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January 29, 2015

To: Mayor Michael D. Antonovich
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Sachi A. Hamai
Interim Chief Executive Officer

SACRAMENTO UPDATE - CALIFORNIA STATE AUDITOR'S REPORT ON THE COUNTY-ADMINISTERED COASTAL IMPROVEMENT FUND

This memorandum provides information on the California State Auditor's report on the County-Administered Coastal Improvement Fund (Attached).

On August 14, 2014, the Joint Legislative Audit Committee approved, on consent, a request by Assembly Member Steven Bradford to audit the Coastal Improvement Fund (CIF) due to allegations brought forward by members of the public that the CIF was being mismanaged and that insufficient funds were being contributed and deposited into the fund.

The Coastal Improvement Fund was established in 1996 by joint agreement between the County and the California Coastal Commission to mitigate the impact of development and coastal access in Marina del Rey. Under the terms of the joint agreement, developers in Marina del Rey are required to contribute $600 for every new residential unit proposed for development, with the monies being deposited into an interest-bearing account prior to the issuance of development permits. Pursuant to County Code, the CIF is jointly administered by the Department of Beaches and Harbors (DBH) and the Department of Regional Planning (DRP); however, to ensure accountability, DBH has been delegated sole responsibility for maintaining the account.

On January 27, 2015, the California State Auditor released their report on the findings of the requested audit. The report noted some of the following concerns:

- The County's plan for using the CIF is unclear, contributing to public confusion about the funds collected;
- Project credits for open space allow developers to avoid paying or reduce amounts paid into the CIF; and
- The County did not always ensure that developers paid CIF fees before they obtained building permits, as required by County Code.

The report also made a series of recommendations regarding the County's administration of the Coastal Improvement Fund. Specifically, the report recommended that the County should:

- Post information on specific projects, and expected completion timelines, for which the County intends to spend CIF money to its website;
- Develop a mechanism that will allow the County to verify that developers actually earn the credits they receive; and
- Develop procedures to collect CIF fees and to report that collection prior to issuing building permits.

Departmental Response to Audit Recommendations

The Department of Beaches and Harbors and Regional Planning report that they submitted a joint response letter to the State Auditor concurring with and agreeing to comply with the recommendations contained in the draft Audit Report. In regards to the Auditor Report's comments about the County's awarding of credit to the developers for public open space, the Departments noted that because public recreation areas and access to the coast are fundamental priorities of the Coastal Act and the Marina del Rey Local Coastal Program (LCP), as well as the County and its constituents, the County encourages developers to provide public open space as part of their projects. (See Pages 2 to 4 of the Department's letter for more discussion on this matter).

The Departments of Beaches and Harbors and Regional Planning indicate that they are currently working to implement the recommendations within the next 60 days.

We will continue to keep you advised.

SAH:RA
MR:AO:ma

Attachment

c: All Department Heads
Legislative Strategist

California State Auditor

Elaine M. Howle State Auditor
Doug Cordiner Chief Deputy

January 27, 2015 Letter Report 2014-136

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

The California State Auditor (state auditor) presents this letter report concerning administration of the Coastal Improvement Fund (improvement fund) by Los Angeles County (county). This report concludes that the county needs to do a better job of communicating to the public its plans for using improvement funds to create public open space. To date, the county has neither established a time frame nor developed specific plans for when and how it will use the improvement fund's resources. The county's lack of clarity and urgency on this issue may result from the improvement fund's small ending balance of only $250,000, a figure well below the $1.45 million the county intended to collect when it established the improvement fund fee nearly 20 years ago. The fund balance is small because residential developers can legally avoid paying the fee by obtaining credits for including certain qualifying features in their projects, which, in some cases, appear to have questionable public value. Our review of seven projects that were assessed the fee found that developers for two of the projects avoided paying the fee by obtaining a sufficient amount of credits. Additionally, we noted instances in which the county issued building permits before receiving payments of the fee, and, in one case, the county let several years elapse before receiving payment. Finally, there was one instance in which the county undercollected about $22,000 for the improvement fund because it did not verify that a developer had fully earned its project credits. When we raised the issue with Regional Planning, it took prompt corrective action and recalculated the improvement fund fee. It then notified the developer of the amount owed and received payment in late December 2014.

Background

The Improvement Fund

The county established the improvement fund in 1995[1] with the intended purpose of offsetting the effects of an increased residential population in Marina del Rey by ensuring sufficient open space for its residents. Thereafter, developers of new residential housing units have been required to pay a fee to the improvement fund—$600 per new residential unit[2]—and the county has been required to use the proceeds from these fees to develop new open space or to improve existing

[1] In 1996 the California Coastal Commission approved the creation of the improvement fund as part of its certification of the Marina del Rey Land Use Plan (land use plan).

[2] A 2012 amendment to the county code established an improvement fund fee of $1,200 per new residential unit for certain residential developments that replace public parking lots, and it required the county to start adjusting the $600 fee amount for inflation using the Bureau of Labor Statistics' Consumer Price Index (CPI). For 2014 the fee was $619 per new residential unit.

facilities, such as parks and public walkways. The text box to the right shows the method and assumptions behind the calculation of the improvement fund fee. However, the county code also contains several provisions that allow developers to obtain project credits that can offset their payment of improvement fund fees. Specifically, developers may obtain project credits amounting to $2.30 per square foot if they develop 500 or more contiguous square feet of public open space.[3] The text box below

Public Amenities That Reduce Amounts Owed to the Coastal Improvement Fund

Residential developers can receive credit reducing the payment due to the Coastal Improvement Fund by including amenities such as:

- Bicycle paths
- Community buildings
- Drinking fountains
- Interpretive displays
- Irrigation
- Jogging paths
- Landscaping
- Nonmotorized low-cost boating
- Nonmotorized public boating facilities
- Parking lots
- Pedestrian promenades
- Picnic tables and benches
- Playgrounds
- Recreation centers
- Recreational fields
- Restroom facilities
- Turf
- View decks and areas
- Walkways

Source: Title 22, Division 1, chapters 22.46.1950 and 22.46.1970 of the Los Angeles County Code of Ordinances.

Calculations Behind the County's Coastal Improvement Fund Fee for Marina del Rey

New Residents Calculation	
New residential units	2,420
Estimated residents per unit	x 1.5
Estimated new residents	3,630
Required Open Space Calculation	
Estimated new residents	3,630
County park standard (1 acre per 250 residents)	÷ 250
Acres of open space required	14.5
Fee Calculation	
Estimated development cost per acre	$100,000
Acres of open space required	x 14.5
Total estimated cost to fund required open space	$1,450,000
New residential units	÷ 2,420
Calculated fee per unit	$599.17
Applied fee per residential unit	**$600.00**

Source: Title 22, Division 1, Chapter 22.46.1950 of the Los Angeles County Code of Ordinances.

describes the types of projects for which a developer may receive these credits. The county's Department of Regional Planning (Regional Planning) and Department of Beaches and Harbors (Beaches and Harbors) jointly administer the improvement fund, as the county code requires.

The County's Process for Assessing Improvement Fund Fees

All development in Marina del Rey requires a coastal development permit to ensure that the development conforms to the Marina del Rey land use plan and the

[3] The 2012 amendment to the county code also required the county to use the CPI to adjust the $2.30 credit amount for inflation. For 2014 the county gave developers a credit amount of $2.37 per square foot of public open space.

Specific Plan,[4] which is contained in the county code. A coastal development permit for Marina del Rey is a discretionary permit that generally requires the Los Angeles County Regional Planning Commission (planning commission) to exercise judgment and to deliberate at a public hearing before deciding to approve or disapprove a project seeking this type of permit.[5] In addition to reviewing the application and the project plans for coastal development permits, Regional Planning staff also determine whether improvement fund fees apply to projects; when applicable, the staff calculate those fee amounts. If the developer claims any improvement fund credits, Regional Planning staff determine whether the credits are consistent with the land use plan.

For the planning commission hearing, Regional Planning prepares a staff report with project information and recommendations, draft findings, and draft conditions stipulating the improvement fund requirements. At times the conditions also specify the estimated amount due to the improvement fund, if applicable. The county code requires the county to collect the improvement fund fee from the developer before the developer obtains a building permit from the county's Department of Public Works (Public Works). Public Works issues building permits only after receiving notice from all applicable agencies—including Regional Planning as well as Beaches and Harbors—that all conditions have been satisfied for issuance of the building permit.

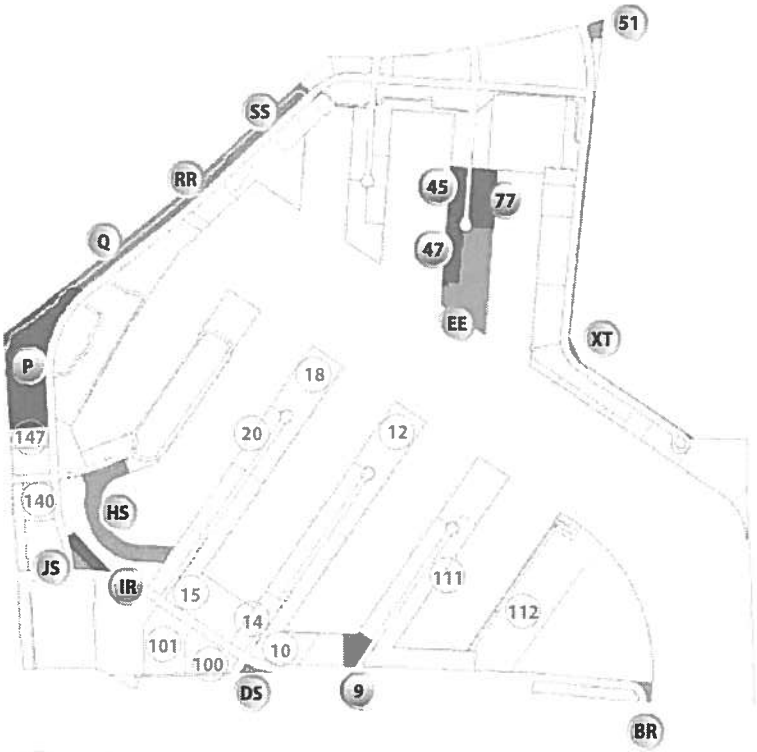
An Overview of Existing and Proposed Open Space Improvements in Marina del Rey

According to county documents, Marina del Rey has more than 44 acres designated as open space. As of November 2014 the county had developed about 25 of these acres and had proposed plans for developing open space on the remaining 19 acres, as shown in Figure 1 on the following page. The largest undeveloped portion of open space is Parcel P, which includes Oxford Basin and which was previously an underdeveloped wetland area of roughly 10 acres. According to Beaches and Harbors, the county began an open space development project on Parcel P in December 2014 that it expects to complete in 12 months. Another significant undeveloped section of open space is the planned expansion of Parcel EE—Chace Park. The county intends to expand the park into parcels 45, 47, and 77; however, when this expansion will take place is uncertain.

[4] The Specific Plan serves as an implementation mechanism for the Marina del Rey land use plan, and it establishes development standards and guidelines that are the regulatory basis for future development, preservation, and reconstruction efforts in Marina del Rey.

[5] Following the planning commission's decision on a coastal development permit, any interested party may appeal decisions about certain development projects in Marina del Rey to the county's board of supervisors. Appeals must be submitted within 14 days of the hearing decision. Similarly, the board of supervisors' hearing decisions regarding certain projects may be appealed to the California Coastal Commission.

Figure 1
Existing and Proposed Park Areas Designated as Open Space in Marina del Rey



PARCEL	ACRE SIZE (AC)	DESCRIPTION
Existing Park Areas		
Q	2.74	Burke Park; open space and parking
RR	2.12	Burke Park
SS	3.40	Burke Park
51	0.52	Gateway green space
XT	1.23	Area A buffer
EE	7.19	Chace Park
BR	0.67	Green space near main channel
DS	0.72	Green space near gateway
JS	0.36	Green space near gateway
HS	5.90	Marina Beach
Total AC	24.85	
Proposed Park Areas		
45	1.80	Chace Park expansion
47	1.92	Chace Park expansion
77	2.92	Chace Park expansion
9	1.46	Wetland park
IR	1.00	Open space in support of Marina Beach
P*	10.26	Oxford Basin
Total AC	19.36	

(#) = Other parcels we discuss in the report where residential development has occurred or is planned.

Sources: Los Angeles County Department of Beaches and Harbors (Beaches and Harbors) staff and the Los Angeles County Code Section 22.46, maps 3 and 8.

Note: The figure does not include the publicly accessible open space, such as pedestrian promenades along the waterfront, which have been provided by residential developers. Also, with the exception of parcels 9 and IR, the figure does not show portions of other parcels that have existing or proposed open space.

* According to a planning specialist at Beaches and Harbors, Parcel P development will begin on December 9, 2014, and is expected to take 12 months to complete.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the state auditor to audit the county's administration of the improvement fund. Specifically, the audit committee asked the state auditor to review the improvement fund's revenues, expenditures, and fund balance for the past three years. The audit committee also asked us to identify the number of residential building permits issued and whether the fees were collected. Finally, the audit committee asked us to determine whether the reasons and justification for the county's not collecting any fees complied with applicable criteria.

We obtained an understanding of Regional Planning's process for approving development requests and for assessing the improvement fund fee by reviewing project files and by conducting interviews with the staff responsible for development projects in Marina del Rey. We also reviewed Regional Planning's case-processing manual and draft management policy for the improvement fund. Additionally, we reviewed documentation for development projects that the planning commission approved, including the conditions of approval.

To identify revenues, expenditures, and the fund balance of the improvement fund, we interviewed personnel and obtained and reviewed accounting records from Beaches and Harbors, which is responsible for the improvement fund's accounting. We noted that between July 2011 and June 2014, the county did not charge any expenditures to the improvement fund and that only one developer made a payment to the improvement fund. Finally, we evaluated the county auditor-controller's 2013 review of the improvement fund balance.

Although the audit committee requested that the state auditor review improvement fund activities for the past three years, when possible, we expanded our period of review to 19 years—from the 1995 establishment of the fund to 2014—because most of the new residential development projects to which improvement fund fees might have applied were approved more than three years ago. To determine the number of building permits issued and whether the improvement fund fees were collected, we interviewed personnel at Regional Planning and at Public Works and obtained data from the departments' respective databases. We first reviewed each database independently to identify all the projects and building permits to which improvement fund fees might have applied. Next, we identified the date that Public Works issued a building permit and identified when the developer submitted payment to the improvement fund. Finally, we reviewed how Regional Planning awards credits to developers that are seeking reductions to the amounts they owe to the improvement fund.

The County's Plan for Using the Improvement Fund Is Unclear, Contributing to Public Confusion About Plans for the Funds Collected

When it established the improvement fund, the county contemplated using money in the improvement fund to create park facilities on specific parcels in Marina del Rey, including Parcel FF (now Parcel 14). However, in February 2012, the California Coastal Commission certified an amendment to the land use plan that altered the designation of Parcel FF from *open space* to *residential.* After that, it became clear that the improvement funds would no longer be used to develop park facilities on what was Parcel FF. However, as the land use plan has evolved, the county has not clearly updated the public regarding how it specifically intends to use the amounts collected in the improvement fund to develop additional open space throughout Marina del Rey. For example, an individual reading the county code today would continue to see mention of Parcel FF (which no longer exists) and that parcel's linkage to open park space and the improvement fund fee.

The planning specialist at Beaches and Harbors asserted that the primary purpose of the improvement fund is not necessarily to finance the development of specific open space on specific parcels, but rather to increase the overall density of public open space in Marina del Rey to correspond with the area's planned increase of 2,420 new residential units. Staff from Beaches and Harbors believe they are achieving this goal by incentivizing developers to include

certain features in their development projects in exchange for credits, which developers then use to reduce or eliminate the need to pay the improvement fund fee. In essence, the county has foregone the money it otherwise would have received from developers in exchange for residential projects that include space that is open to the public, such as promenades, landscaping, and parking lots.

Since establishing the improvement fund nearly two decades ago, the county has received significantly less than the $1.45 million it originally planned when it established the fee. Based on past performance of the fund and the county's willingness to accept the public space that residential developers provide in lieu of fee payments, it seems unlikely that the improvement fund will ever accumulate sufficient amounts to become a significant single funding source for the development of new open space, such as a neighborhood park. Instead, according to the planning specialist at Beaches and Harbors, the county intends to use other county funds, along with the improvement fund, to develop open space projects in Marina del Rey, such as the expansion of Chace Park and the development of a wetland park proposed for Parcel 9. However, when these projects will actually begin remains uncertain. Without a clear plan and timeline for using improvement funds, and with developers receiving credits for open space that has questionable public value, as we discuss in the next section, the public will likely continue to ask whether the county is sufficiently mitigating the impact of the increasing local population through the creation of additional public open space.

Generous Yet Permissible Project Credits Allow Developers to Avoid Paying Into the Improvement Fund

Since it established the improvement fund in 1995, the county has approved nine development projects in Marina del Rey. However, developers have been able to significantly reduce the amounts they owe to the improvement fund by receiving credits from the county in exchange for creating or improving public open space. As Table 1 on the following page shows, the nine development projects would have generated $1,308,000 in gross fees for the improvement fund; however, the awarded credits allowed developers to reduce their payments. Specifically, the $642,000 in credits for the five projects shown in Table 1 reduced the gross fees on those projects by 83 percent, from roughly $775,000 to $133,000. Overall, the $642,000 in credits that developers received thus far for promenades, walkways, and landscaping, among other improvements, have translated to more than six acres of developed public open space, when converted at roughly $2.30 per square foot.

We believe that the county's extending of some of these credits to developers may be too generous. For example, Regional Planning has been generous in awarding about $241,000 in credits to developers for pedestrian promenades that also serve as fire access roads. Regional Planning's practice has been to award credits for the entire area of the pedestrian promenades instead of for just those portions unrelated to fire access that conform to the open space policy. Although the land use plan does not legally preclude Regional Planning from granting credits to developers for entire promenades, we noted that doing so means the improvement fund loses additional revenue to achieve its goals. The county awarded about $212,700 in project credits to the developer of a project on parcels 12 and 15 for portions of pedestrian promenades that also serve as fire access roads. Additionally, Regional Planning awarded almost $28,300 in project credits to another developer of a project on Parcel 20 for portions of a waterfront promenade

that also serves as a fire access road. If Regional Planning had granted credits only for the portions of the promenades not pertaining to fire access, these two developers would have received about $94,400.

Table 1
Coastal Improvement Fund Contributions

PARCEL NUMBER	GROSS COASTAL IMPROVEMENT FUND (IMPROVEMENT FUND) FEE ASSESSED	PROJECT CREDIT RECEIVED*	NET IMPROVEMENT FUND FEE DUE	NET IMPROVEMENT FUND FEE PAID
18	$76,800	$0	$76,800	$76,800
12/15	374,043	297,921	76,122	76,122
20	59,400	37,513†	21,887†	0†
111/112	72,000	72,000	0	0
140	64,800	29,578	35,222‡	35,220‡
100/101	205,200	205,200	0	0
147	138,966	0	138,966	0§ (building permit obtained)
10	163,416	Not yet determined‖	Not yet finalized	Not paid (no building permit)
14	153,594	Not yet determined‖	Not yet finalized	Not paid (no building permit)
Totals	$1,308,219	$642,212	$348,997	$188,142

Sources: California State Auditor's review of Los Angeles County Department of Regional Planning (Regional Planning) and Department of Beaches and Harbors' coastal development project files, review of Department of Public Works' database of building permits issued in Marina del Rey, and interviews with Regional Planning's principal planner.

* *Project Credit Received* include only those credits given to the developer up to the amount of the *Gross Improvement Fund Fee Assessed.* Two developers received credits in excess of the gross assessed improvement fund fee, including $83,950 in credits for Parcel 111-112 and $228,965 in credits for Parcel 100-101.

† This developer initially received credits in excess of the gross improvement fund fee assessed; however, it did not build all of the public open space outlined in the coastal development permit approval conditions. Therefore, Regional Planning recalculated the improvement fund fee and project credits and in November 2014 charged the developer the difference of $21,887. Payment was received in late December 2014.

‡ Due to an immaterial error in the improvement fund fee calculation, the developer was charged and paid $2.30 less than it owed.

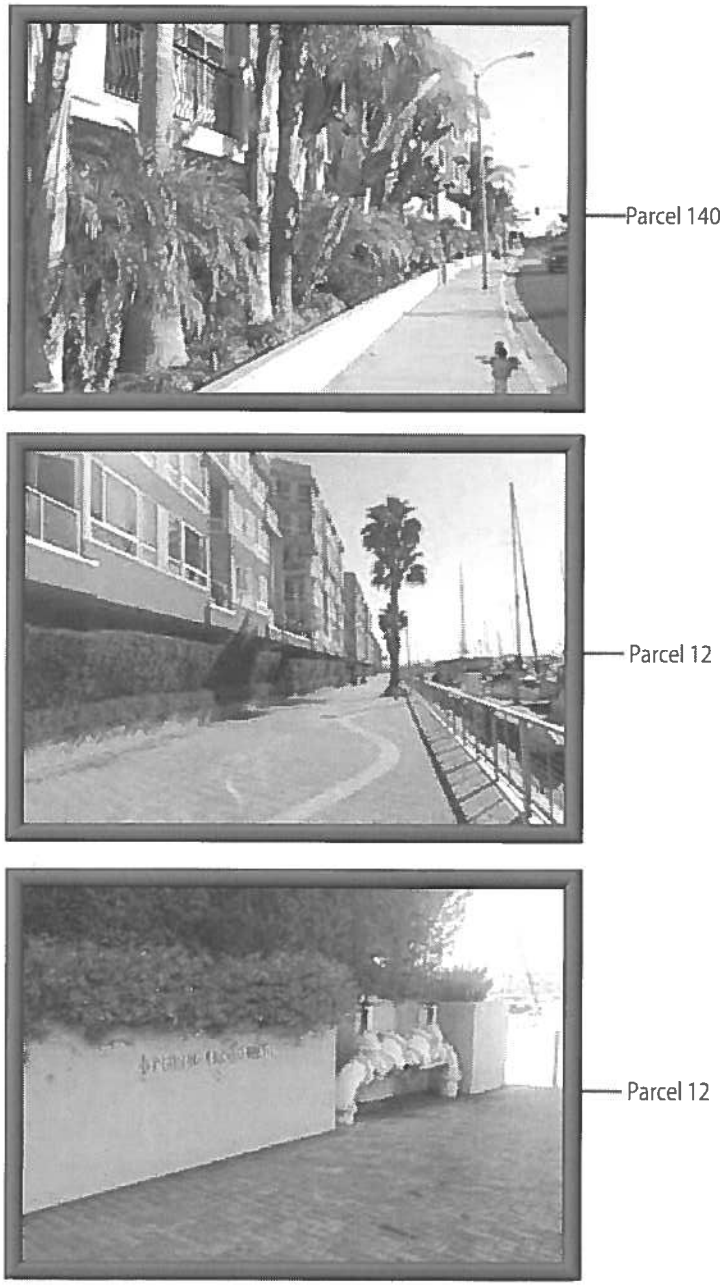
§ Although this developer has not started building, it was issued a building permit prematurely as it has not paid the improvement fund fee. Regional Planning billed the developer for the full improvement fund fee amount in November 2014.

‖ The developers for these projects have not requested any credits; however, Regional Planning staff indicated that these developers can still request credits since they have not started building these developments. The net improvement fund due will depend on the final project credits received.

As Figure 2 on the following page shows, some developers received credits for space that is clearly marked as public open space and that is accessible to the public. However, in another case, a developer received credits for space that was not clearly marked as available to the public, and we question whether anyone other than the residents of that development will benefit from such space. In particular, a developer built an additional 342 residential units on parcels 100 and 101 in Marina del Rey and received credits that offset more than $205,000 in improvement fund fees by including landscaping, pedestrian walkways, parking spaces, and

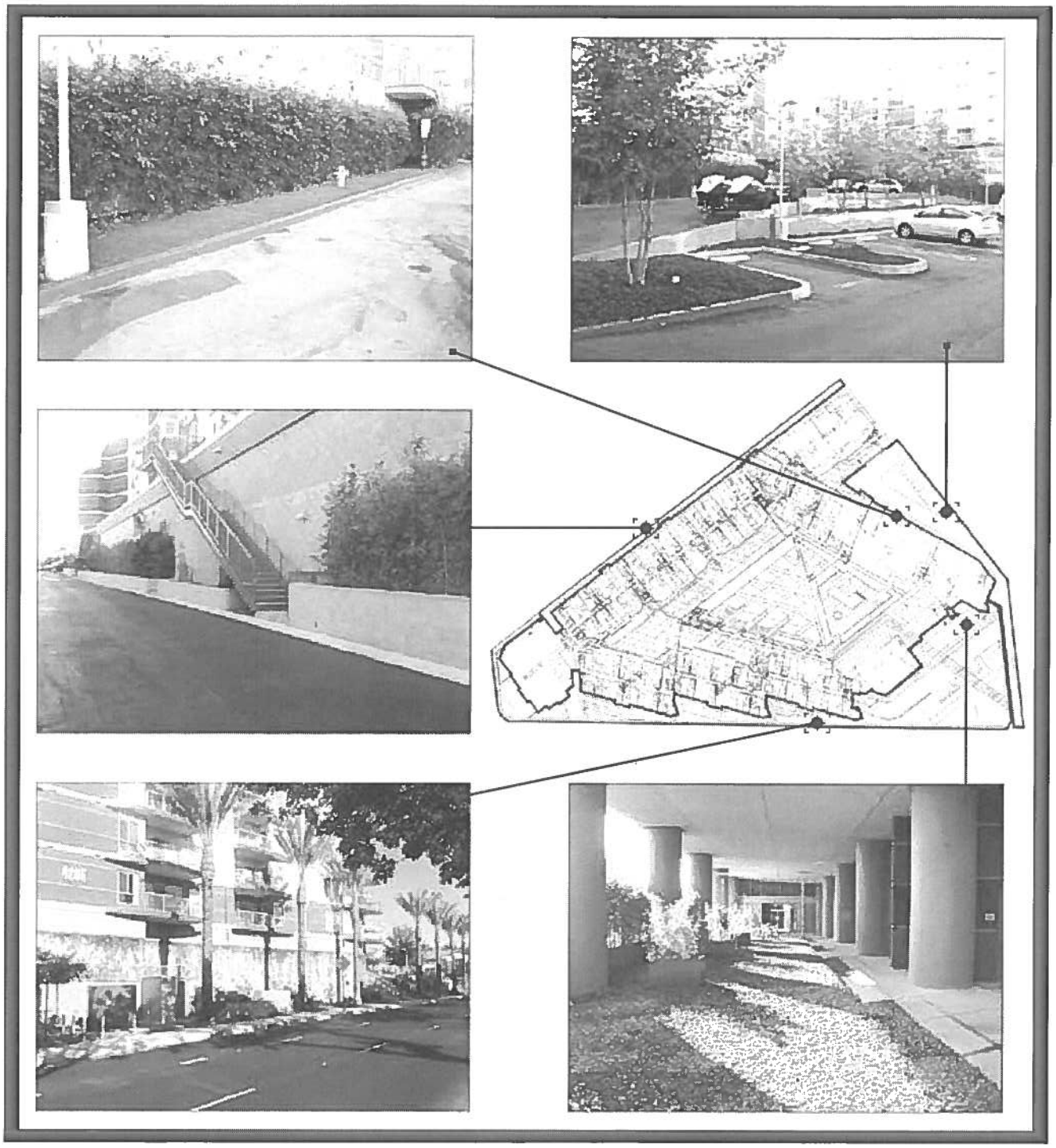
roadway access to the parking spaces. These credits appear to be allowable improvements according to the county code; however, as the photographs in Figure 3 on the following page demonstrate, it is unclear whether the general public is aware of, benefits from, or even uses these open spaces. For example, we think it unlikely that the general public will benefit from the gravel courtyard in front of the residential building. Furthermore, we noted that the parking spaces at this property were marked "guest parking" or were not marked at all, and this situation may cause some members of the public to assume that the parking spaces are for residents only.

Figure 2
Examples of Project Credits Claimed in Marina del Rey That Are Clearly Accessible to the Public



Sources: Photographs taken at Parcel 140 (top) and Parcel 12 (middle, bottom) by auditors during site visits.

Figure 3
Examples of Generous Yet Permissable Project Credits Claimed on Parcel 100-101 in Marina del Rey



Sources: Site plan obtained from the Los Angeles County Department of Regional Planning's coastal development project file and photographs taken at Parcel 100-101 by auditors during site visits.

Because the developers received significant credits for their respective projects, the improvement fund balance, including interest, was just below $204,000 at the end of fiscal year 2013–14, as Table 2 shows. Further, from September 2004 through November 2014, all of the improvement fund revenues—with the exception of one developer's contribution of $35,220 in November 2011—have come from interest earnings. Before this November 2011 contribution, the last payment to the improvement fund by a developer occurred in August 2004. In addition, since it was established, no expenditures have ever been made from the improvement fund.

Table 2
Coastal Improvement Fund Balance
Fiscal Years 2011–12 Through 2013–14

	FISCAL YEARS		
	2011–12	2012–13	2013–14
Beginning Balances	**$164,973**	**$201,436**	**$202,721**
Revenue			
Developer fees	35,220	0	0
Interest earnings	1,243	1,285	1,277
Expenditures	0	0	0
Ending Balances	**$201,436**	**$202,721**	**$203,998**

Source: Fiscal years 2011–12 through 2013–14 unaudited accounting data from the Los Angeles County's Electronic Central Accounting and Purchasing Systems.

Note: In December 2014 the Los Angeles County Department of Beaches and Harbors received a payment of $45,461, which increased the Coastal Improvement Fund's ending balance to about $250,000.

The County Did Not Always Ensure That Developers Paid Improvement Fund Fees Before They Obtained Building Permits, as the County Code Requires

Our review showed that the county did not always collect improvement fund fees before developers obtained building permits, as the county code requires. According to the code, improvement fund fees must be collected before Public Works issues building permits. However, Regional Planning and Beaches and Harbors lack a formalized process for ensuring compliance with this requirement. As a result, Public Works issued building permits to two developers before they paid the improvement fund fees they owed.

Public Works provides developers with a form listing all of the agencies, including Beaches and Harbors as well as Regional Planning, from which developers must obtain approval before receiving their building permits. According to a senior civil engineer at Public Works, although Public Works must ensure that each agency listed on that form gives its approval before Public Works issues a building permit, each agency is responsible to ensure that the developer has met all requirements related to that particular agency. Once Public Works staff receive approval from all applicable county agencies, Public Works assumes that the developer has satisfied all relevant requirements, such as payment of the improvement fund fee.

Before June 2013 Regional Planning and Beaches and Harbors jointly administered the improvement fund, and both agencies collected and deposited fees into their own separate accounts. A county review in June 2013 took issue with this practice and recommended that all fees be deposited into a single interest-bearing account and that both agencies develop formal policies for administering the fund. Both agencies now agree that Regional Planning awards credits and calculates the fees due from developers while Beaches and Harbors collects and deposits the amounts collected; however, formal policies and procedures that will preclude Public Works from issuing building permits prematurely have yet to be finalized. For example, the county has not completed protocols for how Regional Planning should inform Beaches and Harbors of the amounts due from developers, and Beaches and Harbors has yet to formalize how it will inform Public Works that developers have paid their fees. Regional Planning provided us with draft procedures that it plans on finalizing in February 2015. However, these draft procedures do not currently specify necessary communications with Public Works regarding fee payments.

In fact, the prior lack of clarity about which department was responsible for collecting the applicable fees and for informing Public Works that the fees were paid may have contributed to developers' obtaining building permits without first paying their improvement fund fees. For example, one developer received a building permit in 2007 and did not pay the $35,000 fee until more than 4.5 years later. Another developer, whose project on Parcel 147 Regional Planning approved in 2012, obtained a building permit in August 2013—just after the county auditor-controller's review was published—but the developer has yet to pay the nearly $139,000 in improvement fund fees that it owes. When we raised this issue with Regional Planning, the principal planner acknowledged that this delayed payment was an oversight but asserted that the developer had not yet started construction. Regional Planning sent a letter in November 2014 informing the developer of the error and requesting immediate payment of improvement fund fees. As of early December 2014, the county had not yet received this payment. We are concerned that even after the county auditor-controller published its review—and despite the specific requirement in the county code that payment of the fee must take place before a developer receives a building permit—this developer was able to obtain a building permit without paying the applicable improvement fund fee. Until both Regional Planning and Beaches and Harbors finalize their procedures, the county will continue to run the risk of issuing building permits to developers that have not paid their respective improvement fund fees.

Regional Planning Did Not Verify That a Developer Fully Earned Its Project Credits, Resulting in an Undercollection of Approximately $22,000 for the Improvement Fund

One developer initially received nearly $22,000 in project credits for a public parking structure that was supposed to be built by December 2007, but was not.[6] However, the county failed to adjust the amount of improvement fund credits and failed to recalculate the improvement fund fees due until we raised the issue during our audit. The county acknowledged its oversight and billed the developer for the amount owed.

[6] The planned parking structure was to be 12,740 square feet and valued at $29,302 (or $2.30 per square foot) in project credits. Regional Planning ultimately billed the developer about $22,000 because the developer had excess credits resulting from other project features, such as waterfront promenade space.

For this particular development, the developer initially received credits in excess of the improvement fund fee for a two-phase project on Parcel 20 in Marina del Rey. The first phase largely consisted of constructing a 99-unit apartment building, which the developer has completed. The second phase, which has not been built, includes building a five-level parking structure containing 231 public parking spaces for which the developer received roughly $22,000 in project credits. The coastal development permit conditions for this project specifically required the developer to complete this phase no later than December 21, 2007. Seven years later, the developer has yet to start building this structure. Furthermore, the lot where the structure should have been built is currently being used as private parking (as Figure 4 on the following page shows), which does not constitute legitimate public open space.

When we raised the issue with Regional Planning, the principal planner acknowledged that this development had not been completed and took prompt corrective action. Following our inquiry, Regional Planning recalculated the improvement fund fee for the project, removed the credits awarded for the parking structure, and notified the developer that it owed the remaining balance of about $22,000. Although Regional Planning billed the developer in November 2014, the county had yet to receive payment as of early December 2014.[7]

Regional Planning has a zoning enforcement unit (enforcement unit) responsible for inspecting this and other developments annually to determine compliance with permit conditions. However, in this case, the enforcement unit did not verify that the developer actually earned some of the credits it received from the county because, according to the principal planner, the county neglected to communicate the amount due for the improvement fund fee and the related project credits in the permit's conditions. In late December 2014 the principal planner also stated that Regional Planning had developed standard condition language that will be incorporated into all future conditions of approval for projects subject to the improvement fund fee.

Recommendations

To ensure that the public is informed of the county's plans for using the improvement fund, the county needs to more clearly communicate its intentions and then update such communications as its plans change. The county's communications could be as simple as a public notice and a posting to its Web site that include the following:

- Information on the specific projects and parcels in Marina del Rey where it intends to spend money from the improvement fund for the development of open space (or a time frame for making such a decision).

- The time frame for the expected start and completion of such projects.

[7] The developer submitted payment in late December 2014, subsequent to the conclusion of our audit fieldwork.

Figure 4
Planned Development Versus Actual Development and "No Parking" Signs on Parcel 20

Sources: Los Angeles County Department of Regional Planning's coastal development project files (top), Google Earth maps (middle), and photographs (bottom) taken at Parcel 20 by auditors during site visits.

To better ensure that developers do not obtain building permits before they pay the fee to the improvement fund, the county needs to finalize its improvement fund management procedures regarding the collection of the fee and the reporting of that collection to Public Works. Specifically, such policies should include the following:

- A protocol for how Regional Planning communicates the amount due to Beaches and Harbors.
- A protocol for how Beaches and Harbors informs Public Works that the developer has paid the fee to the improvement fund.

To ensure that developers do not receive project credits to which they are not entitled, the county should develop a mechanism that will allow its enforcement unit to verify that the developer actually earned the credits it received.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Date: January 27, 2015

Staff: Grant Parks, Audit Principal
Tram Thao Truong
Brett Noble, MPA

Legal Counsel: Stephanie Ramirez-Ridgeway, Sr. Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

January 12, 2015

Richard J. Bruckner
Director

Ms. Elaine M. Howle*
State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle:

COUNTY OF LOS ANGELES RESPONSE TO THE MARINA DEL REY COASTAL IMPROVEMENT FUND AUDIT REPORT

The County of Los Angeles (County) appreciates the opportunity to provide comments on the draft Audit Report prepared by the State Auditor regarding the Marina del Rey Coastal Improvement Fund (Fund), which is jointly administered by the County Departments of Beaches and Harbors (DBH), and Regional Planning (DRP).

The County agrees with the recommendations of the draft Audit Report. Implementation of the recommendations will enhance and encourage public understanding of the County's collection, use, and management of the Fund proceeds, and will strengthen collaboration between County departments with respect to management and collection of the fund.

This letter presents the County's proposed actions to implement the recommendations of the draft Audit Report. The County additionally wishes to clarify its policies with respect to open space in Marina del Rey, including the importance placed by the County and its constituents on a connected system of public pedestrian promenades throughout Marina del Rey. Finally, this letter provides factual clarifications and updates regarding action by the County to collect outstanding Fund fees from developers. ①

<u>County Response to Recommendations</u>

The draft Audit Report provides three recommendations:

Recommendation No. 1 – "To ensure that the public is informed of the county's plans for using the improvement fund, the county needs to more clearly communicate its intentions and then update such communications as its plans change. The county's communication could be as simple as a public notice and a posting to its web site that include the following:"

* California State Auditor's comments begin on page 20.

- "Information on the specific projects and parcels in Marina del Rey where it intends to spend money from the improvement fund for the development of open space (or a time frame for making such a decision)."
- "The time frame for the expected start and completion of such projects."

The County will implement the recommendations by creating a dedicated webpage with prominent placement on DRP's and DBH's websites for information specifically on the Fund. These webpages will include, among other things, information on specific projects in Marina del Rey where Fund money is planned to be used, and expected time frames for project start and completion dates, when known.

Recommendation No. 2 – "To better ensure that developers do not obtain building permits before they pay the fee to the improvement fund, the county needs to finalize its Coastal Improvement Fund Management procedures regarding the collection of the fee and the reporting of that collection to Public Works. Specifically, such policies should include the following:"

- "A protocol for how Regional Planning communicates the amount due to Beaches and Harbors."
- "A protocol for how Beaches and Harbors informs Public Works that the developer has paid the fee to the improvement fund."

The County will finalize the Draft Coastal Improvement Fund Management Procedures by February 2015. The procedures will formalize communication protocols between the DRP, DBH, and Public Works as it relates to the Fund.

Recommendation No. 3 – "To ensure that developers do not receive credits to which they are not entitled, the county should develop a mechanism that will allow its zoning enforcement unit to verify that the developer actually earned the credits it received."

As noted in the report, the County has developed standard condition language that will be incorporated into all future conditions of approval for projects subject to the Fund. The condition language will more clearly state the fees due and/or project credit received so that our Zoning Enforcement Team can verify the conditions have been implemented.

County's Policy Regarding Open Space in Marina del Rey

Marina del Rey is an unincorporated County community initially developed to provide public access to and recreation along the coastline. The County is charged with determining the land use and coastal access policies applicable to Marina del Rey, under the stewardship and oversight of the California Coastal Commission (Coastal Commission). The County developed the Marina del Rey Local Coastal Program (LCP), which consists of the Marina del Rey Specific Plan (Specific Plan) and Land Use Plan (LUP), with significant input from residents and other stakeholders, as well as the Coastal Commission. The Coastal Commission first certified the LCP in 1984, and

certified major amendments to the LCP in 1996 and 2012. Development of the policies contained in the LCP can be best described as a dialog among all stakeholders to ensure the purposes for developing Marina del Rey in the first place is maintained – public recreation and coastal access – while balancing other stakeholder interests in the area and remaining consistent with the Coastal Act.

The Specific Plan sets forth the requirements of the Fund, which is designed to mitigate impacts of new residential development in Marina del Rey by providing funds to develop open space in Marina del Rey. The Fund provides for the collection of fees on a per-unit basis from residential developers, but equally as important, allows developers to receive Fund credit by providing open space on-site.

While the draft Audit Report appears to disfavor the awarding of credit for on-site public open space, the development of such on-site public open space is essential to providing meaningful and accessible open space to visitors and residents in Marina del Rey. Without public on-site open space in residential developments, public open space would likely occur only in designated public-serving areas in the Marina, meaning the public's ability to access the coast and recreate would be more limited. (2)

A principal example of the benefits Fund credits have provided is the series of interconnected public pedestrian promenades, which are heavily-utilized year around in Marina del Rey. One of the County's primary goals is to provide a continuous public pedestrian promenade around the entire harbor granting public access to the coast as well as providing a significant source of public recreation to the residents and visitors of Marina del Rey.

The draft Audit Report further states that the DRP was generous in awarding approximately $241,000 in credits to developers for pedestrian promenades that also serve as fire access roads. The County provided photographs depicting such promenades to the auditors during the audit process. There is no distinction between the portion of the promenade designated as a fire lane and the remainder of the promenade, other than the requirement that the fire lane portion remains clear of benches or other obstacles. Such promenades are fully improved public pedestrian rights-of-way which provide access to the Marina basins and recreational activities such as walking and jogging through the Marina and along the waterfront. They are not available for general vehicular access, and for all intents and purposes function as public pedestrian facilities at all times except during emergencies. (3)

The draft Audit Report also states that, "although the land use plan does not legally preclude Regional Planning from granting credit to developers for the entire promenade, we noted that doing so means the improvement fund loses additional revenue to achieve its goals." The County disagrees with this as a matter of policy. The construction by private developers of promenade facilities is integral to the County's plan for public access along the waterfront in Marina del Rey. Encouraging the development of such promenades, including the portions designated as fire lanes, serves a priority County Coastal Commission interest. (4)

Finally, the monetary cost for the development of a public pedestrian promenade can range from $13 per square foot for a simple concrete promenade, to over $30 per square foot when pavers are used. This is significantly more than the $2.30 per square foot of project credit given under the Fund. There is a great benefit in having the developer absorb the cost of these improvements, rather than covering the cost of planning, permitting, and constructing them with monies from the Fund.

Clarification of Factual Points and Updates Regarding County Action to Collect Fund Proceeds

In the Section titled: **The County's Plan for Using the Improvement Fund Is Unclear, Contributing to the Public Confusion About Plans for the Funds Collected:**

1. The report states that since the 2012 Major Amendment to the LCP when the designation for the Lease Parcel formerly known as FF (now Parcel 14) was changed from Open Space to Residential III and V, the County has not clearly updated the public on how it intends to use the Fund to develop additional open space. To the contrary, the County from the beginning of the major amendment process made it clear to the public through staff reports and public discussion that the open space replacement for the previously proposed two-acre park on Parcel 14 would be a 1.46 acre wetland park on Parcel 9 and development of transient docks adjacent to Parcel 9. In addition, the County added 7.1 acres of dedicated open space to Chace Park. With these improvements, the total added open space in Marina del Rey would be 19.26 acres, which is almost 7 acres more than the 12.7 acres contemplated in the LCP, prior to the 2012 major amendment. (5)

2. The report states that since establishing the Fund nearly two decades ago, the County has received significantly less than the $1.45 million it originally planned when the fee was established. It is important to note that the $1.45 million referenced in the report assumes the maximum build out of all 2,420 residential units, however less than half of those units have actually been built, (specifically 1,051 units). (6)

In the Section titled: **Generous Yet Permissible Project Credits Allow Developers to Avoid Paying Into the Coastal Improvement Fund:**

The report states that nine development projects subject to the Fund would have generated $1,308,000 in gross fees for the Fund. That is an oversimplification of the matter as only six of the nine development projects have been built or have building permits as of the time of this report and one project was approved by the Coastal Commission and; therefore, it should be expected that less than the maximum of the $1.3 million will be collected. (7)

Ms. Elaine M. Howle
January 12, 2015
Page 5

In the Section titled: **Regional Planning Did Not Verify That a Developer Fully Earned Its Project Credits, Resulting in an Under-Collection of Approximately $22,000 for the Improvement Fund:**

The report states that DRP billed the developer in November 2014 and payment has not yet been received as of early December 2014. The County received payment in the amount of $21,887.00 on December 29, 2014 (receipt attached).*

Thank you again for the opportunity to provide comments on the draft Audit Report.

Sincerely,

Richard J. Bruckner
Director

RJB:AG:ag:ems

Gary Jones, Director
Department of Beaches and Harbors

GJ:MT

Attachment: Parcel 20 proof of payment

c: Supervisor Don Knabe (Julie Moore, Steve Napolitano)

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* We are not publishing the attachment because it contains confidential financial information.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE JOINT RESPONSE FROM THE LOS ANGELES COUNTY DEPARTMENT OF REGIONAL PLANNING AND THE DEPARTMENT OF BEACHES AND HARBORS

To provide clarity and perspective, we are commenting on the joint response from the Los Angeles County Department of Regional Planning (Regional Planning) and the Department of Beaches and Harbors (Beaches and Harbors). The numbers below correspond to the numbers we have placed in the margins of the response.

(1) We stand by the factual accuracy of our letter report and do not believe it requires further clarification. We more fully address Regional Planning and Beaches and Harbors' joint responses in our comments below.

(2) Regional Planning and Beaches and Harbors incorrectly claim that our report disfavors the awarding of credits for the on-site public open space created by developers. To clarify, our report concludes that some of the credits awarded were generous (albeit allowable) under the Marina del Rey local Land Use Plan (land use plan). For example, Figure 3 on page 9 depicts examples of a project that we considered to have received generous credits, such as a gravel courtyard at the entry way of a residential property and parking spaces not clearly marked as available for public use. We do not believe these are examples of open space that would benefit the general public.

(3) Regional Planning takes issue with our conclusion that it was generous in awarding credits for the entire portion of various public promenades, instead of just the portion not needed for fire access lanes. We stand by our conclusions. We recognize, as we state on page 6, that nothing legally precludes Regional Planning from granting credits for the entire promenade. However, developers were already required to provide space for fire access lanes and nothing requires Regional Planning to grant credit for that space. In fact, the county's municipal code states that credits shall be granted (that is, at a minimum) for that portion of the pedestrian promenade or view corridor not designated as a fire access road.

(4) We stand by the statements in our report. On page 5 we state that the Coastal Improvement Fund (improvement fund) and the related fee were established with the thought of developing public park facilities on specific parcels in Marina del Rey. However, those goals and plans have changed over time with amendments to the local land use plan. Our critique was that Regional Planning and Beaches and Harbors should be more explicit with the public regarding their planned uses for the improvement fund. We are pleased that both agencies fully intend to

implement our recommendation and identify which specific projects will receive financial support from the improvement fund. We will be monitoring Regional Planning and Beaches and Harbor's efforts in its 60-day, six-month, and one-year response to our audit.

(5) Regional Planning and Beaches and Harbors imply that they have already made clear to the public their plans for using the proceeds from the improvement fund. Contrary to this assertion, the Los Angeles County's (county) own code currently links Parcel FF—a parcel which no longer exists—in Marina del Rey to the creation of open space by using the improvement fund as we state on page 5. Such a condition only serves to confuse the public regarding how the improvement fund will be used.

(6) Our report makes no such assumption regarding a maximum build out of residential units. The county's goal at the time it created the improvement fund was to collect $1.45 million to develop open space on specific parcels. If over 1,000 units have been built—or roughly half the planned number of residential units as indicated in the response—then our report's conclusion that the improvement fund is unlikely to become a significant single source of funding is further confirmed. The improvement fund has a balance of $250,000, well below $725,000, which is one-half of the county's $1.45 million funding goal, as stated in the county's code.

(7) Regional Planning and Beaches and Harbors have mischaracterized what we said in the report. Page 6 of our report states that the $1.3 million amount represents the gross fees (prior to applying credits). Table 1 on page 7 provides an overview of gross fees, applied credits, and the resulting amounts paid and due to the improvement fund. Furthermore, Table 1 clearly shows that three projects have not been built yet. Finally, on page 6 we further explain how, for a subset of completed projects shown on Table 1, developers were able to reduce what they owed to the improvement fund by 83 percent.