



**Berkeley Housing Authority**

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*Office of the Executive Director*

**M E M O R A N D U M**

**Date:** July 13, 2010

**To:** Honorable Chairperson and  
Members of the Berkeley Housing Authority Board

Honorable Mayor Tom Bates and  
Members of the Berkeley City Council

**From:** Tia M. Ingram, BHA Executive Director  
Carole Norris, Chair, BHA Board of Commissioners

**Subject:** Berkeley Housing Authority: Fiscal Year 2009-10

It has been another exciting year in the history of the Berkeley Housing Authority. Although there have been challenging times, we remain encouraged by, and excited about our accomplishments over the brief three years the Authority has been governed by its new Board. We are equally excited about the opportunity to share with you, the City Council, brief highlights of our performance in the Section 8 and Public Housing Programs, and the much anticipated “repositioning” project involving our 75 units of BHA owned large family rental housing units.

We are proud to report that BHA:

- received an award from HUD for PHA Administration in June 2008 (for Fiscal Year ending June 30, 2007), and
- achieved Standard Performer designation in the Section 8 Program as of June 30, 2009, and ultimately earned the right to continue operating a City of Berkeley Section 8 Housing Choice Voucher Program. We anticipate self-certifying to Standard performer for Fiscal Year 2009-10 on or before August 29, 2010.

The challenges in the Public Housing Program were beyond the capacity of the Authority to achieve, namely, we lacked the ability to generate the \$4 million conservatively estimated for necessary capital improvements, and determined through a strategic planning process that with only 75 units (61 public housing and 14 state rental housing construction program funding) it was impossible to achieve any economies of scale in owning and adequately managing the units. Thus, we strived to make the housing experience as positive as possible for current residents by undertaking the capital projects identified below, providing quality and timely maintenance services and regular exchange of information with residents to further their goals of self-sufficiency and embarked on the current repositioning.

## I. ACCOMPLISHMENTS

### Section 8 Program

- A. BHA's Section 8 Program operated as a "Standard performer" for the first time since 2002 in HUD's annual assessment. Thus, we are no longer an agency in troubled status. We anticipate self-certifying to Standard (or better) performer for Fiscal Year ending June 30, 2010; certification due August 29, 2010.
- B. Successfully completed the Corrective Action Plan (CAP) required by the U.S. Department of Housing and Urban Development while in troubled status.
- C. Processed over 1,000 applications received from families prior to 2002 and we exhausted the Section 8 Wait List.
- D. Opened the Section 8 Tenant-Based and Project-Based Wait Lists for the first time since 2001. Over 40,000 applications were received during a 5-day period.
- E. Increased the number of families assisted from 1,679 to 1,810 as of June 30, 2010 (net of new admissions, terminations, and port-outs).
- F. Awarded 130 Project-Based Vouchers to affordable housing projects.
  - a. 5 units for new construction (transitional youth)
  - b. 45 units for new construction (senior housing)
  - c. 24 units for rehab projects (senior housing)
  - d. 14 units for rehab projects (family developments).

### Public Housing

- A. We replaced distressed roofs at 19 units, and replaced roofing over the front entry porch at 51 units.
- B. Removed and/or professionally pruned significantly over-grown (and in some cases diseased) trees at all locations.
- C. Rehabilitated 3 badly damaged units that had been vacant for an extended time and rented them to large low-income families.
- D. Enhanced "Resident Services" by hiring a full-time property manager, and providing monthly newsletters with information to help residents achieve self-sufficiency and share timely information.
- E. Provided a bulky item/clean-up day.

### Administration

- A. Fostered a professional working relationship with legal advocates, Bay Area Legal Aid and East Bay Community Law Center.
- B. Developed a curriculum on housing issues in conjunction with Children's Hospital's training program for Medical Interns.
- C. Achieved a clean audit report with no findings, and only minimum comments in the management letter (second consecutive year).
- D. Partnered with the Rent Stabilization Program to broaden rental housing-owner participation in the Section 8 Program.
- E. Worked effectively with the Berkeley Police Department to follow up on program violations including drug, violent and nuisance behavior, and as appropriate, to terminate assistance.

In sum, we are very pleased with our accomplishments in the Section 8 Program, and with our increased service delivery to our tenants in 75 family housing units.

Our goals in the next year are to continue to build upon our successful administration of the Section 8 Program, maximize the rental assistance we can provide to qualified families, and to complete the repositioning of BHA owned rental units.

## II. REPOSITIONING OF BHA OWNED RENTAL UNITS

In June 2007 the City Council ceased serving as BHA's Board of Commissioners and elected to have the Mayor appoint the Board Members. Shortly thereafter, the U.S. Department of Housing and Urban Development proposed two contracts as a condition of continued Federal funding for the Section 8 and Public Housing Programs. Each contract identified certain actions and deliverables BHA was required to perform. The Corrective Action Plan (CAP) addressed the Section 8 Housing Choice Voucher Program and the Memorandum of Agreement (MOA) the Low Income Public Housing (LIPH) Program. Both documents were executed in 2007, and provided one to two years for completion.

The CAP essentially required BHA to achieve "Standard Performer" by Fiscal Year ending June 30, 2009 (which we achieved, as described above), and the MOA required "Standard Performer" and rehabilitation of the LIPH units or submission of a disposition application by December 31, 2009.

### The Path to the Submission of the Inventory Removal Application and Beyond:

- A. What options did BHA have under the MOA? The MOA was clear: (a) achieve Standard Performer Status in the Public Housing Program AND develop a plan for upgrading the physical conditions of the units within existing budget constraints, or (b) submit a disposition application. A Disposition application in HUD jargon is, an application to remove the units from Public Housing inventory with an alternate plan for their operation in the future. Taking no action was not an option. We either had to come up with the capital to renovate the units and a plan to do so, or develop an alternative plan for their operation and management. If we took no action, we would have risked HUD putting the units under receivership and, therefore, losing local control over the continued affordability of the units.
- B. What was BHA's response?
  - a. BHA retained consultant services to conduct a feasibility study, and develop a Strategic Plan taking into consideration the two requirements of the MOA.
  - b. The Board adopted the recommendation of the consultant to transfer ownership to a private affordable housing owner with a commitment of Section 8 Project Based Voucher assistance and a requirement of long-term affordability.
  - c. BHA prepared and submitted a Disposition Application to remove the units from the Public Housing inventory.
  - d. The Disposition application advises our intent to issue a Request for Qualification to identify one or more affordable housing owners to rehabilitate the units and operate them as permanently affordable housing.
- C. Why is the project sometimes referred to as a "disposition," other times "inventory removal" and still other times "repositioning" project?
  - a. The section of the Code of Federal Regulations (CFR) that is applicable is 24 CFR, Part 970 in which "disposition" is used to describe the conveyance or transfer of the interest of public housing units;

- b. “Inventory Removal” is the title on the application that is required to be submitted to HUD’s Special Applications Center in order to remove public housing units from a public housing authority’s inventory;
  - c. “Repositioning” is a term we have begun using in our discussions because it more accurately reflects what we are attempting to do, which is to transfer assisted families from Public Housing to Section 8, Project-Based housing.
- D. How can BHA ensure that we both inform residents of, and afford them all rights under applicable law?
- a. BHA has retained the services of an expert relocation firm with experience working with other Public Housing Authorities that have undertaken similar projects. Overland, Pacific and Cutler was hired for the engagement.
  - b. In addition to legal services from Goldfarb and Lipman, LLP, General Counsel for BHA, we contracted with Reno & Cavanaugh, PLLC, a firm based in Washington, DC, with partner Steve Holmquist, a former HUD Official, bringing valuable HUD and legal experience to the project.
- E. How can we ensure that any local protections applicable to existing residents are adhered to?
- a. Staff is working closely with the City of Berkeley Rent Stabilization Program Office to ensure that any protections afforded under the City’s Rent Ordinance also are followed; and
  - b. We have requested that appropriate members of City staff (Housing Department, Rent Board, Planning Department) serve in a resource role for the project.
- F. How can we ensure that protections for residents remain integral in the process as any disposition project is completed? The Board has:
- a. appointed an LIPH Feasibility Committee to work with staff on each phase of the project;
  - b. adopted a set of Goals and Objectives, and Principles for Process, to govern decisions with regard to the project (Attachment 1); and
  - c. authorized creation of a Community Advisory Committee made up of current residents and community representatives (to be seated) that can provide a forum for engaging the community in an exchange of information as key decisions about the project are made.
- G. How can we ensure that questions and/or concerns raised by current residents receive timely and competent responses?
- a. A Repositioning Project Manager was hired whose primary tasks are facilitation of the Advisory Committee and resident engagement (Kathleen Sims, Rosewood Associates);
  - b. Various documents have been provided to all residents, including a compendium of “Frequently Asked Questions” addressing issues ranging from why BHA is proposing to “dispose” of the units, to how current families will be potentially affected, to relocation issues, and providing contact information for additional questions;
  - c. BHA Newsletters continue to invite residents’ questions and comments on the process, and encourages resident participation;

- d. All reports are posted on BHA’s website and are made available at BHA’s office for review;
- e. Issues raised by residents of a personal nature (i.e. how does the project impact me) are addressed directly with the resident orally or by letter.

H. Will every current resident be offered a rental lease for one of the post-disposition units?  
 Yes. The Public Housing units are exempt from the registration and rent provisions of the Berkeley Rent Stabilization Ordinance, however, the “Good Cause for Eviction” provisions apply. Note:

- a. Families can be required to vacate the unit (temporary relocation) to allow for rehabilitation (upon certification from the Building Official that permits have been obtained); and
- b. Every family temporarily relocated retains the right to return to the unit it vacated prior to rehabilitation.
- c. Families returning to a unit with the same number of bedrooms as the qualifying Section 8 Voucher would be offered a Section 8 (assisted) rental lease.
- d. Families returning to a unit with more bedrooms than the qualifying Section 8 Voucher would be offered a non-assisted lease at market rent and would have the option to continue tenancy (without assistance) or use the voucher to rent an appropriately sized unit in the private market.

I. How can we ensure residents and the public at large, that the post-rehabilitation rent will be affordable? Given what is currently known about residents' incomes, all but three current households are eligible for Section 8 Assistance.

These Section 8 eligible residents will be transferred to the Section 8 Voucher Program. The City's Rent Stabilization Ordinance provides that all residents that are required to temporarily relocate during rehabilitation are entitled to return to their units. If these residents elect to return, the Rent Stabilization Ordinance does not restrict the amount of rent, but the owner may charge a market rent for the rehabilitated units. If a household is eligible for Section 8, it will only be required to pay 30% of its income for rent if it returns, so long as the unit is the appropriate size for the family under the Section 8 rules.

- a. Section 8 Tenant or Project Based Voucher. Every eligible current resident will have its assistance converted from the Public Housing Program, to Section 8 Voucher Program. In both programs the formula is the same for calculating income, assets and expenses; the same deductions apply for household type and minors; and both programs provide for a deduction for tenant paid utilities.
- b. Flat Rent. There is one important distinction that restricts a family’s rent payment in the Public Housing Program that does not exist in the Section 8 Program: “Flat Rent.” Under the Flat Rent provision a Public Housing family has the right to choose to pay rent equal to 30% of adjusted monthly income or the “Flat Rent” amount; a family will opt for Flat Rent if the amount is less than 30% of adjusted monthly income. Thus, families with high annual income who currently pay less than 30% of income for rent, would experience an increase up to 30% of adjusted monthly income so long as their income is not over the Section 8 limits

- c. Rental Differential Payment. Since the Rent Stabilization Ordinance provides the right to return, no one will be involuntarily displaced. However, any household that wants to move and is eligible for Section 8 will be provided a Section 8 voucher.

Based on the most recent recertification data on the existing households:

- a. 36 qualify for continued assisted housing in one of the 3 or 4 bedroom units.
- b. 28 qualify for continued assisted housing in a 1 or 2 bedroom unit. These tenants will have the option to return to their original units, or to move with Section 8 assistance. Under the Section 8 program a household is eligible for assistance based on its family size. Therefore, under the Section 8 rules, a family that qualifies for a 1 or 2 bedroom unit, but returns to a 3 or 4 bedroom unit, would be required to pay the difference between the "Payment Standard" for the size unit to which it is entitled and the rent for the larger unit. However the Section 8 regulations limit the tenant's share of the rent to 40% of income, so a family *could* opt to pay up to 40% of income.
- c. 3 do not appear eligible for continued assisted housing because annual income is more than 80% Area Median Income or 30% of adjusted monthly income is more than the Payment Standard (resulting in \$0 rental subsidy payment). The Rent Stabilization Ordinance allows these families to return and to pay the market rent for their units. If they wish to move, they will receive full assistance to do so under relocation law.

#### Critical Next Steps (Next 12-18 Months)

##### A. Decision on the Inventory Removal Application

We anticipated a decision from the HUD's Special Applications Center (SAC) by March, 2010. We were advised in mid-June that the Field Office review of our "Environmental Certification" had been completed and forwarded to the SAC. We are hopeful that this will advance our application to the next phase, and that we will have an answer by September 30, 2010 (the end of the Federal Fiscal Year).

##### B. Community Advisory Committee

The Board will soon appoint an Advisory Committee with up to seven members. The Committee, to be comprised of stakeholders and advocates from the legal, faith, and housing communities (with City staff available to advise on various City ordinances, "plans" and policies), has a charge of providing input on the project, including the processes used to ensure the goals and outcomes and principles of the Relocation Project adopted by the Board are met. We plan to have the members seated, and commenting on the draft Request for Proposals from Developers by September 2010.

##### C. Leasing of Currently Vacant Units

We completed baseline rehabilitation (without upgrades or enhanced energy features) of three vacant units this past Fiscal Year at an average cost of \$55,000 each. Given limited resources, a plan for comprehensive rehabilitation (to a market standard including upgrades and significant energy efficiency measures), and clear knowledge that with or without repositioning, many of the units will have to be vacated for development-wide modernization efforts, the Board will need to determine if it is in the best interest of BHA to use limited resources to make repairs necessary to re-lease the units at this time. There

is also concern about disruption to a newly housed family that would be required to move, perhaps within 12 months of occupancy if/after the disposition application is approved, and increased costs to cover relocation benefits for a family in such situation.

D. Tenant Replacement Vouchers

Assuming the application is approved, BHA will act immediately to submit an application for Tenant Replacement Vouchers for all of the occupied units. If approved, this will increase the size of the Section 8 Program by granting an additional voucher for each occupied unit. In the event the application is not funded in full, by the time residents want or need to begin moving, we will allocate 75 (or 61 for the Federally Funded program & later 14 for the State-funded RHCP program) of the vouchers out of the existing Annual Contributions Contract to this project, and replace them when the new allocation is received. Vouchers will allow the tenants, even if otherwise eligible to remain, to move to units in the private sector anywhere in the country with a Housing Authority covering that jurisdiction.

E. Request for Qualifications

Our Consultant, EJP Consulting has the lead for developing the Request for Qualifications (RFQ) that we will use to identify one or more affordable housing owners for the project. We have been careful not to authorize a complete draft until (a) HUD approves the Inventory Removal application, and (b) the Advisory Committee is seated, and has an opportunity to review and comment on the draft RFQ. These efforts are underway, and we are optimistic that we can issue the RFQ within 4 weeks of HUD approval of the Inventory Removal application. We further anticipate obtaining approval from the State for the RHCP conversion, and completing negotiations with the selected developer(s) over a 3-4 week period.

F. Relocation Plan

OPC reviewed the information in BHA's files as the basis for identifying the post-rehab housing needs of current residents, and to identify possible re-housing opportunities in the City of Berkeley and adjacent (if not comparable) cities including Albany, Emeryville and Alameda. After a developer(s) is selected, and the project takes on more specific definition in terms of the rehabilitation efforts, and the need for temporary and/or permanent relocation is apparent, OPC will conduct one-on-one interviews with every family, and use that data to develop a formal Relocation Plan, including an individualized calculation of the relocation benefits every family is eligible to receive. As the time approaches for families to begin relocating to other housing, OPC will reassess available housing options, and work with families on an individualized basis to secure suitable housing.

The repositioning project budget includes funding for the OPC contract. It is our intent to have the selected developer(s) fund and implement the relocation of residents. BHA will encourage the developer(s) to utilize the services of OPC to provide continuity, and we will actively monitor the process to ensure residents are treated fairly and equitably.

G. Continued Affordability

Regulatory restrictions will be drafted to ensure the long-term preservation of the units as affordable housing units. The ideal response is one in which all the units receive comprehensive rehabilitation, all of the units remain available to low-income families, and there is both an immediate and ongoing revenue stream for BHA so that we can meet our legal obligations and adequately fund the existence of a local Housing Authority. Any

such agreements will have to be approved by HUD, prior to a release of the Declaration of Trust. This phase is anticipated to take at least 6 months to complete.

### Conclusion

We remain confident that the Repositioning Project, while challenging, is the responsible thing to do, and will result in a win-win-win situation for current and future low-income residents, the City of Berkeley, and the Berkeley Housing Authority. We recognize that the Repositioning Project will disrupt, at least temporarily, the lives of current residents, all of whom will have to move at least once: to allow for rehabilitation or to relocate to other permanent housing.

However, we believe that the greater good is achieved in that families that need scarcely available 3 and 4 bedroom units will have an opportunity to be housed, and our current residents who have successfully raised their children, and are now empty nesters, will get to make choices about where they will reside without forfeiting rental assistance needed to keep rent affordable at 30% (or up to 40%) of adjusted monthly income. And we believe that this is the only solution to bring the units up to current standards and ensure that they remain as affordable housing for low-income residents of Berkeley.

Finally, it is possible that the project may create a much needed revenue stream to support the ongoing existence of a Public Housing Authority in, and serving the City of Berkeley, as well as furthering both entities' commitment to long-term affordable housing for low income families.

Attachment:

1. BHA Board's Adopted Goals and Outcomes and Principles for Process regarding the Repositioning Project

“Goals and Outcomes” and “Principles for Process”  
Governing the Low Income Public Housing Repositioning Project

Goals and Outcomes

1. Preserve 75 units of affordable housing.
2. Maintain at least 75 units on the existing sites.
3. Serve same household income population (up to 50% AMI) by providing a Section 8 voucher or Project Based assistance.
4. Optimization of financial compensation to BHA.

Principles for Process

1. Ensure the diversity of the population of those who will live in the units after repositioning/disposition process.
2. Least possible displacement/disruption to current residents.
3. Residents are offered/receive the information, services, and housing they need.
4. Residents continue to pay 30% of adjusted income – no minimum income requirement.
5. Transparency – communicate openly about what we’re doing and why.
6. Eligible existing residents have 1<sup>st</sup> priority for rehabbed units.
7. Residents are integral part of planning/relocation process.