

February 3, 2020

Anna Maria Farías
Assistant Secretary for Fair Housing and Equal Opportunity
Fair Housing and Equal Opportunity Headquarters
U.S. Department of Housing and Urban Development
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Susan Forward
Regional Director, Boston Regional Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Suite 321
Boston, Massachusetts 02222-1092

Dear Assistant Secretary Farías and Regional Director Forward,

Enclosed please find a copy of our Title VI complaint filed with the United States Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity against the Boston Redevelopment Authority d/b/a the Boston Planning and Development Agency (BPDA), a recipient of considerable grant funding from the Department through the City of Boston, for its failure to provide meaningful access to its review of the Suffolk Downs development project in East Boston to individuals with limited English proficiency (LEP). Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, prohibits discrimination in federally assisted programs on account of race, color, or national origin.

The complaint requests that the Department of Housing and Urban Development require the BPDA to halt its review of the Suffolk Downs project pending an investigation of the BPDA's language access practices; suspend any further federal funding disbursements until the BPDA adopts and implements a comprehensive remediation plan for LEP resident engagement; and ensure that the BPDA achieves full compliance with federal law.

Lawyers for Civil Rights, our clients, and their membership stand ready to provide any information to the Department that may be helpful in its investigation and to assist in way we can. For further information, please contact us at 617-988-0609.

Sincerely,



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**LAWYERS FOR
CIVIL RIGHTS
BOSTON**

cc (via email): Representative Ayanna Pressley
Senator Elizabeth Warren
Senator Edward Markey
Mayor Martin Walsh
Boston City Councilors
Representative Adrian Madaro
Senator Joseph Boncore
Brian P. Golden, BPDA Director
E. Renee LeFevre, BPDA General Counsel
The HYM Investment Group, LLC
GreenRoots, Inc.
City Life Vida Urbana

**GREENROOTS, INC. and
CITY LIFE/VIDA URBANA, non-profit
corporations,**

Complainants,

v.

**BOSTON REDEVELOPMENT AGENCY
d/b/a BOSTON PLANNING AND
DEVELOPMENT AGENCY,**

Respondent.

**COMPLAINT UNDER TITLE VI OF
THE CIVIL RIGHTS ACT OF 1964**

I. Introduction

The ability of all residents, regardless of national origin or English proficiency, to meaningfully participate in local planning and decision-making is a cornerstone of good governance. A city's planning and zoning bodies are tasked with making decisions that impact the everyday welfare of residents, from determining the amount and affordability of housing to the solutions a city will undertake to combat climate change. Under well-established federal law, these agencies have a particular responsibility to include a community's most vulnerable residents—those who are low-income or have limited English proficiency—in every step of their decision-making to ensure a smart, equitable development process. *See infra* at Section II.a.

The Boston Redevelopment Agency d/b/a Boston Planning and Development Agency (hereinafter, "the BPDA") has failed in this critical responsibility concerning the review, comment, and approval process for Suffolk Downs. As detailed below, this planning agency of the City of Boston, a recipient of considerable federal funding from the U.S. Department of Housing and Urban Development (HUD), has continually excluded limited English proficient (LEP) individuals from the review process for Suffolk Downs, one of the largest development projects in Boston's history. Encompassing 10.5 million square feet and straddling the cities of Boston and Revere, the project will redevelop, over fifteen to twenty years, a former racing site into a new mixed-used neighborhood in East Boston featuring hundreds of condominiums, townhomes, retail squares, a public plaza, and forty acres of open space. In so doing, Suffolk Downs will fundamentally change the character, cost, and composition of every neighborhood it

touches and all surrounding communities.¹ Simply put, the stakes for affected communities in Boston, who are predominantly LEP residents of color, are enormous.

Particularly for a project of the size and scope of Suffolk Downs, the review process—as specifically contemplated by Boston’s Zoning Code—is intended to create an ongoing feedback loop, through which affected community members comment on development plans as they are refined and revised through successive stages of planning. The BPDA’s explicit role is to coordinate an extensive community review process that includes providing developer documents, publishing meeting notices, soliciting and reviewing public comments, and holding public meetings and hearings. The goal of this process is to ensure that, at every step, residents have adequate information in order to relay their concerns to the BPDA and private developers, and to inform proposed mitigation and community benefits.

However, throughout the Suffolk Downs review process, the BPDA has failed to provide reasonable language access to the LEP individuals who constitute a significant percentage of East Boston’s residents. The City of Boston itself has determined that 46% of East Boston residents are LEP, with most of these residents speaking Spanish, Arabic, or Portuguese/Cape Verdean Creole.² Just 31.5% of East Boston residents over the age of five speak only English at

¹ BOSTON PLANNING & DEVELOPMENT AGENCY, SUFFOLK DOWNS (2017), *available at* <http://www.bostonplans.org/projects/development-projects/suffolk-downs>; Tim Logan, *Designing a neighborhood from scratch: The stakes are high at Suffolk Downs*, THE BOSTON GLOBE (June 17, 2019), *available at* <https://www.bostonglobe.com/business/2019/06/17/designing-neighborhood-from-scratch-the-stakes-are-high-suffolk-downs/KcWz5yacTUCHK4cq9sYnJM/story.html>.

² CITY OF BOSTON, LANGUAGE AND COMMUNICATIONS ACCESS, DEMOGRAPHIC DATA REPORT—LIMITED ENGLISH PROFICIENCY 3 (2018), *available at* https://www.boston.gov/sites/default/files/document-file-11-2018/demographic_data_report_-_neighborhood_depth_lep_with_accom_notice_2.pdf [hereinafter, DEMOGRAPHIC DATA REPORT]. It should also be noted that East Boston’s demographics—particularly the number of Spanish speakers with limited English proficiency—are well-documented. *See, e.g.*, RESEARCH DIVISION, BOSTON REDEVELOPMENT AUTHORITY, NEW BOSTONIANS 2012 20 (2012), *available at* <http://www.bostonplans.org/getattachment/1651e206-4e95-487e-9935-712fda6e0335> (observing that in 2010, 67% of East Boston residents spoke a language other than English at home, with 30% of residents speaking Spanish at home); James Vaznis, *East Boston’s schools have a blueprint for teaching English*, THE BOSTON GLOBE (Nov. 20, 2017), *available at* <https://www.bostonglobe.com/metro/2017/11/20/east-boston-schools-find-success-with->

home; by contrast, 54% of residents over five years old speak Spanish at home.³ Yet despite their awareness of the needs of East Boston's LEP population and of the enormous community importance of the Suffolk Downs project, the BPDA has repeatedly failed to translate vital documents, including meeting notices, agendas, and developer submissions. The BPDA has also failed to provide competent and complete oral interpretation at public meetings in languages relevant to affected residents in East Boston, including Arabic and Spanish.

The BPDA's continual and systemic failures constitute national origin discrimination under Title VI of the Civil Rights Act of 1964, Executive Order 13166 and the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affected Limited English Proficient Persons*, Docket No. FR-4878-N-02 (Jan. 22, 2007) (hereinafter, "HUD LEP Guidance"). This discrimination erects formidable barriers to the ability of LEP residents of East Boston to meaningfully participate in municipal planning and development and to advocate for community benefits that would serve their needs. Too, by denying LEP individuals access to the review process, the BPDA has precluded other residents, community-based organizations, and the developers from hearing from the communities most impacted by Suffolk Downs, thereby rendering the entire process incomplete, and ill-informed.

Given the BPDA's repeated and flagrant flouting of its Title VI obligations,

Complainants respectfully request that HUD:

- 1) Require the BPDA to halt its review of Suffolk Downs pending an investigation of the agency's language access practices;

students-learning-english/Fg29PaNLgQA6i90SZSzAnK/story.html. (reporting that about 75% of the students at an East Boston elementary school do not speak English fluently—and that many are recent immigrants from El Salvador and Colombia—as well as that almost half of East Boston High School's students were born in other countries, most of which are in Latin America, and have a "wide range of English fluency").

³ RESEARCH DIVISION, BOSTON PLANNING & DEVELOPMENT AGENCY, BOSTON IN CONTEXT: NEIGHBORHOODS 13 (2015), available at: <http://www.bostonplans.org/getattachment/290cae05-72b0-47ba-a214-4a6645d43b01>.

- 2) Suspend any further federal funding disbursements until the BPDA adopts and implements a comprehensive remediation plan for LEP resident engagement; and
- 3) Ensure that the BPDA achieves full compliance with federal law.

II. Factual Background

a. Harm at The Community Level In East Boston

Approximately two-thirds of Suffolk Downs will be sited in East Boston, a historically working-class immigrant and coastal neighborhood.⁴ Of this population, significant numbers do not speak English proficiently. According to a 2018 Demographic Data Report created in part by BPDA Research Division Analysis, 18.4% of the City's LEP residents are located in East Boston.⁵ The Report also notes that at least 5% or 1,000 persons of the total demographic, whichever is less, are LEP and speak Spanish or Arabic.⁶

Race, language, environmental justice, and poverty are inextricably intertwined in East Boston. The neighborhood, where over 65% of residents are people of color and 57% identify as Latinx, also reports lower incomes and less education in its populace compared to the City of Boston as a whole.⁷ East Boston's median household income is nearly \$10,000 lower than the rest of Boston, and only 23% of the neighborhood's adult residents have at least a bachelor's

⁴ RESEARCH DIVISION, BOSTON PLANNING & DEVELOPMENT AGENCY, BOSTON IN CONTEXT: NEIGHBORHOODS 12, 20-21 (2019), <http://www.bostonplans.org/getattachment/8349ada7-6cc4-4d0a-a5d8-d2fb966ea4fe> (noting that over 35% of East Boston residents are not citizens, while over 10% are citizens by naturalization, with the bulk of the population employed in administrative and waste services, accommodations and food services, and construction, manufacturing, transportation, warehousing, utilities, and agriculture).

⁵ DEMOGRAPHIC DATA REPORT, *supra* note 2, at 2.

⁶ *Id.* at 3.

⁷ RESEARCH DIVISION, BOSTON PLANNING & DEVELOPMENT AGENCY, NEIGHBORHOOD PROFILES 2 (2019), available at: <http://www.bostonplans.org/getattachment/f4a7abfb-0426-4d4f-b353-47f080a3c5ca> (noting that in contrast to East Boston, only 19% of Boston's residents as a whole identify as Latinx).

degree.⁸ In addition, the coastal community, which has been settled in recent years by climate refugees fleeing ecological disaster in Asia and Latin America, is especially vulnerable to sea level rise propelled by climate change, with the City's own Climate Action Plan estimating that, by the end of the twenty-first century, "between 10 and 20% of East Boston will face flooding at high tide, even when there is no storm."⁹ Complainants and other community-based organizations have worked tirelessly to support and stabilize vulnerable families. For example, the Family Nurturing Program at Maverick Landing Community Services in East Boston provides weekly parenting education and family support from "Arabic and Spanish speaking parent leaders," and runs playgroups in Spanish and Arabic, noting that the "Spanish- and Arabic-speaking communities in East Boston are populations less likely to access services, often due to ... language barriers, isolation, and other cultural considerations."¹⁰

Over the past several years, this vulnerable neighborhood has seen an unprecedented spike in development. Since 2013, at least 19 large residential projects have been approved in East Boston, injecting approximately \$700 million in condominiums and apartments into what is widely recognized as Boston's last "affordable neighborhood."¹¹ This spike has left residents subject to, in the words of Suffolk Downs' own developer, "ongoing displacement pressures in and around East Boston."¹² Metropolitan Boston is now the fourth most expensive of the twenty-

⁸ *Id.*

⁹ CITY OF BOSTON, CLIMATE ACTION PLAN: 2019 UPDATE 9 (2019), *available at* https://www.boston.gov/sites/default/files/imce-uploads/2019-10/city_of_boston2019_climate_action-plan_update_2.pdf.

¹⁰ Maverick Landing Community Services, *Building a Cognitive-Rich Home Environment for Children*, <https://mlcsboston.org/home/programs/familynurturing> (last visited January 29, 2020).

¹¹ Kathleen Conti, *East Boston Health Center Tries to Adapt to a Gentrifying Neighborhood*, THE BOSTON GLOBE (Jul. 17, 2016) *available at* <https://www.bostonglobe.com/business/2016/07/17/east-boston-health-center-tries-adjust-gentrification/uYpwTz5JUPpigKFBVjrf4l/story.html>.

¹² THE HYM INV. GROUP, LLC, SUFFOLK DOWNS REDEVELOPMENT: ADDITIONAL INFORMATION DOCUMENT 2 (2019), *available at* <http://www.bostonplans.org/getattachment/2cecb88b-c9f4-4ed2-9007-7ff3847094e9>.

five largest metropolitan areas in the United States in which to buy a home, and the third most expensive rental market in the country with median rents exceeding even New York.¹³ Housing advocates have referred to East Boston as the epicenter of an “eviction crisis,” where long-term tenants are issued no-fault evictions and forced out because of skyrocketing rents and home values.¹⁴ Between 2012 and 2017 alone, Complainant City Life/Vida Urbana worked on 66 building clearout cases in East Boston, where predominantly immigrants and tenants of color were mass evicted or forced out through significant rent hikes.¹⁵ Such no-fault mass evictions have become “increasingly commonplace” in majority-minority neighborhoods such as East Boston and will continue unchecked in the absence of smart, equitable development that is reflective of the needs of all community members.¹⁶

b. The Complainants

Complainants respectfully submit this complaint on behalf of their voiceless members: thousands of low-income, LEP residents of color who have been systemically stifled by the BPDA. Complainants’ members have been unable to express serious concerns surrounding Suffolk Downs, particularly in connection with climate resiliency and housing affordability.

GreenRoots, Inc. is a not-for-profit, community-based organization dedicated to improving and enhancing the urban environment and public health in Chelsea, Massachusetts

¹³ ALICIA SASSER MODESTINO, ET AL, THE BOSTON FOUNDATION, THE GREATER BOSTON HOUSING REPORT CARD 2019: SUPPLY, DEMAND, AND THE CHALLENGE OF LOCAL CONTROL 6 (2019), available at <https://www.tbf.org/-/media/tbf/reports-and-covers/2019/gbhrc2019.pdf?la=en&hash=6F5C3F0B829962B0F19680D8B9B4794158D6B4E9>.

¹⁴ *Evictions in East Boston: The Push for a ‘Just Cause’ Ordinance* (WBUR, radio broadcast Dec. 14, 2015), available at <https://www.wbur.org/radioboston/2015/12/14/just-cause-ordinance>.

¹⁵ Kathleen Conti, ‘Mass Displacement is a Crisis’: Building Clearouts Are Becoming Increasingly Common in Boston, THE BOSTON GLOBE (Aug. 24, 2017), available at <https://www.bostonglobe.com/business/2017/08/24/building-clearouts-are-rise-housing-advocates-say/7f0egrovQqCoQqeMbc79cL/story.html/>.

¹⁶ *Id.*

and surrounding communities, including East Boston. For over twenty years, GreenRoots has engaged in ecological restoration activities, provided educational activities, convened educational events, held meetings, and organized local groups and individuals on a broad range of issues impacting the health and environment of Chelsea and Greater Boston residents, many of whom are low-income, LEP residents of color.¹⁷ On behalf of the communities for which it advocates, GreenRoots has submitted numerous comments to the BPDA throughout the Suffolk Downs approval process drawing attention to the need for a “greater effort in multilingual outreach” as well as translation of “highly technical” information contained in presentations by a “qualified expert.”¹⁸

City Life/Vida Urbana (CL/VU) is a grassroots, membership-based community organization committed to fighting for racial, social, and economic justice and gender equality by building working class power. Founded in 1973 by a group of local residents and activists, CL/VU promotes individual empowerment, develops community leaders, and builds collective power to effect systemic change and transform society. In 2007, CL/VU launched the Post Foreclosure Eviction Defense Campaign, developing an organizing strategy around eviction defense to halt housing displacement for working-class tenants and owners. In 2019 alone, CL/VU defended over 800 families as they fought to stay in their home and resist waves of speculation-fueled displacement in Boston neighborhoods, including East Boston. On behalf of its members, many of whom are LEP residents of East Boston, CL/VU submitted multiple comments throughout the Suffolk Downs approval process contesting the quality of the Spanish-

¹⁷ GreenRoots was formerly known as the Green Space and Recreation Committee, a division of the Chelsea Collaborative, Inc., a nonprofit based in Chelsea, Massachusetts.

¹⁸ Letter from John Walkey, Waterfront Initiative Coordinator, Green Roots, to Tim Czerwienski, BPDA Project Manager 1 (Feb. 2, 2018), *available at* <http://www.bostonplans.org/getattachment/4c6b7cd6-7685-4cbe-bcab-2a3b7c2938db>.

language translation, but were hindered in their ability to effectively advocate for their membership because the BPDA failed to provide consistent supports for LEP residents.

Since the BPDA has failed to provide meaningful language access, Complainants have been systemically forced to divert their limited staff and scarce resources to provide at least some basic translation and interpretation for non-English speaking residents so they can have a modicum of access to the Suffolk Downs review process. In this manner, Complainants have been directly harmed by the BPDA's failure to properly oversee and manage the language access process.

c. The Article 80 Review Process

Zoning in Boston is covered by a city-specific zoning code, which was heavily influenced by a spike in development activity in the mid-1980s that propelled Boston to set forth a “comprehensive” planning and zoning process that emphasizes “community participation” as well as the “special characteristics and needs of each of the city’s distinctive areas.”¹⁹ Within the code, Article 80 governs the BPDA’s review of proposed real estate development projects and comprehensive development plans within the city. Article 80 is intended to, in relevant part, “mitigate the impacts of development projects on their surroundings and on City resources” and “promote the public health, safety, convenience, and welfare” with the goals of, in relevant part, “preserv[ing] and increas[ing] the City’s housing amenities” and “ensur[ing] that new development is compatible with the existing traditional scale and character of Boston.”²⁰

¹⁹ CYNTHIA BARR & JENNIFER R. SCHULTZ, *Introduction to BOSTON ZONING: A LAWYER’S HANDBOOK* iii (8th ed. 2019); *See id.* at 4-3 (“Public participation . . . plays an important part in the review of development projects under Zoning Code 80 Development Review and Approval. . . In the review of large projects and comprehensive development plans, the zoning provides for public comment at each stage of the process.”).

²⁰ Boston Zoning Code, Article 80—Development Review and Approval, Section 80-1. a

Due to its size and scope, Suffolk Downs has triggered two Article 80 procedures: Large Project Review and Planned Development Area (PDA) Review. Large Project Review generally applies to projects that, like Suffolk Downs, will add 50,000 or more square feet of gross floor area.²¹ The sheer size of projects covered by Large Project Review necessitates multiple opportunities for public comment and a public hearing during three review stages:²²

- **Step One:** The developer initiates the Large Project Review process by submitting a Project Notification Form. The BPDA will then issue a Scoping Determination, specifying the impacts the developer must analyze. Public comment is solicited for 30 days during this phase, so that community members can provide feedback and insights on the proposal, on elements ranging from traffic mitigation to parking to climate resiliency.
- **Step Two:** The developer may be required to submit a Draft Project Impact Report, analyzing the issues specified in the Scoping Determination. Again, affected members of the public are given the opportunity to provide feedback through written comments, with comment periods running as long as 75 days, depending on the project's location and complexity. The BPDA will then issue a Preliminary Adequacy Determination, specifying any further analysis required for the final report and identifying required mitigation measures based on public comments and the Draft Report.
- **Step Three:** The developer submits a Final Project Impact Report, providing the required analysis. A comment period and public hearing is again required; as with

²¹ *Id.* at Section 80B-2.

²² A hearing is required because Suffolk Downs is a Development Impact Project within the meaning of Section 80B-7 of the Zoning Code.

the comment period for the Draft report, this period can run as long as 75 days.

The BPDA then votes to approve, conditionally approve, or disapprove the Final Report.

A project such as Suffolk Downs pursuing a “Planned Development Area” designation or status must undergo a separate BPDA approval process as well—a process that is also characterized by a high degree of community involvement. Planned Development Area Review is governed by Section 80C-5. A Planned Development Area is a district that can be established in certain areas to allow development that is not otherwise allowed by the underlying zoning, subject to special review and conditions. Approval of a project pursuing a Planned Development Area designation or status requires the BPDA and the Zoning Commission to approve a development or master plan that describes the proposed development in detail. Pursuant to Section 80C-5, Planned Development Area Review by the BPDA customarily involves a 60-day review period—including a 45-day comment period—followed by a hearing before the BPDA.

The Zoning Code explicitly contemplates multiple opportunities for public input for the development of a Planned Development Area, reflecting the significant impact that proposed development may visit upon the community, as well as for Large Project Review. Moreover, in addition to the above, the BPDA conducts scheduled public meetings; members of the public are “welcome and encouraged to attend these meetings in addition to submitting written comments to the Board in advance.”²³ In sum, in the words of the BPDA itself, “[c]itizen participation is vital to the success of development review under Article 80.”²⁴

d. The BPDA’s Receipt of Federal Funding

²³ BRIAN GOLDEN, BOSTON REDEVELOPMENT AGENCY, A CITIZEN’S GUIDE TO DEVELOPMENT REVIEW UNDER ARTICLE 80 OF THE BOSTON ZONING CODE 23 (2014), *available at* <http://www.bostonplans.org/getattachment/610ddaf1-a547-4eb9-bb22-4d0938f354f6>.

²⁴ *Id.* at 5.

HUD has jurisdiction over this matter because the BPDA continually receives federal funding from HUD, thereby subjecting the agency to the obligations contained in Title VI and its attendant regulations. According to the BPDA's Operating & Capital Budget for Fiscal Year 2020, the Mayor's Office of Workforce Development—an agency within the BPDA that funds and oversees programs that promote workforce development—received \$7,889,022 in federal grants and donations in Fiscal Year 2017, \$6,665,103 in Fiscal Year 2018, with \$6,473,520 budgeted for Fiscal Year 2019 and \$6,101,238 budgeted for Fiscal Year 2020.²⁵ In particular, the Office of Workforce Development manages Boston's Community Development Block Grant funding from HUD as a sub-recipient from the City's Department of Neighborhood Development. Notably, that funding is used "primarily for affordable housing and economic development."²⁶ In 2019, the City of Boston received \$17,146,361 in Community Development Block Grant funding, \$5,336,980 in HOME Investment Partnerships Program funding, and \$1,461,960 in Emergency Solutions Grants Program funding.²⁷

III. Legal Analysis

a. Title VI and its Accompanying Regulations Require Recipients of Federal Funding to Ensure Meaningful Access to Programs and Activities by LEP Individuals.

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be

²⁵ BOSTON PLANNING & DEVELOPMENT AGENCY, BOSTON PLANNING & DEVELOPMENT AGENCY FY20 BUDGET DOCUMENT 13 (2019), *available at* <http://www.bostonplans.org/getattachment/9293776e-23df-48d0-a415-ce57ed55484b>.

²⁶ Office of Workforce Development, Grants Managed, <https://owd.boston.gov/about-us/grants-managed/> (last visited Jan. 27, 2020).

²⁷ HUD EXCHANGE, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, HUD AWARDS AND ALLOCATIONS: BOSTON, MA (2020), *available at* <https://www.hudexchange.info/grantees/allocations-awards/?viewMoreAwards=1¶ms=%7B%22state%22%3A%22MA%22%2C%22grantees%22%3A%5B%7B%22id%22%3A%22186%22%7D%5D%7D##granteeSearch>.

subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁸ As outlined by the Department of Justice (DOJ), a recipient means any “political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization . . . to whom Federal financial assistance is extended, directly or through another recipient, for any program.”²⁹ Courts have consistently held that Title VI prohibits conduct with a disparate impact on LEP individuals because such conduct constitutes discrimination on the basis of national origin.³⁰ Too, DOJ has “consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations.”³¹

The obligations of federal funding recipients to LEP individuals was made clear in Executive Order 13166 “Improving Access to Persons With Limited English Proficiency.”³² In August 2000, then-President Bill Clinton ordered agencies providing federal financial assistance to draft Title VI guidance “specifically tailored to its recipients that is consistent with LEP guidance issued by the Department of Justice.”³³ In 2007, the Office of the Assistant Secretary for

²⁸ 42 U.S.C. § 2000d.

²⁹ CIVIL RIGHTS DIVISION, U.S. DEP’T OF JUSTICE, TITLE VI LEGAL MANUAL, <https://www.justice.gov/crt/fcs/Title-6-Manual#VI.%20What%20is%20a%20Recipient> (last updated, Dec. 19, 2019).

³⁰ See, e.g., *Lau v. Nichols*, 414 U.S. 563 (1974); see also *Colwell v. Dep’t. of Health & Human Servs.*, 558 F.3d 1116-17 (9th Cir. 2009) (noting *Lau* held that “discrimination against LEP individuals was discrimination based on national origin in violation of Title VI”); *U.S. v. Maricopa Cty, AZ.*, 915 F.Supp.2d 1073, 1079 (D. Ariz. 2012) (“[L]ongstanding case law, federal regulations, and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination under Title VI.”).

³¹ Enforcement of Title VI-National Origin Discrimination Against Persons with Limited English Proficiency, 65 Fed. Reg. 50123-01, 50124 (effective Aug. 11, 2000) (citing 28 C.F.R. § 42.405(d)(1)).

³² Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (2000).

³³ *Id.*

Fair Housing and Equal Opportunity published the HUD LEP Guidance.³⁴ The HUD LEP Guidance specifically highlights the fact that its provisions extend to recipients and subrecipients of the Entitlement Community Development Block Grant, State Community Development Block Grant, and HOME Investment Partnership Program as well as that the document covers “all parts of a recipient’s operations . . . even if only one part of the recipient receives federal assistance.”³⁵

Recipients are required to “take reasonable steps to ensure meaningful access to their programs and activities by LEP persons,” beginning with the application of a four-factor test: (1) the number or proportion of LEP individuals eligible to be served or likely to be encountered by the grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives and (4) the resources available to the grantee/recipient and costs.³⁶ The goal of the HUD LEP Guidance is to balance meaningful access to “critical services” by LEP individuals with avoiding undue burdens on “small local governments.”³⁷

As relevant here, the HUD LEP Guidance specifically indicates that recipients are “expected to ensure competency of the language service provider” when providing oral assistance, ensuring that interpreters “demonstrate proficiency in and ability to communicate information accurately in both English and in the other language” and can communicate “any specialized terms or concepts peculiar to the entity’s program or activity” in both languages.³⁸ The HUD LEP Guidance also emphasizes the need for translation of “vital” documents, a

³⁴ Final Guidance to Federal Financial Recipients Regarding Title VI Prohibition Against Discrimination Affecting Limited English Proficient Persons 72 Fed. Reg. 2731 (effective Jan. 22, 2007).

³⁵ *Id.* at 2740.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 2742.

classification that hinges upon the importance of the program, information, or service involved and the “consequence to the LEP person if the information in question is not provided accurately or in a timely matter,” as awareness of rights and services “is an important part of ‘meaningful access.’”³⁹ Finally, a recipient will be considered to have complied with their written-translation obligations if they provide written translations of vital documents for “each LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.”⁴⁰ Notably, both Arabic and Spanish qualify under this rubric for the neighborhood of East Boston.

The Office of Fair Housing and Equal Opportunity at HUD is responsible for conducting investigations upon receipt of a Title VI complaint to ensure that federal funding recipients are complying with their civil rights obligations. If the investigation yields a finding of non-compliance, HUD will inform the recipient in a Letter of Findings that, among other matters, sets out appropriate corrective steps. If the non-compliance cannot be informally resolved, HUD “must secure compliance through the termination of federal assistance” following an administrative hearing or the referral of the matter to DOJ.⁴¹

b. The BPDA Has Systemically Failed to Provide Meaningful Access to the Suffolk Downs Review Process.

Over the course of the Article 80 review process for Suffolk Downs, the BPDA has discriminated on the basis of national origin by continually failing to provide adequate written translation and oral interpretation for LEP residents of East Boston in contravention of the agency’s obligations under Title VI and the HUD LEP Guidance. As stated above, Suffolk

³⁹ *Id.* at 2744.

⁴⁰ *Id.* at 2745.

⁴¹ *Id.* at 2747.

Downs is one of the largest projects in Boston's history, representing an investment of millions of dollars and the development of over a hundred acres in a historically working-class non-English speaking community. Suffolk Downs implicates a host of local and state laws, touching on everything from wetland preservation and climate resilience to housing preservation and stability.

A project this complex cannot be adequately reviewed by the non-English speaking public if key documents go untranslated or oral interpretation is haphazard, unreliable or inaccurate. To neglect, for example, to provide Spanish-language summaries of dense technical documents, or to deprive community members of comment opportunities by hiring interpreters unversed in urban planning, or to effectively exclude the entire Arabic LEP population, is not "meaningful access" to the BPDA's programming as contemplated by either HUD or DOJ.⁴² Instead, in light of the project's duration and complexity, the requirements of Article 80, the resources available to the City of Boston, and the size of the LEP population, it is incumbent upon the BPDA to create an extensive and ongoing process to weigh public input, wherein LEP individuals have full and equal opportunity to review documents, attend meetings, and share their views on the direction of their neighborhood. These are essential building blocks for smart and equitable development according to the spirit and letter of Article 80.

The BPDA's deprivation of LEP residents of East Boston of meaningful access to the Suffolk Downs review process has taken many adverse and harmful forms:

Systemic Lack of Access for Arabic LEP Speakers

- To date, despite the existence of internal policy documents making clear that LEP Arabic speakers constitute either 1,000 residents or 5% of the relevant population, as well as requests from community groups such as Complainant GreenRoots, the

⁴² *Maricopa Cty., Ariz.*, 915 F.Supp.2d at 1080.

BPDA has neither provided *any* oral interpretation at community meetings nor translated vital documents into Arabic.⁴³

Systemic Lack of Adequate Oral Interpretation

- As Complainants and their members experienced directly, the Spanish interpretation services provided at BPDA-hosted Suffolk Downs presentations was substandard and insufficient to communicate a thorough and accurate understanding of the relevant materials to the LEP Spanish-speaking community. In particular:
 - Interpretation has been scattered, unprofessional, unreliable, and incomplete. Interpreters were unfamiliar with or untrained in the technical terms used in planning documents to refer to complex matters such as urban development, housing policy, zoning, traffic engineering, and environmental science. Consequently, interpreters simply repeated these terms in English or omitted them entirely to the confusion of the non-English speaking audience.
 - At best, providing interpretation appeared to be an afterthought at BPDA-hosted meetings. For example, simultaneous interpretation equipment was available only on a sporadic basis. When the equipment has been available, interpretation was hampered by high levels of static and failed batteries. When equipment was unavailable, an interpreter would sit near a group of non-English speaking residents and attempt to whisper a translation to the group. This was unmanageable for groups of more than two individuals.
 - The Question & Answer (Q&A) portions of public presentations—the key junctures at which community dialogue and input occur—were regularly uninterpreted.
- Recent public meetings and presentations typify the inequities and national origin discrimination:
 - A March 7, 2019 presentation on Suffolk Downs was advertised as being entirely in Spanish. However, when Complainants and their members arrived, no interpreter was present. As a result, a City of Boston employee who happened to speak Spanish was called upon to provide sequential—not simultaneous—interpretation using the venue’s public announcement system. Unsurprisingly, this well-intended staff member was neither trained nor prepared to provide the kind of technical and detailed interpretation that this meeting required. As a result, much of the English presentation was inadequately or incompletely interpreted into Spanish. The Q&A portion of the meeting took place largely in English, with an English-speaking audience member speaking directly to the English-speaker presenter with no

⁴³ Letter from John Walkey to Tim Czerwienski, *supra* note 18, at 3 (“[W]e hope the next phases will continue and expand [multilingual] outreach to potentially include some of the Arabic-speaking community as well.”).

interpretation provided. Complainants and their members were not afforded an opportunity to effectively or meaningfully participate.

- At a May 21, 2019 presentation on Suffolk Downs, the quality of interpretation was extremely poor. The BPDA-hired interpreter lacked a command of the subject matter and struggled to keep up with the presenters. The interpreter skipped parts of the presentation, including entire slides of the PowerPoint displayed to the audience. Additionally, although headsets were available, there were a number of reception issues. No attempt at Arabic interpretation was even made. As a result, it was near-impossible for LEP community members to grasp the details of the presentation.
- At the January 8, 2020 public meeting on Suffolk Downs, the agenda was provided only in English even though the BPDA had advertised the availability of Spanish language interpretation and translation. Neither oral interpretation nor translated documents were available in Arabic. Moreover, only one interpreter was available for over fifty attendees, several of whom spoke only Spanish. This interpreter did not provide simultaneous translation; instead, over the course of a two-hour meeting, Spanish speakers were expected to raise their hands so that the interpreter could come directly to them to tell them what had been said. Additionally, the quality of the translation was poor, with Spanish speaking attendees receiving an incomplete and at times, inaccurate, translation of a complex presentation that bore directly on the future of the neighborhood in which they live. The inadequacy of the translation was particularly concerning given that the meeting—at which the Suffolk Downs developer presented updates and changes to the project, as well as mitigation and community benefits based on public feedback—is one of the last before the February 13, 2020 hearing at which the BPDA is expected to vote to approve the project.

Systemic Insufficient Written Translation

- Despite requests from community-based organizations, including Complainant GreenRoots, the BPDA has failed to provide even summaries or synopses in Spanish of complex technical reports submitted by the Suffolk Downs developer.⁴⁴
- On September 16, 2019, the BPDA posted an “Additional Information Document” that extensively modified the developer’s PDA master plan for Suffolk Downs and described new or drastically altered community benefits relating to affordable housing, transportation, and climate resilience to its dedicated Suffolk Downs website in English only. By failing to translate the Document, the BPDA forced community groups, including Complainants, to translate the document themselves. Complainants were forced to divert their limited financial and human resources to provide translations to non-English speaking residents so they could participate in the public

⁴⁴ *Id.* at 3.

comment period that was supposed to end on October 16, 2019.⁴⁵ The failure to translate the document—even though the BPDA was well aware that many residents of East Boston are LEP and had translated or posted translations of prior submissions—significantly impeded the ability of these residents to provide comments on the document.

- Although the Additional Information Document was eventually translated into Spanish, the BPDA posted it on October 25, 2019, only three weeks prior to the revised comment deadline of November 15, 2019 and after Complainants had secured counsel. Additionally, community groups working with LEP communities, such as Complainants, were never informed of the new deadline by the BPDA until receipt of a separate letter from the developer on November 14, 2019 leaving little to no time to meaningfully engage affected community members. Moreover, due to the BPDA's failure to provide a Spanish Additional Information Document alongside the English version, several Spanish-speaking LEP residents were unable to submit comments prior to the November 6, 2019 vote of the Boston Civic Design Commission to recommend approval for the PDA Master Plan for Suffolk Downs.

Notably, the BPDA persisted in depriving residents of full access to the development review process despite repeated requests from community organizations such as Complainants to improve translation efforts, extend comment periods, or delay hearings to enable full participation by all East Boston residents, including non-English speakers. For example, Complainants raised this very matter in an October 16, 2019 comment to the BPDA, as well as in letters submitted on its behalf by Lawyers for Civil Rights (LCR) and Greater Boston Legal Services (GBLS) on November 13, 2019, and December 6, 2019, in which a meeting was formally requested with the BPDA to discuss systemic language access issues (letters attached hereto as Exhibit A, B, and C.). The BPDA failed to even acknowledge receipt of these two legal letters. To date, undersigned counsel's request for a meeting remains unanswered. In this flagrant manner, the BPDA demonstrates its systemic and ongoing reluctance to hear LEP

⁴⁵ Although the Code does not require a public comment period for additional information documents, the BPDA's staff arranged with the developer for the publication of public notice and for a 30-day public comment period, with an initial deadline of October 16, 2019. Letter from Thomas N. O'Brien, Managing Dir., HYM Inv. Grp, to Brian P. Golden, Dir. BPDA 1 (Sept. 16, 2019), *available at* <http://www.bostonplans.org/getattachment/2cecb88b-c9f4-4ed2-9007-7ff3847094e9>.

residents and to comply with Title VI of the Civil Rights Act of 1964, Executive Order 13166 and HUD LEP Guidance. Under these circumstances, HUD intervention is warranted because the agency is resistant to accountability and oversight.

Every component of the four-factor test outlined in the HUD LEP Guidance militates strongly in favor of greater resources and commitments towards the BPDA's provision of services and supports to LEP individuals throughout the Suffolk Downs review process. First, with regard to the number or proportion of LEP individuals eligible to be served or likely to be encountered by the BPDA, a full 46% of East Boston residents—the precise neighborhood impacted by Suffolk Downs—are LEP, with the majority of them speaking Arabic or Spanish as a primary language.⁴⁶ Second, with regard to the frequency with which LEP individuals come in contact with the program, the public participation provisions of Article 80 require the BPDA to regularly hold public meetings and to solicit public comments throughout the Suffolk Downs review process. Third, with regard to the nature and importance of the program to people's lives, the planning and review processes governing Suffolk Downs have considerable impact on East Boston's residents. In approving, mitigating, or denying the Suffolk Downs plan, the BPDA will decide the level of affordable housing that will be available to LEP tenants of East Boston, as well as whether the project will commit to green, climate-resilient construction that can withstand the impacts of climate change on a coastal community experiencing sea level rise. Finally, with regard to the resources available to the BPDA, Complainants note that the City of Boston is not a "small local government" unduly burdened by its Title VI obligations. Instead,

⁴⁶ DEMOGRAPHIC DATA REPORT, *supra* note 2, at 3.

Boston is the largest city in New England; the metropolitan area is the fifth wealthiest, as well as one of the best educated, in the entire country.⁴⁷

c. The BPDA's Systemic Practice of Denying LEP Residents Meaningful Access to Its Programs Is Indefensible in a Rapidly Diversifying City.

The language access failures that have dogged Suffolk Downs are increasingly untenable in Boston, a rapidly diversifying city whose population growth is driven by increases in the nonwhite and non-English speaking population. Indeed, in 2014, Boston's foreign-born residents accounted for 27.1% of the city's population; the city has the seventh highest share of foreign-born residents among the largest U.S. cities, and more than half of Boston children under the age of 18 lived with at least one foreign-born parent.⁴⁸ The most common countries of origin for these foreign-born residents are the Dominican Republic, China, Haiti, El Salvador, Vietnam, Jamaica, Cape Verde, Colombia, India, and Guatemala.⁴⁹

Despite these demographic trends, historically, the BPDA has repeatedly declined to afford LEP residents meaningful access to its comment and review procedures. For example, in 2018, the BPDA continually provided notices of public hearings related to the 36-70 Sprague Street Project in English only, even though the project was located in the Hyde Park neighborhood where nearly 70% of residents are Black or Latinx and many speak only Haitian Creole or Spanish. Despite requests from the resident organizing committee of the Southwest Boston Community Development Corporation to provide notices in these languages, as well as an August 2018 letter from GBLS reminding the BPDA of their Title VI responsibilities to LEP

⁴⁷ Samuel Stebbins & Michael B. Sauter, *25 Richest Cities in America: Does Your Metro Area Make the List?*, USA TODAY, (May 23, 2018), available at <https://www.usatoday.com/story/money/economy/2018/05/17/25-richest-cities-in-america/34991163/>.

⁴⁸ LIMA ET AL, BOSTON REDEVELOPMENT AUTHORITY RESEARCH DIVISION, BOSTON BY THE NUMBERS 2015 8 (2015), available at <https://www.slideshare.net/alvaroelima/boston-by-the-numbers-2015>.

⁴⁹ *Id.* (citing U.S. Census Bureau, 2014 1-year American Community Survey, Public Use Microdata Sample (PUMS), BRA Research Division Analysis).

communities, the BPDA refused to provide adequate language assistance or to even acknowledge GBLS' letter (attached hereto as Exhibit D). Significantly, notices of public hearings are specifically included in the HUD LEP Guidance as an example of vital or generic widely used written materials that could be translated into the language of each frequently encountered LEP group or likely to be affected by the grant recipient's programming.⁵⁰

IV. Relief Requested

In light of the BPDA's repeated and flagrant flouting of its Title VI obligations to LEP residents, Complainants respectfully request that HUD:

1. Require the BPDA to halt its review of Suffolk Downs pending an investigation of the agency's language access practices, particularly with respect to translation of written documents and oral interpretation at public meetings.
2. Suspend any further federal funding disbursements until the BPDA adopts and implements a comprehensive remediation plan for LEP resident engagement. Federal funding should only be restored when the BPDA provides full and equal access to LEP residents in full compliance with civil rights law.
3. Ensure that the BPDA achieves full compliance with federal law through a conciliation agreement.
4. Provide all other necessary and appropriate relief that justice may require.

V. Conclusion


By denying non-English speakers access to the review process for Suffolk Downs, the BPDA has precluded residents, community-based organizations, and the developers themselves from hearing from the communities most impacted by the project. Federal grant money should

⁵⁰ 72 F.R. at 2744.

not be used to stifle the voice of Boston's most vulnerable residents, particularly when affordable housing and climate resiliency are at stake. HUD's intervention is necessary to halt this systemic exclusion and discrimination.

Dated: February 3, 2020

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Lauren Sampson', written over a horizontal line.

Lauren Sampson, Esq.
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EXHIBIT

A

October 16, 2019

Via Email and First-Class Mail

Tim Czerwienski, Project Manager
Boston Planning and Development Agency
One City Hall Square
Boston, MA 02201
tim.czerwienski@boston.gov

Re: Suffolk Downs

Dear Mr. Czerwienski,

On behalf of a coalition of Boston-based community groups organized by and for residents of color, including GreenRoots, City Life/Vida Urbana, Neighbors United for a Better East Boston, MassCOSH, the Center for Cooperative Development and Solidarity, and Stand for Democracy (hereinafter, “the Community Groups”), Lawyers for Civil Rights respectfully submits this comment to express the Community Groups’ significant concerns regarding the Supplemental Information submitted on September 16, 2019 by the HYM Investment Group (hereinafter, “HYM”). In light of these concerns, the Community Groups strongly oppose the redevelopment of Suffolk Downs in its present form.

As a threshold matter, the Community Groups note that a month was insufficient time for this comment period. Given the immense importance of this project, the extensive documentation submitted by HYM, and the translation issues noted below, a much longer comment period was warranted. The Community Groups respectfully request that the comment period be extended 120 days to allow time for additional interested residents, stakeholders, and advocacy organizations to submit comments addressing questions and shortcomings with HYM’s proposal.

Overarching Flaws in The Development Review Process

Before addressing the substantive problems with the Supplemental Information, the Community Groups highlight several overarching flaws in the Development Review Process, which cumulatively serve to shut out from the review process many of those who will be most directly affected. Taken together, these concerns demonstrate how low-income residents, immigrant residents, and residents of color are being systematically excluded from the largest development project in Boston history—a development that will primarily impact and displace those very residents.

I. Lack of Translation

HYM failed to translate the Supplemental Information into Spanish, continuing a longstanding problem in the development process. By failing to translate the Supplemental Information, HYM displaced the burden of translation onto residents and community groups such as those represented in this comment letter, which are already operating with limited

financial and human resources. The failure to translate the document—even though HYM is well aware that many residents of East Boston are monolingual Spanish speakers or English language learners and has translated prior submissions—raises serious legal and equity concerns. Similarly, the Community Groups note that the oral Spanish translation provided at community meetings has been problematic and unprofessional. HYM translators appear unfamiliar with the technical jargon used in planning documents and so simply repeat these terms in English, to the confusion of the audience. On at least one occasion, HYM utterly failed to provide a translator, leaving a City of Boston employee who happened to speak Spanish to step in.

This deliberate indifference to the demographics and needs of the East Boston community may subject HYM (and the Boston Planning Development Agency (BPDA)) to liability under state and federal anti-discrimination laws, including Title VI. Title VI, the accompanying regulations and state law prohibit discrimination based on national origin. *See* 42 U.S.C.A. § 2000d; *see also* 28 C.F.R. § 42.405(d)(1) (“Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons.”). In comparable instances, the lack of translation into languages spoken by affected communities has drawn legal scrutiny. *See, e.g., Nat’l. Multi Housing Council v. Jackson*, 539 F.Supp. 2d 425, 430 (D.D.C. 2008) (observing DOJ has “consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations.” (citation omitted)).

This project cannot and must not move forward without professional translation of every public document and community presentation.

II. References to External Documents and Discussions

As other commenters have noted, HYM’s BPDA submissions have attempted to incorporate by reference external discussions, plans, and memoranda without actually including them in the Planned Development Area (PDA) or other binding documents. Residents cannot meaningfully assess the impact of, or comment on, decisions they are excluded from reviewing. In its current form, even with the Supplemental Information, the PDA is incomplete.

Accordingly, the Community Groups request that HYM both provide the following documents and incorporate them in their entirety into the PDA:

- A detailed description of the “regional solutions” to climate change HYM is seeking with the Commonwealth and the Cities of Boston and Revere;
- An itemized breakdown of the proposed contribution to transit upgrades that is currently “under discussion” with the MBTA;

- A detailed description of the “significant linkage funds” HYM claims will flow to the Neighborhood Housing Trust, so that the community can assess their impact and adequacy;
- Any agreements, including drafts, with MBTA and/or MassDOT; and
- Any Project Labor Agreements pertaining to the construction and staffing of Suffolk Downs, such that the Community Groups can assess whether the project’s workforce will include local residents, women, and people of color, as well as women-owned and minority-owned small businesses.

III. Lack of Representation on the Impact Advisory Group (IAG)

Suffolk Downs cannot be separated from the context in which this development is taking place. Since 2013, 19 large residential projects have been approved by the BPDA, injecting approximately \$700 million in condominiums and apartments into a historic immigrant enclave.⁴ Yet tellingly, no representative from any of the Community Groups was invited to sit on the project’s IAG, despite their years of activism and advocacy in East Boston. It is shortsighted to include primarily “abutters” of the project on the IAG, as if the only stakeholders are those adjacent to the former racing site. Suffolk Downs is regional in scope and impact; it involves the wholesale construction of a new mixed-used neighborhood, with 10.5 million square feet of development across two cities. The project will fundamentally change the character, cost, and composition of every neighborhood it touches and all surrounding communities. Without including organizations led by and serving people of color on the IAG, the BPDA will have an incomplete picture of the social and environmental impacts of Suffolk Downs.

Housing and Affordability

IV. Amount and Rental Pricing of Affordable Housing

In the Supplemental Information, HYM states that 13% of the total square footage of all dwelling units in Boston will be set aside as affordable units, in order to facilitate the provision of two- and three-bedroom units suitable for families. On-site rental units will be provided at an average of 70% of Area Median Income (“AMI”).

The Community Groups request additional information on how the decision to keep a set percentage of the total residential square footage affordable, rather than a set percentage of the total units, impacts the number and size of affordable units. Given the housing shortage in Greater Boston, the lower median household income of East Boston, and the need for multi-bedroom units, the Community Groups strongly believe that half of the residential units built by HYM should be provided at 30% AMI, an amount that reflects the actual earnings of East Boston residents. Additionally, half of these residences should be two and three-bedroom units.

Although the Community Groups recognize that their proposal exceeds the City of Boston’s mandatory set-aside of 13% of available residential space for affordable housing, this allocation

⁴ Conti, K., *East Boston Health Center Tries to Adapt to a Gentrifying Neighborhood*, The Boston Globe (Jul. 17, 2016).

is amply justified. Vacancy rates are at historical lows, putting ever greater pressure on low-income renters. In a 2019 Housing Report Card, the Boston Foundation observed that while a 6% vacancy rate is generally considered stable for rental properties, the vacancy rate in Greater Boston “dipped well below 4% in 2015 and has yet to recover.”³ This low vacancy rate disincentivizes landlords from listing rentals at affordable prices, while increasing the risk of displacement, as “vulnerable renters” are unable to compete for an ever-decreasing number of apartments with higher-income households.⁴ The Boston Foundation specifically noted that a “disproportionate percentage of the region’s renters are low-income and people of color who have historically been pushed or priced out of the housing market.”⁵ A similar report by the Federal Reserve Bank of Boston estimated that Massachusetts must nearly double its stock of affordable apartments in order to support extremely low-income households, which would require the construction of over 4,000 affordable apartments per year.⁶ Indeed, in the Supplemental Information, HYM itself acknowledges the “ongoing displacement pressures in and around East Boston,” which are driving long-term residents out of their homes.

The Community Groups’ proposal that half of the affordable units be two- and three-bedroom apartments recognizes the need for larger-sized units for those who will be most impacted by the Suffolk Downs project. Immigrants make up over half of East Boston’s population.⁷ Immigrant-headed households in Massachusetts are, on average, larger than native-born households, which is due in considerable part to the larger number of children in immigrant families.⁸ If BPDA were to endorse HYM’s proposal, it would be effectively guaranteeing that East Boston immigrant families and families of color will be shut out of Suffolk Downs, even though the project spans a historically working-class immigrant community. In so doing, the BPDA would be perpetuating the housing segregation that has characterized displacement and gentrification in Boston for generations. This worrisome trend of building white neighborhoods has been extensively documented by the Boston Globe’s Spotlight series in connection with the development of the Seaport.⁹

Community Groups believe their affordable housing proposal is also justified in light of the anemic nature of HYM’s proposed financial contributions to public transportation. These contributions are significantly out-of-step with other large-scale developments in Greater Boston that are dwarfed by the size and scope of Suffolk Downs. By contrast, HYM and NB Development Group paid for and constructed an entirely new regional rail station serving the multi-phase, mixed-use 15.2 acre Boston Landing Development that directly links downtown

³ The Boston Foundation, The MHP Center for Housing Data, & The University of Massachusetts Donahue Institute (UMDI). (2019, June). *The Greater Boston Housing Report Card 2019 Supply, Demand and the Challenge of Local Control. The Greater Boston Housing Report Card 2019 Supply, Demand and the Challenge of Local Control.*

⁴ *Id.*

⁵ *Id.*

⁶ Federal Reserve Bank of Boston. (Apr. 3, 2019). The Growing Shortage of Affordable Housing for the Extremely Low Income in Massachusetts. Retrieved from <https://www.bostonfed.org/publications/new-england-public-policy-center-policy-report/2019/growing-shortage-affordable-housing-extremely-low-income-massachusetts.aspx>

⁷ Boston Planning & Development Agency Research Division, *East Boston* (May 2017).

⁸ The Immigrant Learning Center, Inc., Clayton-Matthews, A., & Watanabe, P. (2012, March). *Massachusetts Immigrants by the Numbers, Second Edition: Demographic Characteristics and Economic Footprint.*

⁹ Ryan, A., et al., *A Brand New Boston, Even Whiter Than The Old*, Boston Globe (Dec. 11, 2017) (noting that Boston “had a rare opportunity to build a new neighborhood for all Bostonians. Instead it built the Seaport.”)

Boston and Brighton.⁸ In Somerville, Federal Realty Investment Trust invested \$15 million to build Assembly Station on the Orange Line for the primary purpose of serving Assembly Square, a retail and residential development.⁹ As part of a community benefit package, Encore Boston Harbor invested over \$70 million in roadway improvements in Everett and Sullivan Square and transportation alternatives, including shuttle buses and water taxis, with plans to potentially extend the Silver Line from Chelsea to Encore in Everett.¹⁰

Given the low level of HYM's public transportation investment for Suffolk Downs, the Community Groups propose that the BPDA require HYM to commit funds equivalent to what a development of this size would typically invest in public transportation, and dedicate them to affordable housing instead. Such a contribution would amply support Community Group's proposal that half of the residential units built by HYM should be provided at 30% AMI and that half of these should be two and three-bedroom units

V. Stabilization Fund

As per the Supplemental Information, HYM has agreed to provide \$5 million to a housing stabilization fund that will be used to assist East Boston-based nonprofits in purchasing existing market-rate housing units to lease or sell them at affordable rates. The Community Groups believe this sum is utterly insufficient to address displacement pressures in East Boston. When considering the scale of this project and its attendant footprint in this region, \$5 million is a paltry sum. Indeed, HYM's own project liaison has estimated that each housing unit costs the developer about \$500,000. To dedicate the approximate cost of ten rental units to housing stabilization, given the scale of Suffolk Downs, is insulting and inadequate. Instead, the Community Groups propose HYM's contribution to the stabilization fund should represent a meaningful percentage of the cost of the overall project, to be determined by the BPDA in consultation with the community, including the undersigned groups.

Climate Resilience

VI. Compliance with Climate Action Plan

Suffolk Downs must meet all construction standards outlined in the City of Boston's 2019 Climate Action Plan, including, but not limited to ensuring the entire development is zero net carbon or energy positive and submitting a Carbon-Neutral Building Assessment. Given the urgency of the climate change crisis, the enormous and unprecedented footprint of Suffolk Downs, and the lengthy anticipated construction period, there is no justification for noncompliance. Resiliency is particularly needed in East Boston and Revere, which are uniquely vulnerable to sea level rise propelled by climate change. Indeed, the Climate Action Plan estimates that by the end of the 21st century, "between 10 and 20% of East Boston will face flooding at high tide, even when there is no storm." HYM has not meaningfully explained or

⁸ Sperance, C., *Developers Seen As Key Ingredient in Several Multibillion-Dollar Transit Plans*, Bisnow (Jul. 30, 2019).

⁹ Moskowitz, E., *MBTA Board OK's Millions for Station Improvements*, The Boston Globe (Oct. 5, 2011).

¹⁰ LaFratta, K. & Solis, S., *As Encore Boston Harbor Prepares to Open, Traffic Nightmares Could Present New Transit Opportunities*, MassLive (Jun. 21, 2019).

justified its failure to comply with the City's own standards. The Community Groups urge the BPDA to hold Suffolk Downs to the standard Boston has set for its future.

Additional Mitigation

VII. Diversity and Training for Private Security

It is anticipated that HYM will hire private security officers during the pendency of construction and across the vast Suffolk Downs worksite. Given the demographics of East Boston, this workforce must be drawn from the community they serve, include a percentage of people of color that reflects East Boston's neighborhoods, and be largely bilingual in English and Spanish. Additionally, prior to any breaking of ground, all private security officers must undergo extensive implicit bias training to reduce the influence of racial bias in community interactions and officer decision-making.

VIII. Use of Commercial and Rental Space

In its present form, Suffolk Downs will include two retail squares at Suffolk Downs and Beachmont Stations and a public plaza with over 100,000 square feet of ground floor retail. In order to preserve the character of these neighborhoods, it is essential that locally-owned, women-owned and minority-owned businesses be afforded access to this commercial and retail space. Gentrification has not simply displaced individuals and families—local businesses and nonprofits, which anchor whole communities, have been forced to relocate from long-held homes. Accordingly, the Community Groups request information on what steps, if any, HYM is taking to prioritize the inclusion of locally-owned, women-owned and minority-owned small businesses and nonprofits in Suffolk Downs' commercial spaces to ensure residents are able to share in the wealth generated by this project. This is particularly urgent in light of the ongoing crisis surrounding women- and minority-owned small businesses in Boston, who received "less than 1% of the \$664 million Boston awarded last year for contracts for constructions and professional goods and services."¹²

IX. Mitigation for Vulnerable Residents

As community activists and advocates, the Community Groups have firsthand familiarity with the vibrancy and diversity of East Boston. However, with the marked rise in gentrification, the Community Groups also see the challenges experienced by many East Boston residents, including opioid addiction, chronic homelessness, and significant underemployment. These residents and their lived experiences are entirely missing from the PDA and Supplemental Information, even though they are an integral part of East Boston. The Community Groups request information as to what mitigation, financial or otherwise, HYM is intending to make to benefit East Boston's most vulnerable residents, including support services and workforce development. This mitigation will be especially salient if, as the Community Groups predict, the project accelerates the rate of displacement in East Boston, leaving families financially destabilized and without adequate housing to meet their needs.

¹² Valencia, M., *Boston Awarded \$664m In Contracts. Less Than 1% Went To Women- And Minority-Owned Businesses*, Boston Globe (May 2, 2019).

Conclusion

In summary, for the reasons expressed herein, the Community Groups strongly oppose the redevelopment of Suffolk Downs in its present form. A project of this magnitude, in a lower-income, historically immigrant community suffering from rising rents, must incorporate a far fuller set of benefits for the communities of color harmed and displaced by the proposed redevelopment.

Sincerely,



Lauren Sampson, Esq.
Lawyers for Civil Rights
lsampson@lawyersforcivilrights.org

cc: John Walkey, GreenRoots
Lisa Owens, City Life/Vida Urbana
Andres Del Castillo, City Life/Vida Urbana
Gloribell Mota, Neighbors United for a Better East Boston
Jodi Sugerman-Brozan, MassCOSH
Luz Zambrano, Center for Cooperative Development and Solidarity
Blake Shetler, Stand for Democracy
Boston City Councilor Lydia Edwards

EXHIBIT

B

November 13, 2019

Via Email

Tim Czerwienski, Project Manager
Boston Planning and Development Agency
One City Hall Square
Boston, MA 02201
tim.czerwienski@boston.gov

Re: Supplemental Comment on Suffolk Downs

Dear Mr. Czerwienski,

Lawyers for Civil Rights is writing to supplement our October 16, 2019 comment regarding the Supplemental Information submitted on September 16, 2019 by the HYM Investment Group, LLC (hereinafter, "HYM"). We met with HYM on November 4, 2019, along with several other community-based organizations and attorneys from Greater Boston Legal Services, to discuss several of the concerns raised in our comment letter. Based on information that emerged from our meeting, we write to present two additional legal and equity concerns:

1. In our comment, we highlighted the inadequacy of Spanish-language translations at community meetings, noting in particular the need for translators well versed in the vocabulary of planning and development. However, HYM informed us that the BPDA usually determines which gatherings will likely require translation. HYM's clarification strongly suggests that the City of Boston and the BPDA has regularly failed to meet its obligations under Section 601 of Title VI of the Civil Rights Act of 1964 to "ensure *meaningful* access" to its programs and activities by Limited English Proficiency individuals. *See* Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 65 Fed. Reg. 2732, 2740 (Aug. 11, 2000) (emphasis added).
2. HYM expressly stated that it intends to pursue Article 80 Large Project Review approval simultaneously with Planned Development Area Review approval before the end of 2019. Given the unprecedented size and scope of Suffolk Downs, it would be extremely undemocratic, exclusionary, and ill-advised to grant these approvals together.

HYM estimates that construction will take approximately 20 years. To contextualize the harm of a blanket approval from the BPDA: a five-year old resident of East Boston—who will be of voting and taxpaying age well before the construction is completed—will have limited, if any, meaningful opportunity to comment on the project's long-term transformation of the community.



**LAWYERS FOR
CIVIL RIGHTS
BOSTON**

In addition, only requiring HYM to comply with 2019 environmental and resilience standards is unsound given the dramatic climate changes and projected technological advances expected to take place over the next two decades. The BPDA must retain jurisdiction over this project to ensure community input at every stage of the design and construction at Suffolk Downs. This militates strongly against the BPDA prematurely approving every facet of Suffolk Downs in 2019.

LCR therefore requests a meeting with you, representatives from HYM, representatives from the Community Groups, and attorneys from our office to discuss both of these pressing matters, which must be resolved before any hearing or vote on Suffolk Downs can take place. Please contact me at lsampson@lawyersforcivilrights.org or 617-988-0609 to arrange a mutually convenient time to speak.

Sincerely,

A handwritten signature in black ink that reads "Lauren Sampson".

Lauren Sampson, Esq.
Lawyers for Civil Rights
lsampson@lawyersforcivilrights.org

cc: John Walkey, GreenRoots
Lisa Owens, City Life/Vida Urbana
Andres Del Castillo, City Life/Vida Urbana
Gloribell Mota, Neighbors United for a Better East Boston
Jodi Sugerman-Brozan, MassCOSH
Luz Zambrano, Center for Cooperative Development and Solidarity
Blake Shetler, Stand for Democracy
Margaret Turner and Joseph Michalakes, Greater Boston Legal Services
Thomas O'Brien, The HYM Investment Group, LLC
Boston City Councilor Lydia Edwards

EXHIBIT

C

December 6, 2019

Via Email

Brian Golden
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Boston, MA 02108

E. Renee LeFevre
General Counsel
Boston Planning and Development Agency
City Hall Plaza
Boston, MA 02108

Tim Czerwienski
Project Manager
Boston Planning and Development Agency
City Hall Plaza
Boston, MA 02108

Re: Suffolk Downs

Dear Mr. Golden, Ms. LeFevre, and Mr. Czerwienski:

As representatives of a coalition of community-based and legal groups focused on housing justice, we are writing you, again, regarding the proposed redevelopment of the Suffolk Downs site at 525 McClellan Highway (hereinafter, the “Project” or “Project Site”), spearheaded by The McClellan Highway Development Company, an affiliate of HYM Investment Group LLC (hereinafter, the “Proponent”). The undersigned groups have written the Boston Planning and Development Agency (hereinafter, the “BPDA”) repeatedly to express grave misgivings about the Project, which has the potential to fundamentally transform one of Boston’s last remaining affordable neighborhoods and render it inaccessible to working-class and immigrant populations who have made it their home for generations. In particular, we have urged the BPDA not to hold a vote on the Proponent’s revised Planned Development Area (PDA) filing without first conducting a review process that is fully participatory and inclusive of East Boston’s sizeable Spanish-speaking population. We have also urged the BPDA to, in compliance with its duties under the Fair Housing Act, refuse to approve the proposal without fundamental changes to ensure the production of vastly more housing that is truly affordable to the surrounding

community, as well as to impose zoning provisions that are fully consistent with the City's obligation to affirmatively further fair housing.

Unfortunately, the events of the past several weeks leave the undersigned with little confidence that either the BPDA or Proponent are hearing our concerns. On November 4, we met in person with Proponent's representatives to reiterate the demands made in our prior public letters (attached as Exhibit A) and continue a conversation intended to ensure that the Project could be responsive to the community and its needs. Proponent's response, both in that meeting and in subsequent correspondence (attached as Exhibit B) indicates that it is not interested in changing course as a result of community feedback, and is dead set on approval of the Project as is, no matter what the consequences may be for residents of East Boston and the surrounding area. Shortly thereafter, we learned, secondhand, that the BPDA had decided to end the comment period on November 15, a mere three weeks after the publication of Proponent's "Additional Information Document"—the only available materials that explain the basics of the PDA and the proposed revisions in plain language—in Spanish. This decision came despite our repeated requests to push back this deadline to a date that would enable Spanish-speakers to digest and respond to the document equally as easily as their English-speaking neighbors.

Given these developments, we, as well as the community members that compose our membership base in East Boston, are gravely worried that the BPDA intends to push a vote on the revised PDA filing at its upcoming regular meeting on December 12, and that the PDA will ultimately be approved without changes necessary to ensure that the Project will not result in massive displacement in East Boston and disproportionate harm to members of protected classes. Instead of the rush job that Proponent proposes, the BPDA must—consistent with its duty to ensure that development review processes are both procedurally and substantively fair to immigrants, communities of color, English language learners, and other persons protected under federal and state civil rights and fair housing laws—delay any vote on the PDA filing until such time that Proponent demonstrates that it has listened to, understood, and responded to the community's demands.

East Boston and its residents deserve a more inclusive vision for the Suffolk Downs Site than what is laid out in this PDA filing, as well as a more inclusive review process than what Proponent has conducted. Below, we briefly reiterate and more fully explain the most important ways in which both the substance and process of the Suffolk Downs proposal continues to fall short.

- I. Zoning relief and market-rate development at the rate promised in the Project incentivizes real estate speculation, which in turn exerts upward pressure on rents and creates the conditions for mass displacement of East Boston's working-class, immigrant population.**

As one of Boston's last remaining truly affordable neighborhoods, East Boston is uniquely vulnerable to displacement pressures. In fact, rental listing data from the past five years

indicates that the median prices for studios and one-bedroom units are now *higher* in East Boston than they are citywide, while over the same period, median rents for apartments of *every size* have increased in East Boston at rates that far outstrip the City as a whole.¹ Alarmingly, the median cost of units likeliest to be occupied by families with children, three- and four-bedroom units, has risen in East Boston in excess of fifteen percent from 2015, even as rents for such units have *fallen* by around three percentage points citywide.²

This transformation of East Boston's rental market has coincided with an unprecedented boom in housing development throughout the neighborhood.³ It is striking, but not surprising, that the addition of hundreds of overwhelmingly market-rate apartments to East Boston's housing stock (along with the planned addition of hundreds more) has not coincided with a reduction or even a flattening in area rents, but rather with skyrocketing housing costs that are increasing at an even faster rate than that of the City as a whole. Indeed, this trend is grimly consistent with the observations of the undersigned community groups and the lived experiences of many of their members, who have often found that the same large corporations who pursue Article 80 projects in East Boston also have a robust presence in the market for two- and three-family homes in the neighborhood, frequently buying up these properties to either re-rent at market value or convert them into condominiums.

By way of example, according to public records, the investment firm MG2 purchased at least 65 multifamily properties in East Boston between 2015 and early 2019, and converted and re-sold at least 10 of these properties as condominiums. Members of City Life/Vida Urbana who resided in buildings purchased by MG2 affiliates faced tremendous pressure to accept rent increases of 70 percent or higher within months of the takeover of the property, and in some instances also dealt with conditions so unsafe (like utility shutoffs and exposure to lead and asbestos hazards) that they could reasonably be described as attempts at constructive eviction. Around this time, MG2 obtained BPDA approval for at least *five* large and lucrative development projects in East Boston: 277 Border Street, 287 Maverick Street, 11-19 Walley Street, 656 Saratoga Street, and 2-10 Maverick Square.⁴ Because the anticipated value of future

¹ See Metropolitan Area Planning Council, Rental Listing Data 2015–19, Boston Data Set (unpublished research on file with Greater Boston Legal Services).

² *Id.* Specifically, the median price of a 3-bedroom apartment in East Boston has risen from \$2,200 to \$2,550 since 2015, compared to a *decrease* from \$3,000 to \$2,925 citywide; the median price of a 4-bedroom apartment in East Boston has climbed from \$2,650 to \$3,100, compared to a decrease from \$3,600 to \$3,500 citywide.

³ See generally Conti, K., *East Boston Health Center Tries to Adapt to a Gentrifying Neighborhood*, THE BOSTON GLOBE (Jul. 17, 2016), available at <https://www.bostonglobe.com/business/2016/07/17/east-boston-health-center-tries-adjust-gentrification/uYpwTz5JUPpigKFBVjrf41/story.html> (noting that between 2013 and July 2016, BPDA approved 19 large residential projects in East Boston); Boston Planning and Development Agency, Development Projects, available at <http://www.bostonplans.org/projects/development-projects?neighborhoodid=8&projectstatus=under+construction&sortby=name&sortdirection=ASC&type=dev> (last accessed Dec. 2, 2019) (highlighting an additional 27 large residential projects that have been approved in East Boston pursuant to the same review process since July 2016).

⁴ A sixth project, a proposed mixed-use facility including 27 residential units to be located at 2 Ford Street, is under review.

development is a key factor landlords use to justify extracting higher rents from occupied buildings in the present, it is no coincidence that investors like MG2 pursue *both* large-scale opportunities for new development and purchases of occupied housing stock. Nor is it a coincidence that waves of both promised and actual market-rate development in East Boston have not operated to curtail rising rents, but have rather fueled rent increases.

This insight—that the *promise* of market-rate development leads to real estate speculation and inflicts tangible harm upon low- and middle-income renters, irrespective of the impact of such development once housing is actually built—is supported by both the lived experience of the undersigned and their members as well as by recent scholarly research. Most notably, Yonah Freemark’s investigation of upzoning in Chicago found a correlation between the granting of zoning relief and an immediate *increase* in housing costs in upzoned neighborhoods.⁵ Proponent’s technically correct point regarding the limitations of the study (i.e. that Freemark’s conclusions regarding property values on specific upzoned areas apply explicitly only within those areas) entirely misses that the broader dynamic Freemark observes, where “the speculation [caused by new development] will come first,” wreaking havoc upon rent-burdened communities for years prior to the purported benefits of any new construction.⁶ More importantly, this narrow reading also disregards the experience of present-day East Boston, where the co-incidence of an ever-increasing development pipeline with burgeoning and unsupportable rent increases is no mere hypothetical, but the lived reality of thousands of working-class people, most of whom are immigrants and people of color.

Finally, it is not the case, as Proponent speculates, that displacement risks posed by the Suffolk Downs proposal are somehow mitigated by the fact that the Project Site is currently vacant and unused. If anything, Greater Boston’s most recent experience with mass redevelopment of non-residential land into housing, Somerville’s Assembly Square, suggests that the exact opposite is true. From 2015 to 2019—as the Assembly Row development expanded from about 500 to over 1,000 mostly market-rate rental and homeownership units, with plans to

⁵ “Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction,” March 29, 2019, <https://urbanaffairsreview.com/2019/03/29/upzoning-chicago-impacts-of-a-zoning-reform-on-property-values-and-housing-construction/>; See also Miriam Zuk & Karen Chapple, HOUSING PRODUCTION, FILTERING, AND DISPLACEMENT: UNTANGLING THE RELATIONSHIPS 3–4 (2016) (explaining that the “filtering” mechanism by which market rate housing leads to reductions in rent, where older units become more affordable as new ones are added to housing stock, is less effective in strong housing markets like California and New England than elsewhere, may take decades to meaningfully impact median rents, and may correlate with *increased* rents in the meantime).

⁶ See Richard Florida, *Does Upzoning Boost the Housing Supply and Lower Prices? Maybe Not.*, CITYLAB (January 31, 2019), available at <https://www.citylab.com/life/2019/01/zoning-reform-house-costs-urban-development-gentrification/581677/>. Notably, of the 42 residential projects in East Boston for which project status information is available on the BPDA website (which dates back to August 2013), only 10 are listed as having been “completed,” the most recent such project having been approved by the BPDA in November 2016.

ultimately add 1,000 more⁷—median rents in the adjacent neighborhoods of Ten Hills, East Somerville, and Winter Hill continued climbing, at rates that largely rivaled or exceeded annual rent increases across Somerville as a whole.⁸ The starkest trend occurred in Ten Hills, which borders Assembly to the west across the Fellsway, where median rents increased for apartments of every size at rates ranging from 35 to 80 percent between 2015 and 2019.⁹ It must be noted that the Suffolk Downs proposal is five times as large as Assembly Row, in terms of units that will ultimately be added to the housing stock and impact the surrounding market. And at minimum, Assembly Square stands as a stark reminder that the notion that the displacement crisis can be solved merely by building high volumes of luxury housing on previously under-utilized land is a myth, not reality.

In light of the above, it is essential that the BPDA refuse to approve the Project until Proponent takes meaningful steps to confront its implications for displacement and potential harms to members of protected classes. As the undersigned community groups have previously stated, we believe that what the community needs to counteract the displacement risk is a set-aside of no fewer than half the proposed units at 30 percent Area Median Income (AMI), or the level reflecting what is meaningfully affordable to East Boston residents, as well as a contribution to the proposed East Boston housing stabilization fund that represents a meaningful percentage of the construction cost of the Project and is well in excess of the \$5 million currently proposed.¹⁰ It is an equally integral part of BPDA's fair housing duty that the Agency require Proponent to build sufficient numbers of apartments suitable for families with children—at all income levels, and not just as part of its affordable set-off¹¹—to meet the demand for such housing in East Boston, where the average household size is 2.8 persons per dwelling unit.¹²

⁷ See generally D.C. Denison, *Construction starts on Somerville's Assembly Row*, BOSTON GLOBE (March 29, 2012), available at <https://www.bostonglobe.com/business/2012/03/28/work-starts-somerville-assembly-row/M11EAhEqeHx38qZartH4bM/story.html>; Tom Acitelli, *Somerville's tallest building has started welcoming its first residents*, CURBED BOSTON (Feb. 15, 2018), available at <https://boston.curbed.com/boston-construction/2018/2/15/17012348/somerville-tallest-building-assembly-row>.

⁸ See Metropolitan Area Planning Council, *Rental Listing Data 2015–19, Somerville Data Set* (unpublished research on file with Greater Boston Legal Services)

⁹ *Id.*

¹⁰ As described more fully *infra* at Section II, BPDA could enable Proponent to meet broader and deeper affordability targets by requiring it to seek and accept subsidies for a substantial percentage of units at each phase of the development.

¹¹ See, e.g., *Borum v. Brentwood Vill., LLC*, 218 F. Supp. 3d 1, 22–23 (D.D.C. 2016) (finding that plaintiff families had stated claim for disparate impact liability under FHA by alleging large families disproportionately harmed by elimination of larger apartments as part of apartment complex redevelopment).

¹² See Proponent's Supplemental Information Document, filed May 1, 2019, available at <http://www.bostonplans.org/getattachment/8af639bc-decb-4123-8a90-7a1a1ec759a5>, at p. 2-16. As we have observed in previous comment letters, the failure to ensure adequate housing for families with children in East Boston is also a matter of racial justice, as Latinos are likelier than other ethnic groups to reside in larger family units including extended families. See Tim Iglesias, *Moving Beyond Two-Person-Per-Bedroom: Revitalizing Application of The Federal Fair Housing Act to Private Residential Occupancy Standards*, 28 GA. ST. U.L. REV. 619, 649 (2012).

Because the proposed revisions to the PDA outlined in the fourth and final page of Proponent's letter to us would have a marginal housing stability impact, if any, and because others—like stating explicitly that Proponent will only build family-friendly units as part of its IDP contribution—would clearly *worsen* the Project's impact, we believe that Proponent is not taking displacement concerns seriously. The BPDA is under no obligation to approve the Project until Proponent's stance changes. To the contrary, as the BPDA is well aware, if the Agency does approve the Project under these circumstances, that approval will run afoul of the City's obligation to affirmatively further fair housing, given that the burden of the Project's inevitable displacement effects will fall almost exclusively upon immigrants and people of color currently living in East Boston.¹³

II. The “non-discrimination covenant” outlined in both the original and revised PDA filing imposes far narrower duties than what are encompassed under federal and state fair housing law and does not provide for phase-by-phase review to ensure that fair housing objectives will continue to be met over the life of the project.

Another theme repeatedly stressed in prior comment letters is the need to dramatically strengthen the “non-discrimination covenant” located within Paragraph 10 of the revised PDA filing. Because, in the fair housing context, “non-discrimination” obligates housing providers to both avoid engaging in acts of discrimination *and* to take affirmative steps “to overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing,”¹⁴ the revised covenant, which imposes no affirmative commitments whatsoever, is foundationally deficient.

Proponent seeks to justify the limited scope of the covenant by pointing out that the City has not traditionally required developers to make any nondiscrimination commitments for projects on private land. To the extent that Proponent is correct, it is incumbent upon the BPDA to reform its development review procedures—and require *all* developers benefiting from zoning relief to administer their projects in a manner that affirmatively furthers fair housing—and should not fall upon the community to accept a substandard nondiscrimination commitment for Suffolk Downs, where Proponent's commitments become the underlying zoning laws for what will essentially become a new city neighborhood. As the BPDA is well aware, zoning laws, and

¹³ See generally *Gallagher v. Magner*, 619 F.3d 823, 833 (8th Cir 2010) (noting that public agency's knowledge of racially disproportionate impact of a decision can be evidence underlying disparate *treatment* liability where impact is “stark”); *Avenue 6E Investments, LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 508 (9th Cir. 2016) (citing city's awareness of historical patterns of housing stratification by race and class and clear disparate racial impact of decision as basis for denying summary judgment on disparate *treatment* claim). East Boston is a majority-Latinx and majority-foreign-born community. See Boston Planning & Development Agency, BOSTON IN CONTEXT: NEIGHBORHOODS, 2013-2017 AMERICAN COMMUNITY SURVEY, at 9 (January 2019) (noting that 57.4 % of the neighborhood's population is Latinx); Boston Planning & Development Agency, BOSTON BY THE NUMBERS 2018 at 32 (2018) (noting that 50.7% of the neighborhood's population is foreign-born, the highest such percentage of anywhere in the City).

¹⁴ U.S. Dept. of Housing & Urban Development: Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42272, 42272 (July 16, 2015); see also 42 U.S.C. § 3608(d) (requiring federal housing agencies to act “in a manner affirmatively to further the purposes of” fair housing law).

in particular unfair zoning practices that run the risk of perpetuating housing segregation or otherwise adversely impacting protected classes, “reside at the heartland” of fair housing doctrine.¹⁵ As such, the Agency must take great care to ensure that the PDA filing includes provisions designed to ensure that the Project Site ultimately evolves into an integrated and mixed-income community consistent with our fair housing laws.

At minimum, BPDA must insist upon the following changes to the covenant:

- the addition of language committing the Proponent to construct, manage, lease, sell, and otherwise administer the Project in a manner that affirmatively furthers fair housing, which should include a requirement that Proponent, all successors or assigns, and their agents, affirmatively seek and accept governmental or other subsidies, in whatever form, designed to make housing units affordable to low-income individuals and families;
- the addition of affirmative marketing provisions that ensure that protected classes—including and particularly immigrants and communities of color—will have a fair chance to obtain housing on the Project Site;
- that the covenant apply to all classes protected currently under federal, state or local law, and any classes that may come within such protection in the future;
- that the covenant apply not only to Proponent, but also to all successors in interest, and their agents, in perpetuity pursuant to G.L. c. 84, § 31 and c. 184, §32; and
- that the covenant include robust enforcement provisions, allowing enforcement by the BPDA, the City of Boston, and third party beneficiaries.

In the absence of these changes, the non-discrimination covenant will not operate against the full range of discriminatory practices contemplated under the fair housing laws.

Our prior comment letters have additionally emphasized the need to ensure that the PDA filing provides for robust monitoring over the life of the Project that will assess not just phase-by-phase compliance with the objectives outlined in the PDA filing, but also whether those objectives themselves need to be revised in light of changed circumstances. Proponent’s contention that the PDA already requires such monitoring, by stipulating that each Phase go through Large Project Review under Section 80B-2 of the Zoning Code, is a red herring. While Section 80B-2 does require projects falling within a PDA Area to be generally consistent with PDA requirements prior to the issuance of any permits, this procedure does not allow the City to reconsider or alter those underlying requirements. Moreover, Section 80B-2 is a *design review* process that very pointedly does not require the BPDA to engage in any fair housing analysis

¹⁵ *Texas Dept. of House and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2521-22 (2015) (citing *Huntington v. Huntington Branch, N.A.A.C.P.*, 488 U.S. 15, 16-18 (1988) (per curiam) (invalidating zoning law with discriminatory effect)).

prior to allowing projects to move forward.¹⁶ There is no mechanism at this time, either in the PDA or in Section 80B of the Zoning Code, that would allow the City to both assess compliance with affordable housing and other mitigation at each Phase *and* receive input from the community as to whether those commitments are sufficient in light of on-the-ground realities. The capacity to engage in such review is critical if the BPDA and the City are to comply with their duty to affirmatively further fair housing, given the unprecedented scope and anticipated length of the Project, which could take up to two decades. Again, because Proponent's PDA present filing will become the only relevant zoning law for the Project Site, the BPDA must retain oversight to assess whether fair housing commitments agreed to in 2019 remain adequate in 2025, 2030, and even beyond.

Greater Boston Legal Services has worked with Councilor Lydia Edwards' office to prepare proposed revisions to the PDA that would strengthen the non-discrimination covenant in the ways described above, as well as provide for a fair housing and mitigation monitoring process. We look forward to providing it to BPDA in the near future and urge BPDA to insist upon the addition of language incorporating the requirements outlined above as a condition of any approval.

III. BPDA must reopen and extend the comment period in order to provide Spanish-speaking residents of East Boston an equal opportunity to review and provide input into the Project.

As previously stated, the undersigned community groups remain deeply concerned about the review process and its accessibility to the majority of East Boston's residents, including and especially the sizeable community of monolingual Spanish residents. As a threshold issue, we note that prior to meeting with Proponent on November 4, several of the undersigned East Boston-based groups were not included in the purported outreach Proponent has conducted in East Boston's Latinx community, notwithstanding the fact that they are membership organizations rooted in that very community.¹⁷ Additionally, there is no dispute that the critical document drawn upon by non-experts to understand the intricacies of Proponent's plans—the "Additional Information Document"—was not translated into Spanish until October 25, 2019, exactly three weeks prior to the revised conclusion to the comment period of November 15, 2019. Finally, the community groups were never informed of the new deadline by the BPDA and were entirely unaware of it until receipt of Mr. O'Brien's letter on November 14, leaving little time to mobilize their members. For these reasons, as well as the issues related to the adequacy of translation provided at Project public meetings Project (and BPDA's role in determining which

¹⁶ See Boston Zoning Code § 80B-3 (stating that the components of Large Project Review are transportation, environmental protection, urban design, historic resources, infrastructure systems, site plan, tidelands, and DIP/Linkage, where applicable); § 80B-4(1) (stating that for projects located within PDA Area, the project "shall comply with any provisions of the underlying zoning *that specify design or impact standards* for Proposed Projects ion Planned Development Areas") (emphasis added).

¹⁷ See Letter from Thomas O'Brien, HYM Investment to Ivan Espinoza-Madrigal et al., November 14, 2019, Exhibit B, at Enclosure 1

such meetings require translation), we remain firm in our position that Spanish speakers in East Boston were not afforded an adequate opportunity to participate in the public review process, in potential violation of Title VI of the Civil Rights Act of 1964.

Conclusion

For the foregoing reasons, as well as those raised in prior comment letters, the BPDA should not hold a vote on the revised PDA filing at its December 12 Board meeting. We respectfully request a meeting with the BPDA, as well as Proponent's representatives, to discuss these issues as soon as possible. We may be reached at any time through Lisa Owens at 617-934-5006 or lowens@clvu.org. Thank you for your time and consideration, and we look forward to hearing from you.

Sincerely,

Centro Cooperativo de Desarrollo y Solidaridad-CCDS
City Life Vida Urbana
Cosecha
Eastie Farm
GreenRoots
MassCOSH
Neighbors United for a Better East Boston-NUBE
Stand for Democracy
Zumix

By:

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Thomas N. O'Brien, Founding Partner and Managing Director, HYM Investment Group
(through counsel)

Mayor Marty Walsh

Sheila Dillon, Director, City of Boston Department of Neighborhood Development (DND)

Boston City Councilor Lydia Edwards

At-Large City Councilor Michelle Wu

At-Large City Councilor Annissa Essaibi-George

At-Large City Councilor Michael Flaherty

At-Large City Councilor Althea Garrison

State Rep. Adrian Madaro

State Sen. Joseph Boncore

Enclosures:

Exhibit A: GBLS Comment Letters dated May 31, 2019 and October 25, 2019; Lawyers for Civil Rights Comment Letters dated October 16, 2019 and November 13, 2019

Exhibit B: Proponent Letter to Community Groups, Lawyers for Civil Rights, GBLS, November 14, 2019

EXHIBIT

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GREATER BOSTON
LEGAL SERVICES
...and justice for all

August 20, 2018

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Boston Planning and Development Agency
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Lance Campbell
Project Manager
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RE: Title VI and Fair Housing Concerns regarding 36-70 Sprague Street Project

Dear Mr. Golden, Ms. LeFevre, and Mr. Campbell:

As you may know, Greater Boston Legal Services (GBLS) is a legal services organization that provides representation to low-income individuals and groups in the Greater Boston area. We work extensively with tenant, community and fair housing groups seeking to create and preserve affordable housing in Boston, especially to expand fair housing opportunities for low-income members of groups protected under federal and state fair housing laws. The rapid pace of development in Boston, occurring alongside massive, systematic displacement of low-income Boston residents, often very long-term residents, is raising alarm and concern among residents and groups in neighborhoods across the City. These residents and neighborhoods want to make sure their voices and concerns are heard in the Boston Planning and Development Agency (BPDA) Article 80 and neighborhood planning processes.

We have learned of deep concerns from the POHWER resident organizing committee¹ of the Southwest Boston Community Development Corporation (SWBCDC) in Hyde Park about

¹ POHWER is the acronym for the SWBCDC resident organizing committee, "The People of Hyde Park Wanting Equal Representation."

BPDA's inadequate community outreach regarding the 36–70 Sprague Street Project² (“Proposed Project”). Failure to conduct adequate outreach is robbing minority and non-English speaking residents in the Hyde Park/Readville neighborhood, where the Proposed Project will be located, from having a voice in its development. Based on our analysis, BPDA appears not to have fulfilled its Title VI obligations and duty to affirmatively further fair housing in its review of the Proposed Project.

(1) By publishing English-only notices of public hearings regarding the Proposed Project, BPDA—a Federal financial assistance recipient—is not complying with its Title VI obligation to provide Limited English Proficiency services to Hyde Park residents.

Section 601 of Title VI of the Civil Rights Act of 1964 prohibits national-origin discrimination under “any . . . activity receiving Federal financial assistance.”³ The U.S. Supreme Court has interpreted Section 601 to also prohibit discrimination against limited English proficiency (LEP) persons—individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.⁴ In accordance with Title VI, Executive Order 13166 directs every federal agency that provides financial assistance to *non-federal* entities to publish guidance on how its recipients can provide language services to LEP persons. In 2007, the Department of Housing and Urban Development (HUD) published its LEP Guidance (“HUD LEP Guidance”) under which all HUD funds recipients, including “subrecipients and state grant recipients,”⁵ are required to “take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.”⁶ This obligation applies to LEP persons regardless of their citizenship status—both “documented . . . and undocumented non-citizens” are covered⁷—and it “extends to a recipient’s *entire* program or activity . . . even if only one part of the recipient receives federal assistance.”⁸

Under HUD LEP Guidance, LEP services include written language services where “vital” documents should be translated into the language of each frequently encountered LEP group likely to be affected by the recipient’s activity.⁹ Specifically, “[n]otices of public hearings” are generally considered vital documents that require translations.¹⁰ Exactly into what languages the documents should be translated (and the extent of a recipient’s LEP obligation) is determined by a four-factor balancing analysis: “(1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program,

² 36-70 Sprague Street, BOSTONPLANS.ORG, <http://www.bostonplans.org/projects/development-projects/36-70-sprague-street> (last visited July 19, 2018).

³ 42 U.S.C. § 2000d.

⁴ See *Lau v. Nichols*, 414 U.S. 563, 566–69 (1974).

⁵ Exec. Order No. 13,166, 72 Fed. Reg. 50,121 (Aug. 11, 2000).

⁶ Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 65 Fed. Reg. 2732, 2740 (Aug. 11, 2000).

⁷ *Id.* at 2751.

⁸ *Id.* at 2740 (emphasis added).

⁹ *Id.* at 2744.

¹⁰ *Id.*

activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs."¹¹ In addition to conducting this case-by-case analysis, a HUD funding recipient may develop an overall Language Access Plan (LAP) to "address identified needs of the LEP populations it serves."¹²

BPDA is a HUD (and other federal) funds recipient and is thus subject to Title VI LEP obligations. According to BPDA's FY 2018 operating budget, federal grants are important sources of BPDA's revenues,¹³ among which is HUD's Community Development Block Grant, received by Mayor's Office of Workforce Development (OWD) as a subrecipient from Department of Neighborhood Development (DND).¹⁴ As a result, BPDA's entire operation should be covered by LEP obligation, but as of the date of this letter, BPDA does not appear to have an LAP in effect. At the very least, vital documents like notices of public hearings regarding the projects under review should be translated into the languages of LEP groups likely to be affected by them.

In its review of the Proposed Project, it appears that BPDA has so far published notices of public hearings in English *only*¹⁵ when the Hyde Park neighborhood is predominantly comprised of residents of color—69.2% of the total population are either African-Americans or Hispanics.¹⁶ Many of these residents are LEP persons speaking only Haitian Creole and Spanish. Back in April, the POHWER resident organizing committee of SWBCDC requested BPDA to publish future notices in both Haitian Creole and Spanish in addition to English, along with other steps to ensure inclusion of all members of the Hyde Park community,¹⁷ apparently to no avail. In light of this, we would like to remind BPDA, a federal financial assistance recipient, of its Title VI LEP obligation to provide language assistance—including but not limited to translations of notices of public hearings—to non-English speaking residents in the Hyde Park neighborhood.

In addition to the requirement of translating vital notices, Title VI regulations require BPDA to provide interpretation for non-English speaking populations at public hearings. We understand that BPDA did make interpretation available for the January 10th meeting, but undoubtedly because of the lack of notice in Spanish and Haitian-Creole, and the short notice of the meeting, no non-English speakers were in attendance.

In light of BPDA's failure to provide translations of notices for the January 10, 2018, meeting in Spanish and Haitian Creole, BPDA must reconvene this meeting, giving adequate notice to these LEP populations so that they can participate.

¹¹ *Id.* at 2740.

¹² *Id.* at 2745.

¹³ See generally BPDA FY 2018 Operating Budget 12–13, <http://www.bostonplans.org/getattachment/d548981d-850c-4789-9405-9211f748fadb>.

¹⁴ See Mayor's Office of Workforce Development, OWD. BOSTON. GOV, <https://owd.boston.gov/about-us/grants-managed/>.

¹⁵ See Attachment A, BPDA's English-only emailed notice of the January 10, 2018 public meeting.

¹⁶ See BPDA, BOSTON IN CONTEXT: NEIGHBORHOODS 9 (2018) (showing that 46.4% of total population at Hyde Park are African-Americans and 22.8% are Hispanics), <http://www.bostonplans.org/getattachment/55f2d86f-eccf-4f68-8d8d-c631feb0161>.

¹⁷ See Attachment B, a letter from The People of Hyde Park Wanting Equal Representation (POHWER) to BPDA dated April 9, 2018.

(2) BPDA's practices and policies regarding the review of Proposed Project should facilitate community participation by residents who are members of protected classes in addition to non-English speaking Hyde Park residents because BPDA is under a duty to affirmatively further fair housing in Boston.

Aside from BPDA's obligations to LEP populations under Title VI of the Civil Rights Act of 1964, BPDA must act to affirmatively further fair housing for *all* groups protected under the federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.* Section 3608(d) of the Fair Housing Act requires HUD as a Federal agency to affirmatively further fair housing (AFFH) in its "programs and activities relating to housing and urban development."¹⁸ Executive Order 12892 defines "programs and activities" to include HUD "grants" and directs HUD to promulgate regulations describing its grantees' AFFH duty.¹⁹ Accordingly, in 1995 HUD promulgated the "Consolidated Plan" by which HUD grantees (like CDBG grantees) must certify they would AFFH in order to receive grants.²⁰ And HUD has subsequently made it clear that the AFFH duty applies *not* only to HUD-funded programs, but "extends to all housing-related activities in the grantee's jurisdictional area whether publicly or privately funded."²¹ Most recently in 2015, HUD published its finalized AFFH rule entitled "Affirmatively Furthering Fair Housing" that guides its "program participants" to better fulfill their AFFH duty.²² Regarding CDBG grantees, the rule requires "each unit of general local government" to provide "reasonable notice" of public hearings and conduct such hearings "in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate."²³ This well-established AFFH duty has been enforced by private parties through HUD administrative complaints and, notably, through litigation.²⁴

As noted above, the City of Boston (DND) is a CDBG grantee and its AFFH duty therefore extends to *all* housing-related activities in Boston—naturally including the activities of BPDA, despite its separate agency status.²⁵ Also, BPDA itself receives CDBG grants from DND and could thus be considered a HUD program participant subject to an AFFH duty.²⁶

¹⁸ 42 U.S.C. § 3608(d).

¹⁹ Exec. Order No. 12,892, 59 Fed. Reg. 2939 (Jan. 17, 1994).

²⁰ See generally Consolidated Submission for Community Planning and Development Programs, 60 Fed. Reg. 1878 (Jan. 5, 1995).

²¹ HUD, FAIR HOUSING PLANNING GUIDE 1-3 (1996).

²² Affirmatively Furthering Fair Housing: Final Rule, 80 Fed. Reg. 42,272, 42,272 (July 16, 2015).

²³ *Id.* at 42,367 (codified in 24 C.F.R. § 570.486(5)).

²⁴ For example, in *U.S. ex rel. Anti-Discrimination Center v. Westchester Cty.*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007), the Anti-Discrimination Center of Metro New York (ADC) filed suit against Westchester County, alleging the County had falsely certified its AFFH compliance to HUD in order to continue receiving HUD and other federal funds. The Southern District Court of New York granted partial summary judgment for the ADC, *id.* at 377, which resulted in the Department of Justice (DOJ) intervening in the litigation and eventually reaching a settlement with the County for \$62.5 million. DOJ also required the County to develop affordable units, return nearly \$30 million of funds to HUD, pay \$2.5 million in attorney fees, and undertake other actions to further fair housing. *U.S. ex rel. Anti-Discrimination Center v. Westchester Cty.*, 668 F. Supp. 2d 548, 562–65 (S.D.N.Y. 2009). As illustrated in the *Westchester County* litigation, enforcement of a local government's AFFH duty is far from being toothless.

²⁵ See *supra* page 4, note 21 and accompanying text.

²⁶ See *supra* page 3, notes 13-14 and accompanying text..

Unfortunately, by hampering community participation in the Hyde Park neighborhood, BPDA has so far not lived up to the mandate of AFFH duty in its review of the Proposed Project. Aside from the failure to translate notices for the January 10th meeting, notices in English only were given substantially less than 30 days in advance, on December 21, 2017, during a vacation period just before a major holiday, when many Hyde Park residents would have been celebrating with their families, travelling or hosting guests. This type of short notice, following immediately after a holiday, seems almost calculated to limit attendance at the meeting. Working families with children need time in advance of a community meeting to ask for time off, to leave work early, and/or to arrange for child care. Elderly and disabled residents need time to arrange for caregivers to bring them to meetings. Community groups outreaching to non-English speaking populations need time to door-knock and set up phone-trees to encourage attendance. In order to truly further fair housing, BPDA should provide no less than 30 days' notice of a public meeting regarding a major project like the Sprague Street project, and should ensure that the meeting does not follow a holiday when community residents may be away. The meeting that is reconvened because of the inadequate notice for the January 10th meeting should be given with at least 30 days' notice, sufficiently after Labor Day weekend to ensure that community outreach can take place.

Moreover, BPDA should work to ensure that notices of this important Proposed Project reach *all* Hyde Park residents, including those without easy access to email or not informed enough to request email notification in advance. Notices should be disseminated in the community through community gathering places and partners, such as schools, faith institutions, publications directed at communities of color and other protected classes, Hyde Park Main Streets organizations, markets, child care providers, health care centers and social organizations such as the YMCA.

The concerns of Hyde Park residents of color and non-English speakers, as well as those in other protected classes, about their lack of inclusion in the Article 80 process are very serious. In a neighborhood where nearly 70% of the population is African-American or Hispanic, SWBCDC has determined that the 100% of the members of the Impact Advisory Group (IAG) are white English speakers, including 11 white men and one white woman. This complete lack of representation of communities of color in Hyde Park on the IAG is shocking. As part of its duty to affirmatively further fair housing, BPDA has a duty to ensure that communities protected under federal and state fair housing laws are affirmatively recruited for, and not excluded from, advisory roles in critically important zoning review and planning processes. Accordingly, BPDA should re-open membership in the IAG to include members of demographic groups currently excluded, including tenants as well as homeowners in the community.

As noted in the POHWER resident organizing committee's April 9, 2018, letter to BPDA, Director Golden has described Article 80 of the Boston Zoning Code as "the vehicle through which every resident is given a voice to ensure Boston is shaped by all of us who care about its future..."²⁷ Director Golden has pledged that BPDA will work with community members "to ensure that all of Boston's future developments are carefully planned and the process is **inclusive**

²⁷ See Attachment B, citing Brian Golden, "Citizen's Guide to Article 80," (2014)(emphasis added).

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— and that we are, together, building a better Boston.”²⁸ Unfortunately, this vision of inclusion is clearly not being realized in the 36-70 Sprague Street Proposed Project Article 80 process. Implementation of the requests in this letter to comply with federal fair housing and civil rights laws would be a first step in moving toward a truly inclusive process.

We trust that the BPDA will take these concerns of SWBCDC, its POHWER Committee, and Hyde Park residents in protected classes to heart, and that you will reconvene the January 10th meeting with at least 30 days' advance notice, not coinciding with a major holiday, properly translated written notices disseminated throughout the Hyde Park community, and interpretation at the meeting, as well as expanding the membership of the IAG to include members of protected classes. We also hope that BPDA will participate in meetings convened by the Department of Neighborhood Development, the Boston Fair Housing Commission and the Boston Housing Authority, with members of the AFFH Steering Committee, regarding preparation of Boston's Assessment of Fair Housing. If you have questions or concerns, please contact Nicole Wiggins or Lina Ramirez of POHWER and Alex Nadel of SWBCDC. Greater Boston Legal Services would also be happy to be part of any discussion necessary to facilitate these measures to address fair housing and civil rights concerns in the Article 80 community process in Hyde Park.

Very truly yours,



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²⁸ *Id.*