housing Element, the Housing Element may be a basis for conforming zoning regulations to fair housing policies in the Housing Element. For these reasons, the audit records whether a jurisdiction has met its fair housing requirement in its Housing Element and implemented its goals and plans.

Finding 12: Approximately 70% of the audited jurisdictions reported that they had met their Housing Element requirements as to fair housing.

XIII. Terms and Conditions/Other Restrictions

Sometimes jurisdictions impose social or other restrictions on people with disabilities in group housing which do not apply to non-disabled people. Often these restrictions are motivated by neighbors' fears of people with mental disabilities. The law prohibits restrictions on people with disabilities and not other similarly situated non-disabled people no matter how neutral a term or condition may seem on its face. The audit gathers information as to whether any jurisdictions impose special restrictions on the residents of group housing for people with disabilities, such as curfews or limitations on the outside use of the property.

Finding 13: The audit reported instances of social restrictions being imposed on the residents of housing for people with disabilities.

Several large cities in the Bay Area and one rural Northern California community have imposed curfews on the residents of group housing for people with disabilities. One large Central Valley jurisdiction now revising its zoning ordinance as to the regulation of group

homes is recommending that providers as part of their "good management practices" impose social and other restrictions on the residents of group homes. The jurisdiction recommends, for example, that providers specify hours of operation and delineate restrictions on the outside use of the property.

In gathering information for the Campaign, the subcontractors also learned of a Southern California community where the residents of a group home were restricted in their movement around the residence. The residents were required to walk on a certain side of the street in the neighborhood and they were prohibited from using a nearby public park.

XIV. Occupancy Standards

The Fair Housing Act exempts from its coverage reasonable restrictions regarding the maximum number of occupants permitted to occupy a dwelling. 42 U.S.C. § 3607 (b)(1). The legislative history indicates that maximum occupancy limits are permissible only if applied equally to all residents and do not operate to discriminate on the basis of disability.

Land use and zoning policies may impose occupancy restrictions in one of two ways; using a neutral standard based on space or a standard based on familial status. Occupancy standards based on familial status limit the number of unrelated people that may reside together and have the same discriminatory effect as a restrictive definition of "family." As explained earlier in the discussion of restrictive definitions of "family," these limitations discriminate against people with disabilities by imposing restrictions on unrelated people who live together in group homes but not similarly sized families in similar zones. A restrictive definition of "family" discriminates against people with disabilities in violation of the Fair Housing Act and the failure to modify the definition or make an exception for housing for people with disabilities may also constitute a refusal to make accommodations under the law.

The current occupancy standard for housing in California, which is an example of a neutral standard, is as follows:

Room dimensions (b) Floor Area: Dwelling units and congregate residences shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.

California Uniform Housing Code (emphasis added).

The audit records whether a jurisdiction's occupancy standards are more restrictive than the state Uniform Housing Code. Additionally, the audit inquires as to whether the jurisdiction applies occupancy limits to unrelated adults but not to traditional families. Both of these practices impact group housing for people with disabilities.

Finding 14: Twenty percent of audited jurisdictions have occupancy standards that apply specifically to unrelated adults but not to families.

In a significant land use and zoning case, the United States Supreme Court distinguished family composition regulations from maximum occupancy restrictions by examining the purpose and effect of each. City of Edmonds v. Oxford House, 115 S.Ct. 1776 (1995). The Court found that definitions of "family", including the City of Edmond's, describe family composition and are not exempt from the Fair Housing Act. In contrast, maximum occupancy restrictions cap the number of occupants per dwelling and serve to protect health and safety by preventing overcrowding.

The audit found that a significant number of jurisdictions continue to use occupancy standards for dwellings in residential zones that apply to unrelated people but not to families. Although some occupancy standards with numerical limitations may be permissible, jurisdictions must provide reasonable accommodations to these types of restrictions for the residents of housing for people with disabilities.

Only five percent of the audited jurisdictions impose occupancy standards that are more restrictive than California's Uniform Housing Code. Jurisdictions that do so are in violation of state law.

Suggestions For Drafting Audit Inquiries

The audit process revealed the importance of testing interview questions in a very precise manner with the assistance of a survey research consultant so that there is confidence that the questions asked are eliciting the information needed for the project. Additionally, in many instances it is recommended that a series of related questions be used to make sure the interview provides the breadth of information necessary to understand the jurisdiction's practices.

For example, government officials were asked whether their jurisdiction imposes a CUP requirement specifically on housing for people with disabilities. If the question is answered literally, as most officials did in this audit, then it is likely to be "no." However, further questioning would likely lead to a different and more accurate answer. Many ordinances state that a CUP is required for nursing homes, convalescent homes, boarding and lodging houses in addition to homes for people with disabilities. However, the substantial majority of the residents of these facilities are people with disabilities. The use of a series of questions in this audit may have resulted in a more accurate count of the number of jurisdictions that impose a CUP only for housing for people with disabilities.

The question asking whether housing which provides supportive services is treated differently from other housing of the same size or type could have been drafted in a more precise manner for government officials. The Campaign wanted to know whether the provision of supportive services triggers the CUP requirement. However, jurisdictions did not understand the question as seeking this information. It is recommended that government officials be provided with examples of supportive services for residents of group homes at the outset of the interview. A second question, posed later in the

interview, asked about different treatment for housing that provides supportive services. This question was referring to the imposition of additional licenses or restrictions on hours of operation for group homes that provide supportive services, but the audit captured limited information responsive to the inquiry.

The question concerning the criteria for public funding for housing for people with disabilities sought information about discriminatory practices, meaning criteria applied only to developers seeking funding for housing for people with disabilities. Although some government officials interviewed understood the question, the audit captured limited information responsive to the inquiry. For those considering this question in a future audit, it is suggested that examples be provided to the government officials as a way of clarifying what information is being requested.

As suggested earlier, those considering future audits in their jurisdiction should field test their interview questions and audit tool and thereafter make necessary revisions to the documents. This process will likely improve the audit tool's ability to capture the information being sought for analysis.

RECOMMENDATIONS FOR FUTURE ADVOCACY

Education and Training

Training for Land Use Officials

The audit interview process revealed that many land use officials, those responsible for administering, and in some cases promulgating, zoning regulations are in need of training on how their land use policies and practices create barriers for housing for people with disabilities. The audit recorded numerous instances where planning directors were uninformed about fair housing laws, and in particular, reasonable accommodations provisions.

Training for Planning Department Staff Who Work Directly With the Public

The front line staff that speaks with the public needs to understand and be able to communicate accurate and current land use and zoning regulations information. In the audit interview process, front line staff often gave misinformation to auditors that was later corrected by more senior personnel. It became apparent that many front line personnel have not received training in changes in land use and zoning practices and fair housing laws which protect people with disabilities. Since the public relies heavily on the information given by staff working at the planning and zoning department counters, it is recommended that this level of staff be given training in current land use and zoning practices and fair housing. As laws change, this same staff needs to be provided with updated information.

Training for Housing Developers

A significant number of key informants interviewed in the audits were housing developers for affordable and/or special needs housing. Although these developers demonstrated a strong commitment to producing housing for low income people or people with disabilities, many of the developers were ill-informed about the interplay between fair housing laws and land use and zoning regulations. With knowledge of fair housing laws protecting people with disabilities, housing developers would be empowered in the often difficult development approval process for group housing to represent their clients' best interests and withstand concessions.

Additionally, training and education for developers of affordable housing may heighten developers' awareness of the needs for housing for people with disabilities and motivate them to consider creating such housing.

Community Education

The audit process reported numerous instances where neighborhood groups initially opposed group housing for people with disabilities until they were educated about the

nature of a variety of disabilities, the structure and operation of group homes and the importance of integrating people with disabilities into the community. Community education should be conducted in an affirmative setting; it should not happen only in response to neighborhood opposition to a proposed housing program for people with disabilities.

Fair housing and disability rights organizations working with people with disabilities are the most obvious educators for community education forums. Additionally, it is recommended that cities and counties sponsor educational programs to demonstrate their support and commitment to housing for people with disabilities.

Each Jurisdiction Should Review and Revise As Necessary Its Land Use and Zoning Policies and Practices

Through this grant, technical assistance has been available to assist the audited jurisdictions in reviewing and revising, as necessary, their land use and zoning regulations for ensuring compliance with fair housing laws. Statewide, all cities and counties should conduct a review of their ordinances to identify barriers to housing for people with disabilities. This should be part of the jurisdictions' Analysis of Impediments to Fair Housing required by HUD, their self-evaluation under the Americans with Disabilities Act, and their housing element review process.

The following land use and zoning policies and practices may be of particular concern because they raise barriers to housing for people with disabilities:

- discriminatory and/or overly restrictive CUP provisions;
- definitions of "family" that impose a numerical restriction on unrelated people residing together;
- local spacing requirements for group homes that are more restrictive than the 300 foot state law;
- group home approval processes that allow for excessive community input as to the internal operation and functioning of the residence;
- approval practices that permit altering proposed group home requirements in response to community pressure;
- imposing business license and other requirements which are contrary to the residential nature of group homes for people with disabilities; and
- social or other restrictions, such as curfews, that limit the residents of group homes for people with disabilities and not other similar residents.

The review process should take place in connection with any necessary training of land use officials. Fair housing and disability rights organizations throughout the state are available for providing technical assistance to government entities that did not participate in the audit.

Jurisdictions Should Adopt Reasonable Accommodations Provisions for Inclusion In Their Municipal Zoning Codes

The audit of 89 jurisdictions statewide revealed that no city has a reasonable accommodations provision in its zoning ordinance specifically for providing flexibility in land use and zoning policies and practices for people with disabilities. It is strongly recommended that all cities and counties adopt a reasonable accommodations provision for their zoning ordinance or codes.

Promote Partnerships Between Advocates For People With Disabilities and Housing Developers

Linking advocates for people with disabilities and housing developers has several benefits. First, this type of partnership encourages the very necessary sharing of expertise regarding the needs of people with disabilities and the technical expertise for developing accommodating dwellings. In essence, both parties will be able to do their job better with a fuller understanding of what it takes to develop the most appropriate housing for people with disabilities. Second, partnerships between advocates for people with disabilities and housing developers is an effective alliance in applying for funding for projects, addressing neighborhood concerns and ultimately seeking approval for developments.

Enforcement

A variety of approaches are available for seeking compliance with fair housing laws. This campaign recommends that advocates first seek voluntary compliance with fair housing laws by meeting with jurisdictions that have identifiable land use and zoning barriers to housing for people with disabilities. Meetings between fair housing advocates and key planning department staff may offer the opportunity for an exchange of ideas and for advocates to provide necessary technical assistance for eliminating barriers to housing for people with disabilities. If these meetings prove unsuccessful, then fair housing advocates should seek the counsel and assistance of attorneys experienced in fair housing and land use issues.

The Department of Housing and Urban Development Should Take A More Active Role in the Enforcement of Fair Housing Laws at the Local Level

HUD should take a more active role in the enforcement of fair housing laws at the local level in several ways; using the Analysis of Impediments to Fair Housing to identify jurisdictions that have barriers to fair housing for people with disabilities or which have failed to provide a complete evaluation including land use practices; tying jurisdictions' compliance with fair housing laws to federal funding commitments; and providing funding for local fair housing organizations to monitor their jurisdictions' compliance with fair housing laws.

TRENDS IN LAND USE AND ZONING POLICIES AND PRACTICES

During the course of the audits, a number of jurisdictions indicated that they were in the process of revising their zoning ordinances. These revisions revealed several possible trends in the regulation of group homes, some of which affect housing for people with disabilities. Some of the revisions reported conform to the intent of fair housing laws while others create new barriers to housing for people with disabilities.

Positive Trends of Jurisdictions

A number of jurisdictions have either just completed or are currently in the process of revising their definition of "family" to eliminate numerical restrictions on unrelated persons that may reside together. A jurisdiction's revision of its zoning ordinance as opposed to leaving an unlawful definition in the ordinance and just not enforcing it is recommended. If a provision remains in the local ordinance, the public is likely to assume it is in effect and will have no notice of the jurisdiction's actual practices.

Some jurisdictions are providing greater access to housing for people with disabilities in residential zones by making the following changes in their ordinances: setting forth a definition of "disability" that conforms to the Fair Housing Act; defining specific group housing that meets the definition of "family"; and specifying residential zone locations as a matter of right for people with disabilities which were not previously permitted or permitted only with a CUP.

The Campaign also found that some jurisdictions that have not made a full examination of their zoning laws have revised their CUP process to either eliminate the CUP requirement entirely with respect to group homes for people with disabilities or apply it only to larger sized homes. A few jurisdictions are currently considering changes to their CUP requirements. For example, at least one jurisdiction is revising its CUP requirement to apply only to homes for more than 10 residents, and with a CUP, it will permit this size home in single family zones.

At least one jurisdiction has drafted a reasonable accommodations provision for inclusion in its zoning ordinance and several other local governments are also considering taking this step. A number of jurisdictions have been receptive to the recommendation that they include reasonable accommodations provisions in their zoning ordinance and they have requested examples for drafting purposes.

Trends Contrary To Fair Housing Laws

The audit found that at least one city has adopted duplicative notice and hearing requirements for the siting of social services, including group homes for people with disabilities. In the audit, providers indicated that the traditional CUP notice and hearing requirements have led them to limit group homes to six or fewer residents to avoid restrictive conditions and community opposition. The imposition of additional notice and hearing procedures, on top of those already required by the CUP process, create further barriers for developing group housing for people with disabilities.

Closely related to regulations for the siting of group homes, are proposals that allow excessive community input into the operation of group homes for people with disabilities. For example, one large city proposes that prior to applying for a CUP, the housing developer meet with neighborhood groups and attempt to reach consensus on the location and operation of the residence. The city recommends the imposition of restrictions on the residents including curfews and limitations on the outside use of the property. These restrictions impact the quality of life for the residents of group homes. Another city, in proposing a process for requesting reasonable accommodations, is suggesting that the applicant with the disability give notice of the request to neighbors and thereafter, the neighbors would have an opportunity to object to the accommodation. These types of regulations, which allow excessive community input as to the operation of group homes for people with disabilities, are not imposed on similarly sized and situated families and are contrary to the intent of fair housing laws.

In several jurisdictions, community groups have exerted pressure on government officials to enact moratoria on housing for people with disabilities. The opposition to housing for people with disabilities within residential neighborhoods comes as greater numbers of people with disabilities integrate into the community. As indicated in the Recommendations Section of this Report, educating community groups about the nature of disabilities, the operation of group homes, and the importance of integration into the community would help dispel fear, hostility and myths about group homes for people with disabilities.

CONCLUSION

The Fair Housing Congress of Southern California, in conjunction with a coalition of disability rights and fair housing organizations, has conducted the California Land Use and Zoning Campaign to examine the extent of discriminatory land use and zoning policies and practices affecting people with disabilities. The Campaign specifically assessed the compliance of local jurisdictions in California with the federal Fair Housing Act and the state's own fair housing legislation.

In addition to auditing jurisdictions statewide, the Campaign provided training to fair housing and disability rights advocates and attorneys on how land use and zoning policies and practices create barriers to housing for people with disabilities. At the same time, the Campaign taught fair housing organizations the skills for evaluating jurisdictions' policies and practices that may create barriers to housing for people with disabilities. As part of its enforcement activities, the Campaign met with local jurisdictions to provide both education and technical assistance for voluntary compliance with fair housing laws and it litigated selected test and individual cases challenging discriminatory land use and zoning policies and practices.

The audit identified significant land use and zoning policies and practices that create potential barriers to housing for people with disabilities, including the following: a CUP requirement for group homes for more than six residents, and with a CUP, often a location restriction to multi-family or commercial zones; in some jurisdictions, the CUP process has been used in a discriminatory manner in attempts to block, close or otherwise alter plans for group homes for people with disabilities; providers indicated that the CUP notice and hearing requirements have led them to limit their strategies to develop homes for six or fewer residents to avoid restrictive conditions and community opposition; restrictive definitions of "family" in zoning codes that limit the number of related people that may live together; and jurisdictions uniformly lack specific written provisions to provide reasonable accommodations in rules, policies and practices for housing for people with disabilities.

A number of recommendations are being made as a result of the above findings including the following: education and training for land use officials, department staff who work directly with the public, and housing developers, to show how land use and zoning policies and practices create barriers to housing for people with disabilities; community education for neighborhood groups to dispel fears and concerns about housing for people with disabilities; each jurisdiction should review and revise, as necessary, its land use and zoning policies and practices to ensure compliance with fair housing laws; jurisdictions should provide written reasonable accommodation provisions in their zoning ordinances; and HUD should take a more active role in the enforcement of fair housing laws at the local level.

The Campaign audit process and meetings with jurisdictions raised local governments' awareness of fair housing laws and the need to consider how their local land use and zoning policies and practices create barriers to housing for people with disabilities. It is hoped that this new interest in fair housing compliance will continue to be cultivated through the future efforts of disability rights and fair housing advocates, fair housing organizations and HUD.