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Testimony of Daniel N. Carpenter-Gold on the New York City Housing Authority's Draft Plan for Fiscal Year 2020

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My name is Daniel Carpenter-Gold, and I am a staff attorney in the Equitable Neighborhoods practice of TakeRoot Justice. TakeRoot, formerly the Community Development Project, provides legal, participatory-research, and policy support to strengthen the work of grassroots and community-based groups in New York City in dismantling racial, economic, and social oppression. The Equitable Neighborhoods practice focuses on ensuring that our partner organizations have a voice in the future of the places in which they live and work.

We stand with our community partners—NYCHA tenants and organizers—in demanding that development on the Authority's campuses be pursued only where it is under the control, and in the best interests, of NYCHA residents. The Authority's approach to development and privatization of its properties, as outlined in its Fiscal Year 2020 Draft Plan, does not meet this standard for several reasons.

Inadequate Resident Control over Decisionmaking

First, NYCHA residents do not have adequate opportunity to participate in and influence the processes of infill development, conversion to private management or ownership, or transfer of air rights. The Authority does not begin resident consultation at a campus until it has already decided that development will occur there.¹ In the case of dispositions of land for infill

¹ E.g., N.Y.C. HOUSING AUTH., NYCHA Unveils NextGen Neighborhoods Site at Cooper Park Houses to Provide Overdue Repairs for Residents and Ne Community Features (Oct. 2, 2017), <https://www1.nyc.gov/site/nycha/about/press/pr-2017/ngn-cooper-park-20171002.page> (declaring “that the newest addition to the NextGeneration...program will be located at Cooper Park Houses” and that only at the time of the press release would “resident engagement at Cooper Park Houses...begin”).

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development, the Authority has also been predetermining the affordability mix of the private building.² This removes the most important decisions from the consultative process entirely, and deprives resident councils of their lawful right “to advise and assist in *all aspects* of public housing operations.”³ The residents of the campuses where development will occur are the people most impacted by these decisions, and must have a voice throughout the decisionmaking process.

We further remind the Authority that state and federal law require initiation of resident-council consultation and environmental review prior to making the decision that infill, conversion, or development-rights transfers will occur on any particular campus.⁴ Residents must be consulted and environmental review must be conducted *before* key decisions are made. Merely including decisions in the Authority’s Annual Plan and holding a public hearing on the Draft Plan does not suffice to comply with your obligations.

The rush to allow private developers to build on public land without resident involvement also wastes time and resources. By law, residents must be consulted as part of any application for disposition of the properties on which they live.⁵ Failing to conduct adequate consultation, and resultant resident resistance, may force the Authority to withdraw applications it has spent substantial energy on—as occurred with the proposed infill at Holmes Towers.⁶ NYCHA is severely resource-constrained; it is better for the Authority and residents alike to work together on any proposed development or privatization.

Finally, when the Authority undertakes infill development that would require a zoning change—as with the Holmes infill—that zoning change must go through the Uniform Land Use Review Procedure, including a City Council vote. Reliance on “mayoral zoning overrides,”

² E.g., *id.* (“The future development will have 50% affordable and 50% market-rate housing.”).

³ 24 C.F.R. § 964.100 (emphasis added).

⁴ See 24 C.F.R. § 58.30(b) (“The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.”); 24 C.F.R. § 970.9 (“PHAs must consult with residents who will be affected by the proposed action with respect to all demolition or disposition applications.”); 40 C.F.R. § 1502.5 (“The [environmental impact] statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made....”); 40 C.F.R. 1506.1(a) (“Until an agency issues a record of decision [on the environmental impact statement], no action concerning the proposal shall be taken which would...[l]imit the choice of reasonable alternative.”); 6 N.Y.C.R.R. 617.1 (“The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review an decision-making processes...at the earliest possible time.”).

⁵ See 24 C.F.R. § 970.9(a).

⁶ See Press Release, Holmes Towers NYCHA Private Development In-Fill Application Withdrawn with Commitment to Meaningful Community Engagement (June 14, 2019), <https://maloney.house.gov/media-center/press-releases/holmes-towers-nycha-private-development-in-fill-application-withdrawn>.



which are not authorized by any State or City law, is both contrary to law and harmful to the public's and residents' right to contest land-use changes.

Inadequate Benefits and Protections for Residents in Properties Slated for Development

Second, the Authority must take steps to ensure that development serves, rather than harms, the campuses and communities in which it occurs. Ideally, this would be done by allowing residents to decide for themselves what construction would occur on their campuses by, for example, voting on proposed developments and changing bidding rules to formally incorporate resident preferences. Failing that, the Authority should take all necessary steps to ensure that the benefit of development accrues primarily to the residents of the campus that is being developed, including earmarking the bulk of revenue generated by new private construction or disposition for the campus on which the development takes place; and building in a revenue stream, such as annual payments, into long-term leases.⁷

The Authority must also maintain properties that are slated for infill or other disposition to the habitability standards required by City and federal law. We are deeply concerned by reports that repairs must be made as part of a deal with a future developer of a new private building or the future owner or manager of a property undergoing conversion. This practice improperly and unlawfully delays badly needed repairs to these properties, with residents bearing the burden.

Thank you for your consideration of these comments. Please feel free to contact us for further information at:

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⁷ Similar recommendations are made in the written comments of the NYC Alliance to Preserve Public Housing, dated July 18, 2019.

