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TO: Supervisor Mark Ridley-Thomas, Chairman
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FROM: Gary Jones, Director

SUBJECT: **MARINA DEL REY AFFORDABLE HOUSING POLICY - REPORT ON EFFECTIVENESS OF CURRENT POLICY (ITEM 2, AGENDA OF NOVEMBER 1, 2016)**

On November 1, 2016, your Board instructed the Department of Beaches and Harbors (DBH), in collaboration with the Department of Regional Planning (DRP), the Community Development Commission (CDC), the Chief Executive Office (CEO), and County Counsel (Counsel) to consult with affordable housing stakeholders and Marina del Rey (Marina) lessees to examine the effectiveness of the current Marina del Rey Affordable Housing Policy (Policy) and report back to the Board within 180 days. On April 18 and August 1, 2017, DBH submitted an interim report to your Board and requested a time extension in order to complete our research and analysis.

This report analyzes the efficacy of the current policy in creating and maintaining affordable units in the Marina, and compares how neighboring Los Angeles County jurisdictions are responding to the requirements of the Mello Act to create and preserve affordable housing within the California Coastal Zone (Coastal Zone). The analysis includes how various public financing methods may further encourage affordable development as compared to the current use of rent credits, how the existing Policy could be revised to increase the number and level of affordable housing units in Marina del Rey, and how the County monitors and determines compliance with the Policy.

Background

The Mello Act, adopted by the California State Legislature in 1982, mandates that each local government, whose jurisdiction falls, in whole or in part, within the Coastal Zone require: (a) the replacement of housing units occupied by low or moderate income persons or families when it approves the conversion or demolition of those existing units,

and (b) the provision of housing units for persons and families of low or moderate income when it approves new housing developments in the Coastal Zone.

In 2002, the County of Los Angeles (County) adopted a policy to implement the Mello Act in Marina del Rey, which required the preservation and inclusion of affordable housing in new developments and redevelopments. The policy stated that all new residential development shall set aside 10% of new residential construction for low-income households for a term of 30 years. This policy included provisions to allow payment of an in-lieu fee if it was not economically feasible to construct affordable units on-site.

In 2008, following a demand letter from affordable housing advocates, the Board directed County staff to negotiate policy revisions and a settlement agreement with People Organized for Westside Renewal (POWER). Subsequently, the County of Los Angeles adopted a further refined Affordable Housing Policy aimed at ensuring that all new residential development in the Marina complied with the Mello Act by setting forth the standards for preserving existing affordable housing supply (replacement units), and creating new affordable housing units (inclusionary units), where feasible. The Board adopted the current Policy on November 18, 2008.

The current policy includes the following standards:

- Converted or demolished residential units that are occupied by low or moderate income persons or families must be replaced. Rental levels of the replacement units will be set on a like for like basis determined by the income levels of the existing tenant as determined by an income survey.

- New residential projects must provide affordable inclusionary housing units at very low, low, and moderate income levels. Subject to the feasibility analysis of each project, a 15% inclusionary affordable housing goal shall be calculated based on the net new incremental units to be constructed as part of the project with 1/3 reserved for each very low, low, and moderate income levels for persons and families.

- The current policy does not address standards that would apply to the renovation of an existing residential building. Therefore renovations have not required preservation or creation of new affordable units.

Existing Conditions in Marina del Rey

Residential Units

There are currently 6,037 units built in Marina del Rey, with another 1,111 planned or under construction. Of those, there are 132 existing deed restricted affordable units and another 128 that are under construction. These affordable units are a mix of studio, 1-

bedroom, and 2-bedroom units with about half of those units marked as very low income and the other half divided equally between low and moderate income levels (Exhibit A). Slightly over one-third of all affordable housing units in Marina del Rey are restricted to use by seniors aged 62 years or older. Only the Neptune Apartments were proposed and approved in compliance with the 2008 Affordable Housing Policy.

Constructed Units:	
Property Name	Total Affordable Units
Admiralty Apartments	15
Capri Apartments	10
Esprit Marina del Rey Apartments	35
Marina Harbor Apartment Homes	18
The Shores Marina del Rey	54
Total Constructed	**132**
Property Name	Total Affordable Units
Neptune Marina Apartments	81
AMLI Residential	47
Total Proposed/Under Construction	**128**
Total Affordable Units Approved	**260**

The County began requiring affordable housing units as a public benefit in Marina del Rey in the early 2000s, during lease negotiations subject to the 1989 Lease Extension Policy adopted by DBH. The lease extension policy provides that:

- A lease term extension must be tied to a commitment to redevelop or upgrade the property making it modernized, and up to a quality to remain attractive, competitive, and physically and economically viable during the term of the lease.
- The County should sponsor amendments to the Local Coastal Program (LCP), if needed, in order to upgrade facilities, enhance the County's revenue stream and create public facilities.
- Lease extensions must be structured to ensure that the County receives fair market rent that coincides with the new value associated with the extended lease.
- The County is not required to agree to lease extensions for any lease. In no case, can a lease be extended beyond a total term of 99 years. After 99 years, or at earlier lease termination, the property reverts to the County, and a new lease can only be entered into following issuance of a Request for Proposals (RFP).

These lease negotiations, along with the adopted policies, allowed the County to compel the lessee to provide affordable housing when redeveloping, which helped maintain affordable units along the coast.

There are limitations on the maximum number of units that can be built in the Marina as approved in the in the Marina del Rey Local Coastal Program (LCP). Development potential is divided among three Development Zones (DZ) and movement of development potential across zones would require an LCP amendment. The remaining residential development potential is allocated in the DZs as follows:

a. DZ #1 (on the western side where most residential facilities are located) – 335 units
b. DZ #2 (along Admiralty Way) – 72 units
c. DZ #3 (limited to Parcel 64 at the end of Fiji Way) – 255 units

Demographic Information

Demographic information for Marina del Rey residents is limited. The CDC only tracks the income and household size for prospective tenants of the affordable units they monitor. The number of bedrooms is based on the household size, which eliminates over and under housing of tenants. The CDC also tracks the age of prospective tenants in instances where the affordable unit must be occupied by a tenant who is at least 62 years of age. Currently, the CDC does not track demographic characteristics, such as race, sex or marital status. As part of this study, the CDC reached out to four property management companies who stated that their applications for tenancy include date of birth, marital status and sex. Such data, in addition to ethnicity and race may be collected, to the extent feasible, as part of the annual compliance documentation submitted to the CDC by the property management company.

Lease Limitations

The County is the owner of all land in the Marina, however the land is separated into lease parcels and leased out to individual lessees to develop. The maximum total lease term for County-owned properties is 99 years due to California State Law, and most residential property lessees in the Marina have already passed over half of their potential lease limitation. Leases that have the potential to be extended for more than 10 years before reaching the 99-year cap are presented in the table below.

Project	Parcel	Maximum Lease Extension (Years) as of 9/1/2017
Mariners Village Apartments	113	43
Oakwood Apartments	103	19
Marina 41 Apartments	102	19
Proposed Mixed-Use Project	95	49

Stakeholder and Lessee Feedback

DBH reached out to Marina stakeholders, including the affordable housing policy advocates previously involved in the development of the 2008 Policy and the current Marina lessees.

The affordable housing policy advocates, POWER, Legal Aid Foundation of Los Angeles (LAFLA), and Western Center on Law and Poverty (WCLP) were contacted for feedback regarding the existing Policy and possible recommendations for improvement.

The following recommendations were made by LAFLA in conjunction with POWER and WCLP (Exhibit B):

Regarding Renovation of Existing Structures

While the Policy has been successful where applicants plan to fully demolish a residential structure and replace it with a new residential building, the Policy should also address the scenario where a substantial rehabilitation or renovation project is so extensive as to constitute a demolition or render a building unfit for residential use, thereby removing housing from the Coastal Zone for an extended period of time. Accordingly, the Policy's definition of demolition should be revised to state: "When a renovation or rehabilitation would replace two or more building systems such as supply lines, drain lines, electrical systems, HVAC, or windows, or would otherwise render a building uninhabitable, such substantial renovation/rehabilitation shall constitute Demolition for the purposes of this Policy." Similarly, projects which remove residential units from the housing market for extended periods of time should also be considered demolitions under the Policy, so that the Mello Act's requirements for the preservation of low-income housing and residential land uses in the Coastal Zone are not circumvented.

Initial Screening and Mello Determinations

The Policy should be revised to state a clear trigger for the issuance of a written Mello determination with respect to development projects. This determination should make a clear finding regarding the applicability of the Mello Act to the project, and should state the project's obligations for both replacement housing units and inclusionary housing units. This trigger should be as early in the entitlement process as possible to give developers, the County, and community stakeholders a clear understanding of the requirements that apply to a given property; ideally, an initial application for an entitlement would begin the process of determining what Mello Act obligations a proposed development would trigger. This process should include a rent and income survey conducted by the County, which will be used as the basis for findings regarding whether a given project would remove existing housing affordable to low- and moderate-income tenants. Because the County does not have a just cause eviction ordinance, property owners are able to evict tenants for no fault of their own through the issuance of 30- and 60-day eviction notices. A clear and early determination regarding a particular project's replacement housing obligations under the Mello Act would also help deter owners from summarily evicting lower-income tenants in an effort to avoid Mello Act compliance. Therefore, the earliest possible trigger for a Mello determination should be utilized, and the rent and income survey should be performed as soon as possible, as well.

Determination of Replacement Housing Obligations Under the Mello Act

The Policy's requirements for replacement of low- and moderate-income housing should be strengthened to ensure affordable housing units in the Coastal Zone are not lost; this is a crucial consideration in a time when California and the County are experiencing an affordable housing crisis, with homelessness increasing in the County in recent years. The Policy's replacement requirements should be revised to include a presumption that any units that are vacant at the time the rent and income survey are performed should be deemed affordable units, unless an applicant can demonstrate through credible evidence, under penalty of perjury, that the unit was not previously occupied by a low- or moderate-income household. Such units should not be automatically deemed market rate, which creates incentives for applicants to attempt to displace low- and moderate-income families (through legal or other means) so that their units will be vacant at the time the survey is performed.

Where tenant incomes are ascertainable, the Policy requires the affordability of units to be determined based on the income of the tenants occupying those units, rather than the monthly rent which is charged for a given unit. This is important, as the Mello Act's requirements stand regardless of the rent charged for a unit; the Mello Act requires replacement of any unit which is "affordable to" low- and moderate-income tenants. Therefore, the Policy should be revised to remove the two-year look back period for tenant incomes. In other words, the Mello Act is solely concerned with the income of a tenant at the time their unit is proposed to be demolished or converted, with no requirement that

their income have been at a certain level for a certain period of time. The Policy can better achieve the Mello Act's purpose by removing the two-year look back period, and solely examining a tenant's income for the month or two preceding the application which triggers the Mello Act determination process. This would also improve the process by reducing the administrative burden of carrying out the tenant income survey. Similarly, because the Mello Act contains a strict requirement for the replacement of housing affordable to low- and moderate-income residents, without regard for their particular occupation, the Policy should be revised to remove the exemption for student and resident manager incomes to be included in the survey.

Where tenant income information is not available to assist in determining the affordability of a given unit, the Policy requires the examination of the rents charged for units to be demolished or converted in order to determine an applicant's replacement housing obligation. Where this is done, the Policy should require the examination of rent levels for each unit to be performed within the context of the size of that unit, or the number of tenants who previously occupied that unit, if known. For example, if a unit could accommodate four tenants, this information must be taken into account in order to meaningfully determine whether that unit should be deemed an affordable unit which must be replaced at the previous rent level to comply with the project's Mello obligations.

Determination of Inclusionary Housing Obligations under the Mello Act

The County should consider deeper income targeting for inclusionary units, such as increased percentages of Very Low Income units, and the requirements of the Policy with respect to inclusionary housing units should be revised to apply to the entirety of a given development project. Currently, the Policy's inclusionary requirements only apply to "net, new units" in a given project. The Mello Act does not contain any provisions to support the "net, new units" limitation, and the limitation should be removed to ensure that the County has the most successful policy possible, especially against the backdrop of increasing homelessness. Similarly, the inclusionary housing requirements stem from the State Mello Act's requirements; because of this, the Policy's language should be corrected to reflect that inclusionary housing is a requirement of certain projects in the Coastal Zone, not merely a goal. The City of Los Angeles has a 10% Very Low Income Inclusionary housing requirement for new coastal zone projects, as part of its local policy implementing the Mello Act, and the City's Policy applies to the entirety of a new development project; it is not limited to net, new units. Finally, in addition to removing the net new limitation from the County's inclusionary housing obligation, the County should consider increasing the inclusionary requirement above 15%.

Moreover, in the County's Policy, the considerations for the feasibility analysis should be revisited to ensure that the most appropriate and accurate methodology, threshold and index for determining feasibility are included in detail in the Policy. This reduces administrative burdens by requiring an "apples to apples" approach in which all feasibility analyses follow a consistent methodology with consistent industry standards, making

them more easily understandable and comparable for staff. The current feasibility analysis underestimates the number of affordable units that could be included in a developer's project without any rent subsidy provided by the County.

The City of Los Angeles's Mello Act policy requires developers to include 10% Very Low Income units, plus one for one replacement of affordable existing units demolished or converted, without any financial assistance or subsidy from the City.

Methods of Compliance

The Policy should also be revised with respect to the methods of compliance which an applicant may utilize to fulfill its replacement and inclusionary housing obligations. Because of the unique nature of development in the Marina, which tends to include larger housing developments than in other parts of the County, the policy should require replacement housing units to be provided on-site. This would ensure that County-owned land does not contribute to the displacement of lower-income County residents.

Finally, the County should consider requiring "like-for-like" in terms of rental and owner units. This is a goal that the County can further more effectively by requiring that, where affordable housing obligations are triggered by the development of ownership units, those affordable housing obligations be satisfied through the provision of affordable ownership units. Where proposed projects are composed of a mix of ownership and rental units, affordable units required to be provided should be proportional to the mix of rental and ownership units. This would help to increase homeownership opportunities for residents of all income levels, and would avoid a discriminatory situation in which homeownership opportunities are provided for higher-income residents on County land while lower-income tenants are forced to search outside the Marina in order to become homeowners.

Lessee Input

DBH spoke with Marina Lessees at their monthly lessee meeting as well as had one-on-one conversations with those who wished to speak in greater depth regarding the current policy and potential changes. Lessees were asked about their experience with having affordable units, the conditions of the existing policy, and if they had recommendations on what that County could do to improve the policy. The lessees who provided feedback believed the existing Policy seemed fair but acknowledged that the Policy made renovations the more financially feasible option over demolition and reconstruction, even if the sites could have accommodated more units with new construction.

The lessees had concerns about a consolidated waiting list for all of the existing Marina affordable housing units as a means to fill the vacancies. The lessees stated that the apartment communities are already inspected by the CDC and the developers follow the regulations set forth by the CDC with regard to the eligibility of new tenants. The lessees

stated that they have been successful at managing their own lists and tenant selection process and would be concerned with a change the process at this time.

Mello Act in Other Jurisdictions within California

Mello Act compliance varies greatly by jurisdiction. While the Mello Act is a statewide law, many cities within Los Angeles County have determined that they are exempt from the policy due to language within it that states that if a city has fewer than 50 acres, in aggregate of land which is vacant, privately owned, and available for residential development, they are not required to comply with the Mello Act. Other cities within California may review development against the criteria of the Mello Act to ensure no affordable housing is lost, however instead of a standalone Mello Act policy, they fall to their citywide affordable housing policies and/or in-lieu fees to encourage more low and moderate income housing. Cities such as Santa Monica and San Diego both have citywide inclusionary housing requirements or require in-lieu fees to encourage affordable housing within 3 miles of the coast. The City of Los Angeles, uses its "Interim Administrative Procedures for Complying with the Mello Act," adopted in 2000. These procedures require that: 1) replacement units must be affordable to Moderate-Income Households or below and, 2) Inclusionary Units may select one of two options: Option 1: at least 20% of all Residential Units for Very Low or Low, or Option 2: at least 10% of all Residential Units for Very Low. Both replacement and inclusionary units may be located at an alternate site if the City's Planning Department allows it. However, while it is important to understand what other cities within California do to address the Mello Act, there is no other jurisdiction that has the same unique land makeup that is comprised of high density, rental, ground-leased properties as the Marina does.

Financing Alternatives

Currently, the majority of developments in the Marina have exclusively used private financing in order to construct or remodel apartment buildings. A few lessees have been granted rent credits (rent reductions) as a retroactive solution following the 2008 Policy, in order to resolve a rent gap that would have occurred otherwise. However, DBH no longer offers this type of rent credit during negotiations with lessees who incorporate affordable housing into a development. The affordable housing requirement is now a part of the lease negotiation from the beginning and incorporated into the ground lease between County and the lessee.

Financing Options

There are two primary types of bond financing/public assistance sources that are available to residential developers in the Marina, known as 9% or 4% Tax Credits. Projects eligible for 4% Low-Income Housing Tax Credits can be mixed-income projects and can be financed with Tax-Exempt Multifamily Bonds. Projects that receive tax exempt bond financing are limited to a 4% Tax Credit as long as 20% of the units are restricted

to very-low households. The Tax Credits are only awarded to the income-restricted units, and the ownership of the affordable units must be separated from the market rate units. The challenge in separating the ownership for the benefit of the tax credits is the ability to generate enough equity from a tax credit investor.

When financing a 9% Tax Credit Project, 100% of the units must be restricted as extremely low-, very low- and low-income households, and must also include a social service component. The 9% Tax Credit financed development would need to be a standalone project and would not be able to incorporate mixed-income units into the development.

The vast majority of these public assistance sources impose 55-year income and affordability covenants as a basic eligibility requirement. The County's ability to impose a 55-year affordability covenant on future affordable units is regulated by state law (Gov. Code 25521), which provides that County-owned property may be leased for a maximum term of 99 years. The use of a 55-year affordability covenant (rather than the formerly standard 30-year covenant) is the result of recent amendments to the Density Bonus Law (DBL) requiring developers to agree to a 55-year restriction on all affordable units in order to take advantage of the DBL benefits. In the Marina, the ground leases mainly originated in the early to mid-1960s, with an initial 60-year term and, if not already renewed by the lessees, a potential remaining extension of 39 years can be granted. Accordingly, the leases that remain to be renewed in the Marina within the next 10-15 years do not have 55 years of potential lease term left, making a 55-year affordability covenant challenging.

There are two ways to address this issue. First, it is possible to restart the 99-year available lease term and thereby provide developers (and their lenders) with the 55 years required to invoke the DBL if the County declines to extend an expiring lease and issues a new solicitation for development of that parcel. The County may also choose to extend existing leases and still promote tax-exempt financing, by the County allowing the land to remain encumbered by the covenants after the leases terminate, approximately upwards of 15 years after the lease expires. This would require the new RFPs to include the encumbrances for the remaining term, or require the County to manage said properties until they are free of the affordability encumbrance.

In addition to the 55-year covenant requirement, there are other restrictions that must be addressed in order to take advantage of public financing. Generally, outside assistance sources are targeted to projects with deep affordability (the 9% tax credit requires an average of approximately 46% of the County median income, and other outside assistance sources are similar in requirement). For example, the CDC Notice of Funding Availability (NOFA) establishes the following minimum standards for the award of County assistance funds:

a. Projects on County-owned land must include at least 49% of the total units as special needs units, and include a social service plan for the project.

b. Projects must include 9% or 4% Tax Credits as a funding source.
c. HOME funds awarded to the County by the United States Department of Housing and Urban Development (HUD) are awarded solely to projects targeted to special needs populations.

Current minimum standards established by the County require that projects must include special needs units and include social service plans as well as use the 9% or 4% Tax Credits as a funding source. The County does have the discretion to modify the methodology that is used to allocate the funds administered by the CDC however funds used for these projects may have to be diverted from other County priorities such as projects aimed at special needs housing.

Under the existing affordable housing policy, there is no explicit encouragement of any type of financing over any other, however there is nothing in place to prohibit a private developer from pursuing tax exempt bond or other public financing. Tax exempt financing has additional requirements that the developer would have to comply with if it chooses to pursue that model. Public financing mechanisms are most often used to finance 100% affordable housing projects, whereas in the context of Marina del Rey, all affordable housing to date has been provided via mixed-income projects. Although such mixed-income projects could qualify for public finance programs, the developers in Marina del Rey have relied almost entirely on private/commercial financing to deliver their projects, including the affordable component. In order to catalyze opportunities for leveraging all funding vehicles, the CDC recommends and would offer to host stakeholder meetings or affordable housing financing seminars (in conjunction with Financial Consultants) at appropriate times and locations for developers and existing ownership entities.

Management Changes

Rent and Income Surveys

In accordance with the Policy, the CDC is responsible for overseeing rent and income surveys that establish the number of replacement units required to be set aside in an affordable housing development. To achieve this the CDC utilizes a qualified relocation consultant firm[1] to conduct a rent and income survey prior to the finalization of lease negotiations with DBH. This protocol ensures that all parties know the required number of replacement units prior to a project's initiation. In addition to the initial rent and income survey, the CDC recommends that tenant surveys also be conducted annually in order to update the names and household size of those who may potentially claim vested rights in applying for available replacement units, particularly when extended time lapses may occur between the initial rent and income survey and start of construction or renovation.

[1] Qualified relocation consultant firms are those that possess direct experience in administering these types of income and tenant surveys and are proficient with federal and state relocation regulations; these firms also have the knowledge base necessary to support tenant rights and help prevent voluntary or involuntary displacement.

Monitoring Fees

The existing Policy has the provision allowing the CDC to collect fees from developers for the following: a) costs incurred directly by the CDC, such as those associated with administering tenant surveys; b) costs associated with the analysis of the project's financial feasibility; and, c) an annual monitoring fee for each affordable unit. The CDC proposes to increase the current annual fee from $145 to $164 per affordable unit, to be adjusted annually per the California Consumer Price Index. The purpose of this fee is to defray the costs associated with the on-going compliance, inspection, and reporting of the replacement and inclusionary units. In addition to the annual monitoring fee, the CDC proposes to charge a one-time initial fee of $2,050 per project to conduct a financial feasibility analysis. This fee amount is the same amount charged in density bonus reviews, and allows the CDC to verify that rent and utility allowances are correctly calculated and vacancy rates and escalation factors are projected within the project's budget.

The slight increase in the proposed monitoring fee does not contemplate significant structural changes to the existing program in the Marina. Should the Board opt to make significant structural changes to the existing program in the Marina, for example the introduction of a consolidated wait list system, the CDC will need to revisit and adjust the fee structure to adequately reflect the new program parameters, change in the scope of CDC responsibilities and additional staff and technical support costs. However, the CDC's existing asset management unit would be well positioned to develop a mechanism for the implementation of affordability monitoring, lease up and wait list management activities.

Consolidated Wait Lists

In terms of projects that would be affected by the implementation of a consolidated wait list, the CDC discussed the issue with the Department of Regional Planning (DRP); it was determined that only projects approved after the Board's adoption of the Policy would be subject to the provision. The Neptune Marina Apartments Coastal Development Permit was approved on May 15, 2012, and is the only project with unleased replacement or inclusionary housing units. The remaining portfolio of existing projects were all approved prior to the adoption of the Policy and therefore would be exempt from the provisions of the Policy, absent of any actions taken by the Board of Supervisors.

The cities of West Hollywood and Santa Monica both maintain consolidated wait lists (also referred to as centralized wait lists) for affordable housing units within their jurisdictions. These lists relate primarily to inclusionary housing units, as well as other units that receive city subsidies. For both cities, the consolidated wait list is not integrated with, or used for, referrals from the County's Coordinated Entry System (CES), which is often used for Permanent Supportive Housing units.

Both Santa Monica and West Hollywood include local preferences for residents or

workers on their consolidated wait lists, as it is very common for people across the country to seek and secure a wait list spot for housing in desirable locations such as West Hollywood and Santa Monica.

The following table outlines the benefits and challenges to consider in deliberating on the use of a consolidated wait list.

BENEFITS	CHALLENGES
Efficiency Citizens often regard consolidated wait lists as being the most efficient way for them to apply for affordable housing within a geographic region.	Eligibility / Education Different projects on a shared wait list may have different eligibility requirements (i.e., senior projects, income level, unit size); the consolidated wait list approach can be misleading to applicants who do not understand the differences among the various project target populations and eligibility requirements.
Consistent Protocol Consolidated wait lists may be perceived as a way for multiple properties to utilize a consistent protocol in which all applicants are treated equally.	Cost Effectiveness Administrative management and customer service requirements related to consolidated wait lists may not be perceived as cost effective given the limited number of eligible projects under the current Marina Housing Policy.
Fair Housing A consolidated list managed by the CDC or another contract agency reduces the possibility or perception that a property's management company would discriminate against any applicant.	Impact Based on the current interpretation, the implementation of a consolidated wait list, and the cost to develop, maintain and administer such a list, would apply to a single project that received approval after the Marina Policy was adopted (Neptune Marina).
Application / Utilization Development and operation of a consolidated wait list may provide a platform for expansion, or wider utilization toward other types of rent-restricted units in the County.	

If the County opts to move towards the implementation of a consolidated wait list in the Marina, the CDC recommends an expansion of the planned use of the Los Angeles County Housing Resource Center (LAC-HRC) website that is currently identified in the 2008 Policy as the mechanism to manage wait lists. This website, located at www.housing.lacounty.gov, has operated as free web-based platform and call center for residents since 2007. The website has several features that, with modifications, would provide the optimum platform and support to assist residents with applications:

- Bilingual (English & Spanish) website with Google Translate capabilities
- Toll Free, Bilingual Call Center Support
- Ability to list accessibility features and promote accessible units
- Section 508 compliant website with TTY support
- Links and resources to search for other housing options within the County

For estimation purposes, the CDC assumed that the development of the wait list function would potentially apply to existing and new developments, which could negate the ability to apportion the modification costs to developers and may mean those costs would need to be funded by the County. The estimated cost for the modifications necessary to build a consolidated wait list system that would have functionality for all affordable units in the Marina – including existing and new developments – would be approximately $125,000.

Because it is not clear how many of the existing projects could be persuaded or required to utilize a new system, or how long of a transition period would be needed, it is difficult to estimate the annual operating fee for the system at this juncture. Emphasys Software, the primary contractor, typically charges 25% of development cost for an annual fee, which would be $31,250 per year. The CDC believes that this fee could be reduced by value engineering the operational requirements, and also by charging a fee to newer projects required to pay under the 2008 Policy.

In addition to leveraging technology to assist with the management of the consolidated wait list, the CDC would recommend that the County consider a local preference policy. If a consolidated wait list system is implemented in Marina del Rey, it would more than likely attract substantial interest from across the country, which may impact local residents due to increased competition. The cities of West Hollywood and Santa Monica have instituted a local preference policy where residents of their respective cities have first priority. The CDC recommends a similar local preference policy for the residents of Los Angeles County.

Recommended Policy Changes

Based on the information gathered, and input received from County Departments and stakeholders, we recommend the following changes to the Marina del Rey Affordable Housing Policy:

- Require all developments provide 20% very low income housing or a mix of low, very low, and extremely low income housing that equals an average of 50% AMI (average median income) when a development is reconstructed or substantially rehabilitated (as defined below). The 20% affordable units will be based off of the total units, not the net new units created.
- Define substantial rehabilitation within the policy in order to ensure consistency in policy requirements.
- Create educational materials and promote better understanding of how to utilize bond financing/public assistance sources.
- Set defined standards of when income surveys are to take place and if additional tenant surveys are needed in order to help with determining tenant eligibility for replacement units.
- Increase monitoring fees to offset costs associated with the Policy requirements.
- Explore financial feasibility of a consolidated wait list in order to assess if it should be implemented within the Marina.

More affordable units, and a deeper level of affordability, can be created by changing the policy to require a minimum of 20% of all new and existing units be restricted for very low income or an average of 50% AMI qualifying residents (for example 1/3 of each low, very low and extremely low housing). Buildings will be required to convert existing units to affordable units when they reconstruct or remodel the existing structures when the remodel meets a definition of substantial rehabilitation.

Substantial Rehabilitation Definition

Option 1

The definition of substantial rehabilitation per the Section 33413 of the California Health and Safety Code defines it as rehabilitation that costs 25 percent or greater of the value of the property (including land) after rehabilitation. Due to the fact that Marina properties are on long term ground leased land, the definition would have to be slightly altered from that to factor in the value of the remainder of the lease and lease extension, if one is being requested. The County must approve an appropriate estimate of all work to be completed and an estimate assessed value of the property prior to construction in order to determine if affordable units will be required during a rehabilitation project. Replacement housing should also be required for any reconstruction or substantial rehabilitation, if there are existing qualifying affordable units.

As previously discussed, the Marina has seen many existing apartment buildings choose to renovate the existing structure, thereby avoiding the affordable housing requirements of the previous policy. If a definition is created to clearly indicate when a substantial renovation is occurring, then this loophole can be avoided. There are numerous factors to address when determining substantial rehabilitation on ground leased land, however that do not arise on more common fee-ownership land. The main factor is that the value

of the land is based off of the length of the lease. The longer the lease the higher the value of land. Additionally, the County just allowing a lease extension alone increases the value of the land exponentially. Therefore there can be two different scenarios to run in order to determine if a property exceeds the 25 percent or greater value of the property limit for incorporating affordable units.
The first scenario is that of a lessee who would like to make tenant improvements on the property, however is not requesting a lease extension. The value of the property would be based on a function of the current net income of the property and the length remaining on the lease. If the improvements proposed exceed 25 percent of this value then affordable units must be added.

The second scenario is if the lessee is asking for both a lease extension and proposing to make renovations. In this case both the value of the property with its existing lease must be compared to the value of the property after given the lease extension as well as the difference in the expected net income increase to the cost of the renovations. If the value of the new lease extension and increased net revenue exceeds 25 percent of the original value plus the cost of reconstruction, then affordable units must be included. The expected cost of reconstruction is negotiated during the lease extension negotiations and therefore cannot be inflated in order to avoid the 25 percent exceedance.

Option 2

Substantial rehabilitation is defined for this purpose as construction work that exceeds $40,000 per unit in construction costs including interior renovations, plumbing, HVAC upgrades with the exception of rehabilitation work that is required due to government code mandated changes, emergency repairs and/or like for like replacements. The per unit construction maximum should be adjusted with regard to inflation. Substantial rehabilitation is triggered when major renovation work is done that upgrades the unit beyond the above amount, for example, adding new plumbing to allow for in-unit washer and dryers when they were in common areas before, adding air conditioning to units when it had not been in place before, etc. The construction limit does not apply to common area improvements such as parking, landscape, pool, gym, etc. Substantial rehabilitation is also triggered if a building is rendered uninhabitable or tenants are relocated for a duration longer than 30 days, when the renovations being made are voluntary in nature. However, if a tenant can be permanently relocated into a comparable unit within the same development, substantial rehabilitation will not be triggered due solely to the relocation. In the matter of the determination of substantial rehabilitation, DBH will have the final review of proposed construction cost and discretion to require incorporation of affordable units if there is the potential of the rehabilitation exceeding the defined amount above.

If the renovation policy had been changed to include renovations that meet the definition of a substantial renovation as defined above, then many of the major renovation projects that have previous occurred in the Marina would have been required to include affordable units. Construction projects that would not exceed this limit are those that are for relatively

minor building improvements such as baseline updates to units and necessary repair and maintenance in order to insure buildings can remain in a well maintained condition without a lease extension. This could also possibly capture short term lease extensions of a few years if no major renovations are proposed since the value of the land increases exponentially as the lease time increases but can remain somewhat low for a short term duration.

Prior to the start of any lease negotiations for a property, as defined by a formal submittal of a request to extend lease to DBH, the lessee must complete a rent and income survey conducted by a CDC-approved relocation consulting firm for replacement housing determination. Having the income survey completed before negotiation starts will help both the County and the applicant in the lease negotiation since both sides will know a realistic estimate of how many units will be required to be reserved as affordable if construction meets the above substantial rehabilitation threshold.

The County should explore opportunities to continue management of buildings past their 99-year lease if an applicant wishes to utilize public financing requiring a 55-year covenant. If an applicant wishes to explore this option, the County must conduct further research to understand the ramifications of encumbering properties for the encumbered period of time past their ground lease.

Conclusion

The current Marina del Rey Affordable Housing Policy has not been successful in producing a large number of affordable units. In particular, the provision that exempts rehabilitation projects from the policy has served as an incentive for lessees to rehabilitate their projects rather than doing full rebuilds. We recommend that the County modifies the current affordable housing policy to address many of the challenges and concerns addressed above.

If you have any additional questions regarding the recommended policy changes, please contact me at (424) 526-7771 or GJones@bh.lacounty.gov, or Michael Tripp of my staff at (424) 526-7745 or MTripp@bh.lacounty.gov.

GJ:BL:MT:mw

Attachments (2)

c: Chief Executive Officer
County Counsel
Department of Regional Planning
Community Development Commission

Exhibit A

MARINA DEL REY AFFORDABLE RENTAL UNITS

Name	Parcel	Total Units	Total Affordable Units	Affordable Rent Levels		
				Very Low	Low	Moderate
Admiralty Apartments	140	204	35	15	0	0
Avalon Marina Bay Apartments	8	205	0			
Breakwater Apartments	64	224	0			
Capri Apartments	20	99	10	0	10	0
Dolphin Apartments	18	332	0			
Esprit Marina del Rey Apartments	12	437	35	35	0	0
Marina 41 Apartments	102	623	0			
Marina City Club Apartments	125l	101	0			
Marina Harbor Apartment Homes	111, 112	966	18		18	
Mariners Village Apartments	113	981	0			
Oakwood Garden Apartments	103	597	0			
The Shores Marina del Rey	100, 101	544	54	17	0	37
Villa Del Mar Apartments	13	196	0			
Waves Marina del Rey Apartments	7	149	0			
Wayfarer Apartments	28	379	0			
Subtotal		**6037**	**152**			
Neptune Apartments	10, 14	526	81	19	32	30
AMLI Residential	15	585	47	47		
Subtotal		**1111**	**128**			
Total		**7148**	**280**			
Percentage affordable built		**2.52%**				
Percentage affordable with construction		**3.92%**				

Exhibit B

LEGAL AID FOUNDATION OF LOS ANGELES

The frontline law firm for poor and low-income people in Los Angeles

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Our File Number 15-1260119

March 29, 2017

Marie Waite, Planner
County of Los Angeles
Department of Beaches and Harbors
13837 Fiji Way
Marina Del Rey, CA 90292

Re: Comments re: the County's Marina Del Rey Affordable Housing Policy

Ms. Waite,

Per your request, we submit these initial comments regarding the County of Los Angeles's Marina Del Rey Affordable Housing Policy ("Policy"), which implements the State Mello Act in Marina Del Rey. On November 1, 2016, the Los Angeles County Board of Supervisors directed staff to review the performance of this Policy, identify ways to improve it and gather input from key stakeholders such as ourselves. Please note, these are only our initial comments, as we only heard from you late last week requesting our input. You requested that we expedite our comments to you, in light of an upcoming Board of Supervisors hearing scheduled for May 2, 2017 on this matter. We put these comments together quickly to respond to your request, but we need additional time to review and comment on the KM&A study and other documents you have prepared for the May 2nd BOS hearing regarding this matter. We would also like to schedule an in person meeting with you before the May 2nd hearing date.

As you likely know, on November 18, 2008, the County of Los Angeles ("County") entered into a settlement agreement with People Organized for Westside Renewal ("POWER"), a local tenant's rights and affordable housing organizing and advocacy group, who was represented by the Western Center on Law and Poverty and the Legal Aid Foundation of Los Angeles ("LAFLA"). The settlement agreement, in part, requires the County to provide notice of hearings related to residential developments in Marina Del Rey, and to work with POWER and their Counsel on any proposed updates to the Policy and associated guidelines. Since 2000, POWER and LAFLA have been deeply involved in Mello Act implementation and enforcement in the County and City of Los Angeles. This includes monitoring and enforcement of individual development projects as well as consultation regarding updates to ordinances and policies implementing the Mello Act.

Pursuant to our settlement agreement, the County is required to seek our input regarding any proposed changes to the Policy and the County cannot revise the Policy unless we agree to the changes. We hereby submit these initial comments based on our experience working with the Mello Act, recent trends and developments, and our ongoing work in the areas of housing law and tenants' rights.

I. Applicability of the Policy – Substantial Renovation as Functional Demolition

The Marina Del Rey Affordable Housing Policy applies to any development in the coastal jurisdictions in the County involving the demolition of residential units or their conversion to non-residential use. The Policy requires the replacement of any housing affordable to low-income residents that may be removed in connection with such a project, and prohibits the conversion of *any* coastal zone housing to non-residential use, with very limited exceptions. These requirements are contained in the State Mello Act as well. In recent years, it has become clear that the Policy's definition of "demolition" must be adjusted to better reflect the intentions of the

Mello Act; i.e., to preserve access to coastal housing for all residents of California. While the Policy has been successful where applicants plan to fully raze a residential structure and replace it with a new structure, the Policy should also address the scenario where a substantial rehabilitation or renovation project is so extensive as to constitute a demolition or render a building unfit for residential use, thereby removing housing from the Coastal Zone for an extended period of time. Accordingly, the Policy's definition of demolition should be revised to state:

"When a renovation or rehabilitation would replace two or more building systems such as supply lines, drain lines, electrical systems, HVAC, or windows, or would otherwise render a building uninhabitable, such substantial renovation/rehabilitation shall constitute Demolition for the purposes of this Policy."

Similarly, projects which remove residential units from the housing market for extended periods of time should also be considered demolitions under the Policy, so that the Mello Act's requirements for the preservation of low-income housing and residential land uses in the Coastal Zone are not circumvented.

II. Initial Screening and Written Mello Determinations

The Policy should be revised to state a clear trigger for the issuance of a written Mello determination with respect to development projects. This determination should make a clear finding regarding the applicability of the Mello Act to the project, and should state the project's obligations for both replacement housing units and inclusionary housing units. This trigger should be as early in the entitlement process as possible to give developers, the County, and community stakeholders a clear understanding of the requirements that apply to a given property; ideally, an initial application for an entitlement would begin the process of determining what Mello Act obligations a proposed development would trigger. This process should include a rent and income survey conducted by the County, which will be used as the basis for findings regarding whether a given project would remove existing housing affordable to low- and moderate-income tenants. Because the County does not have a just cause eviction ordinance, property owners are able to evict tenants for no fault of their own through the issuance of 30- and 60-day eviction notices. A clear and early determination regarding a particular project's replacement housing obligations under the Mello Act would also help deter owners from summarily evicting lower-income tenants in an effort to avoid Mello Act compliance. Therefore, the earliest possible trigger for a Mello determination should be utilized, and the rent and income survey should be performed as soon as possible as well.

III. Determination of Replacement Housing Obligations Under the Mello Act

A. Vacant Units

The Policy's requirements for replacement of low- and moderate-income housing should be strengthened to ensure affordable housing units in the Coastal Zone are not lost; this is a crucial consideration in a time when California and the County are experiencing an affordable housing crisis, with homelessness increasing in the County in recent years. The Policy's replacement requirements should be revised to include a presumption that any units that are vacant at the time the rent and income survey are performed should be deemed affordable units, unless an applicant can demonstrate through credible evidence, under penalty of perjury, that the unit was not previously occupied by a low- or moderate-income household. Such units should not be automatically deemed market rate, which creates incentives for applicants to attempt to displace low- and moderate-income families (through legal or other means) so that their units will be vacant at the time the survey is performed.

The Policy should also be revised to include a requirement that any "cash for keys" or "tenant buyout" agreements, where a landlord reaches a voluntary agreement with a tenant that they will vacate their home in exchange for a monetary payment or other consideration, be reported to the County. This requirement should apply to any cash for keys agreements reached in the 5 years preceding an application which triggers Mello Act obligations under the Policy, and leading up to the time that the Mello determination for the project is issued, and should include forwarding/contact information for each tenant. Tenants entering into such agreements should be asked to complete rent and income surveys to be considered in the Mello determination. As with evictions, any such agreements should be presumed to have been entered into for the purpose of evading Mello

compliance, and the units to which they apply should be presumed affordable if the survey shows the former tenants are low-income or if the cash for keys agreement was not properly reported. Buy-out agreements with a confidentiality clause should be prohibited.

B. Tenant Income Survey and Rent Survey

Where tenant incomes are ascertainable, the Policy requires the affordability of units to be determined based on the income of the tenants occupying those units, rather than the monthly rent which is charged for a given unit. This is important, as the Mello Act's requirements stand regardless of the rent charged for a unit; the Mello Act requires replacement of any unit which is "affordable to" low- and moderate-income tenants. Therefore, the Policy should be revised to remove the two-year lookback period for tenant incomes. In other words, the Mello Act is solely concerned with the income of a tenant at the time their unit is proposed to be demolished or converted, with no requirement that their income have been at a certain level for a certain period of time. The Policy can better achieve the Mello Act's purpose by removing the two-year lookback period, and solely examining a tenant's income for the month or two preceding the application which triggers the Mello Act determination process. This would also improve the process by reducing the administrative burden of carrying out the tenant income survey. Similarly, because the Mello Act contains a strict requirement for the replacement of housing affordable to low- and moderate-income residents, without regard for their particular occupation, the Policy should be revised to remove the exemption for student and resident manager incomes to be included in the survey.

Where tenant income information is not available to assist in determining the affordability of a given unit, the Policy requires the examination of the rents charged for units to be demolished or converted in order to determine an applicant's replacement housing obligation. Where this is done, the Policy should require the examination of rent levels for each unit to be performed within the context of the size of that unit, or the number of tenants who previously occupied that unit, if known. For example, if a unit could accommodate four tenants, this information must be taken into account in order to meaningfully determine whether that unit should be deemed an affordable unit which must be replaced at the previous rent level to comply with the project's Mello obligations.

IV. Determination of Inclusionary Housing Obligations Under the Mello Act

The County should consider deeper income targeting for inclusionary units, such as increased percentages of Very Low Income units, and the requirements of the Policy with respect to inclusionary housing units should be revised to apply to the entirety of a given development project. Currently, the Policy's inclusionary requirements only apply to "net, new units" in a given project. The Mello Act does not contain any provisions to support the "net, new units" limitation, and the limitation should be removed to ensure that the County has the most successful policy possible, especially against the backdrop of increasing homelessness. Similarly, the inclusionary housing requirements stem from the State Mello Act's requirements; because of this, the Policy's language should be corrected to reflect that inclusionary housing is a requirement of certain projects in the Coastal Zone, not merely a goal. The City of Los Angeles has a 10% Very Low Income Inclusionary housing requirement for new coastal zone projects, as part of its local policy implementing the Mello Act, and the City's Policy applies to the entirety of a new development project; it is not limited to net, new units. Finally, in addition to removing the net new limitation from the County's inclusionary housing obligation, the County should consider increasing the inclusionary requirement above 15%.

Moreover, in the County's Policy, the considerations for the feasibility analysis should be revisited to ensure that the most appropriate and accurate methodology, threshold and index for determining feasibility are included in detail in the Policy. This reduces administrative burdens by requiring an "apples to apples" approach in which all feasibility analyses follow a consistent methodology with consistent industry standards, making them more easily understandable and comparable for staff. The current feasibility analysis underestimates the number of affordable units that could be included in a developer's project without any rent subsidy provided by the County. The City of Los Angeles's Mello Act policy requires developers to include 10% Very Low Income units, plus one for one replacement of affordable existing units demolished or converted, without any financial assistance or subsidy from the City.

V. Methods of Compliance

The Policy should also be revised with respect to the methods of compliance which an applicant may utilize to fulfill its replacement and inclusionary housing obligations. Because of the unique nature of development in the Marina, which tends to include larger housing developments than in other parts of the County, the policy should require replacement housing units to be provided on-site. This would ensure that County-owned land does not contribute to the displacement of lower-income County residents, and our experience has been that developers are most successful in achieving their replacement housing obligations when replacement units are provided on-site as part of the planned project.

Finally, the County should consider requiring "like-for-like" in terms of rental and owner units. The Mello Act requires the preservation and expansion of housing opportunities in the Coastal Zone for lower-income residents. This is a goal that the County can further more effectively by requiring that, where affordable housing obligations are triggered by the development of ownership units, those affordable housing obligations be satisfied through the provision of affordable ownership units. Where proposed projects are composed of a mix of ownership and rental units, affordable units required to be provided should be proportional to the mix of rental and ownership units. This would help to increase homeownership opportunities for residents of all income levels, and would avoid a discriminatory situation in which homeownership opportunities are provided for higher-income residents on County land while lower-income tenants are forced to search outside the Marina in order to become homeowners.

Thank you for your consideration of the above comments. We look forward to continuing our discussions to ensure the Marina Del Rey Affordable Housing Policy achieves the greatest possible benefit for the residents of Los Angeles County.

Sincerely,

Alexander B. Harnden
Staff Attorney

Susanne Browne
Senior Attorney

CC: Supervisor Hilda Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Janice Hahn
Supervisor Katherine Barger
Gary Jones, Dir. of Beaches and Harbors
Amy Caves, County Counsel