City of Carson
Report to Mayor and City Council

July 5, 2011
New Business Consent

SUBJECT: CONSIDERATION OF RESOLUTION NO. 11-090 VACATING RESOLUTION NO. 07-106 AND DENYING TENTATIVE PARCEL MAP NO. 27014 PROVIDING FOR CONVERSION TO RESIDENT OWNERSHIP OF THE CARSON HARBOR VILLAGE MOBILEHOME PARK LOCATED AT 17701 AVALON BOULEVARD (APN NO. 7339-001-005)

Submitted by William W. Wynder
City Attorney

Approved by Clifford W. Graves
Interim City Manager

I. SUMMARY

On June 7, 2011, the City Council conducted a court-ordered re-hearing of the application of Carson Harbor Village, Ltd. (CHV) for Tentative Parcel Map ("TPM") No. 27014, a request for approval of a subdivision map to convert the Carson Harbor Village Mobilehome Park from a rental park to a subdivided nominal resident ownership park.

The City Council, having conducted a re-hearing of the Application as ordered by the Los Angeles County Superior Court, and having carefully considered and then followed the directives of the Court of Appeal in the CHV Opinion, having considered the staff report, and all attachments thereto, and having considered the existing administrative record for the Application, and having entertained the arguments of legal counsel and other representatives of the applicant and the comments from other interested members of the public, denied the application for TPM No. 27014.

In addition, the City Council directed that staff and the Office of the City Attorney bring back to the next regularly scheduled City Council meeting a resolution of denial consistent with the administrative record, the substantial evidence contained therein, and the deliberations of the City Council.

II. RECOMMENDATION

WAIVE further reading and ADOPT Resolution No. 11-090, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, VACATING RESOLUTION NO. 07-106 AND DENYING TENTATIVE PARCEL MAP NO. 27014 PROVIDING FOR CONVERSION TO RESIDENT OWNERSHIP OF THE CARSON HARBOR VILLAGE MOBILEHOME PARK LOCATED AT 17701 AVALON BOULEVARD (APN NO. 7339-001-005)."

III. ALTERNATIVES

1. APPROVE Tentative Parcel Map (TPM) No. 21014 based upon any grounds the Council determines is fair, just, and reasonable and that is consistent with the existing administrative record, and direct staff to bring back to the next City Council meeting a resolution of approval consistent with the administrative record, the substantial evidence contained therein, and the deliberations of the City Council.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

The applicant is proposing TPM No. 27014 to allow CHV to be converted from a rental park to a resident-owned park. CHV is a 420-space mobilehome park located on the west side of Avalon Boulevard, south of Albertoni Street and north of Victoria Boulevard.

On October 26, 2010, the Los Angeles County Superior Court issued a writ of administrative mandamus commanding the City Council to vacate Resolution No. 07-106 (the original resolution of denial), and to reconsider the Application in accordance with the directions from the Court of Appeal.

The Applicant agreed to several extensions of time to conduct the reconsideration hearing, but the Applicant did not agree to any date later than June 7, 2011. On that date the City Council, at the request of the Applicant, conducted the court-ordered re-hearing in compliance with the CHV Opinion.

The CHV Court of Appeal's Directions for the Reconsideration Hearing

The Court of Appeal directed the City Council to accomplish the following specific tasks:

Step One – Determine Whether there Has Been a Statutorily Compliant Survey Conducted: "[T]he City Council must determine whether the 2007 survey complies with the statute, without regard to the timing of the submission of the survey (CHV Opinion, p. 21)."

Step Two – Determine Whether the Application Meets the CHV Opinion's Definition of a *Bona Fide* Conversion: "If the City Council finds the survey is adequate, the City Council must consider the survey and may do so in determining whether the conversion is *bona fide* (*Id.*)." A *bona fide* conversion is ***"one that the park owner expects to in fact produce a change in the estate interest of a significant percentage of the mobilehome lots from tenancy to ownership*** (*Id.* at 15 [emphasis added & in original])." "The level of tenant support, or lack thereof, may be circumstantial evidence of the

presence or absence of bona fides but it is not dispositive (*Id.* at 16-17)." "In analyzing whether the conversion is *bona fide*, the City Council may ***not*** . . . impose a minimum threshold of tenant support for the conversion (*Id.* at 21; emphasis added)."

However, "[T]he City Council may ***not*** disapprove the application on the ground that it conflicts with the city's general plan (*Id.* at 21; emphasis added)."

Step Three – Determine Whether the Tenant Impact Report Comports With the Requirements of Law: "[T]he City Council must, in the first instance, determine whether ***"the"*** tenant impact report complies with the requirements for such a report as stated in section 66427.5, subdivision (b), taking into account the City Council's limited ability to require more information under sections 65940, subdivision (a), and 65944, subdivision (a) (*Id.* at 21-22 [emphasis added]."

"The city shall, in the first instance, determine whether the information it seeks is prohibited 'new or additional' information, or information properly sought to 'clarify, amplify, correct, or otherwise supplement' the application (*Id.* at p. 21)."

Step Four – Following Council Deliberations Either Approve or Deny the Application: "If the City Council concludes the conversion is *bona fide* ***and*** the tenant impact report complies with statutory requirements, the ***City Council must approve*** the application. If the City Council concludes otherwise and disapproves the application, the ***city council must specify the grounds for its disapproval*** (*Id.* at 22; emphasis added)."

Compliance With the Mandate of the CHV Opinion

The attached Resolution No. 11-090 (Exhibit No. 1) complies with the directives of the CHV Opinion and addresses and resolves each and all of the issues for consideration mandated by that opinion upon re-hearing.

Respectfully, it is the opinion of the Office of the City Attorney and staff that the attached resolution is consistent with the existing administrative record, the substantial evidence contained in that record, and the deliberations of the City Council on June 7, 2011. The resolution is in a form ready for consideration and possible action by the City Council.

V. FISCAL IMPACT

Unknown at this time.

VI. EXHIBITS

1. Resolution No. 11-090. (pgs. 5-22)

Prepared by: William W. Wynder, City Attorney.

TO:Rev032811

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development Services	Public Services

Action taken by City Council
Date_____ Action_____
_____

RESOLUTION NO. 11-090

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, VACATING RESOLUTION NO. 07-106 AND DENYING TENTATIVE PARCEL MAP NO. 27014 PROVIDING FOR CONVERSION TO RESIDENT OWNERSHIP OF THE CARSON HARBOR VILLAGE MOBILEHOME PARK LOCATED AT 17701 AVALON BOULEVARD (APN NO. 7339-001-005)

WHEREAS, an application ("Application") was duly filed by Carson Harbor Village, Ltd. ("Applicant") for Tentative Parcel Map ("TPM") No. 27014, a request for approval of a subdivision map to convert the Carson Harbor Village Mobilehome Park ("Park" or "CHV") from a rental park to a subdivided nominal resident ownership park. The Park is a 420-space mobilehome park located at 17701 Avalon Boulevard, Carson, California; and

WHEREAS, on June 12, 2007, after a series of public hearings, the Planning Commission voted to deny the Application because, among other reasons, the survey of resident support submitted by the Applicant with the Application ("2005 Survey") was not conducted in accordance with an agreement with the CHV resident homeowners association, and the survey demonstrated support from only 11% of the park residents. The Applicant appealed to the City Council; and

WHEREAS, while the appeal to the City Council was pending, the Applicant offered certain options to park residents, in an effort to garner support for the conversion. The options included upgrades and improvements to the Park at the Applicant's expense, discounted prices for mobilehome spaces, and an extended phasing out of rent control for residents who opted to remain renters instead of buying their spaces after conversion ("2007 Executed MOU"); and

WHEREAS, against the backdrop of the 2007 Executed MOU, a second "survey" was conducted in July 2007 to measure resident support for the 2007 Executed MOU, assuming its terms would be incorporated into the resolution of approval of the Application ("2007 Survey"). The 2007 Survey demonstrated the support of only 24% of total park residents; and

WHEREAS, after holding public hearings on July 17, 2007, July 30, 2007, and September 4, 2007, the City Council voted to adopt Resolution No. 07-106, affirming the Planning Commission's denial of the Application, for the following reasons:

1. The 2005 Survey was not conducted in accordance with an agreement between the Applicant and a resident homeowners association;

2. The demonstrated level of resident support in the 2005 Survey (11%) is insufficient to conclude that the conversion is bona fide;

3. The Tenant Impact Report ("TIR") submitted by the Applicant failed to address the conversion's impact on residents caused by the wetlands in the park, for which purchasing residents would be required to pay the costs of maintenance and upkeep, including taking on the liability risk and remediation costs for any contamination in the wetlands. ("Wetlands Information");

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4. The TIR failed to adequately report on the economic displacement of residents caused by the conversion ("Displacement Information");

5. The conversion was inconsistent with provisions in the City's General Plan Housing Element and Open Space Element for the preservation of affordable housing and open space; and

WHEREAS, the Applicant sued the City of Carson ("City") on November 30, 2007, claiming that the denial of the conversion was illegal. The trial court agreed with the Applicant. The City appealed, and on March 30, 2010, the Court of Appeal reversed the trial court in an unpublished opinion, *Carson Harbor Village, Ltd. v. City of Carson*, Second Appellate District Case No. B211777 ("CHV Opinion"), which held the following:

1. The CHV Opinion affirmed the City Council's decision that the 2005 Survey was not statutorily compliant for lack of an agreement with the resident homeowners association. (CHV Opinion, p. 10.) However, the Court held the City Council was required to consider the 2007 Survey as well. (*Id.* at pp. 12-13.)

2. The CHV Opinion held that the City Council *does* have the discretion to determine whether the Application is bona fide, and may deny an application it finds is not bona fide. The Court defined a bona fide conversion as "one that the park owner *expects* to in fact produce a change in the estate interest of a significant percentage of the mobilehome lots from tenancy to ownership." (*Id.* [emphasis in original].) "The level of tenant support, or lack thereof, may be circumstantial evidence of the presence or absence of bona fides but it is not dispositive." (*Id.* at pp. 16-17.)

3. The CHV Opinion held the City was *not* barred from requesting more information in the TIR after the Application had been deemed complete. (*Id.* at pp. 20-21.) However, the City may only request information to "clarify, amplify, correct, or otherwise supplement the application." (*Id.* at p. 21.) It may not request "new or additional" information. (*Id.*) The Court based this holding on sections 65940(a) and 65944(a) of the Permit Streamlining Act in the Government Code.

4. Finally, the CHV Opinion held that the City may not disapprove the Application on the ground that it conflicts with the City's General Plan. (*Id.* at pp. 17-19) ; and

WHEREAS, given the above holdings, the Court of Appeal remanded the case back to the trial court to order the City Council to reconsider the Application in accordance with the following directions:

1. "The City Council must determine whether the 2007 survey complies with the statute, without regard to the timing of the submission of the survey." (CHV Opinion, p. 21.)

2. "If the City Council finds the survey is adequate, the City Council must consider the survey and may do so in determining whether the conversion is *bona fide*." (*Id.*)

3. "[T]he City Council must, in the first instance, determine whether the tenant impact report complies with the requirements for such a report as stated in section

66427.5, subdivision (b), taking into account the City Council's limited ability to require more information under section 65940, subdivision (a), and 65944, subdivision (a)." (*Id.* at pp. 21-22.) "The city shall, in the first instance, determine whether the information it seeks is prohibited 'new or additional' information, or information properly sought to 'clarify, amplify, correct, or otherwise supplement' the application." (*Id.* at p. 21).

4. "[T]he City Council may not disapprove the application on the ground that it conflicts with the city's general plan." (*Id.* at p. 21).

5. "If the City Council concludes the conversion is *bona fide* and the tenant impact report complies with statutory requirements, the City Council must approve the application. If the City Council concludes otherwise and disapproves the application, the city council must specify the grounds for its disapproval." (*Id.* at p. 22) ; and

WHEREAS, on October 26, 2010, the trial court issued a writ ordering the City Council to vacate Resolution No. 07-106 (the original resolution of denial from September 4, 2007), and to reconsider the Application in accordance with the directions from the Court of Appeal; and

WHEREAS, in accordance with the trial court's writ, the City Council reconsidered the Application at the City Council meeting on June 7, 2011 ("Reconsideration Hearing"). A notice of time, place, and purpose of the meeting was duly given.

NOW, THEREFORE, having conducted a re-hearing of the Application as ordered by the Los Angeles County Superior Court, and having carefully considered and then followed the directives of the Court of Appeal in the CHV Opinion, having considered the staff report, and all attachments thereto, and have considered the existing administrative record for the Application, and having entertained the arguments of legal counsel and other representatives of the applicant and the comments from other interested members of the public, the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

Section 1. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. With respect to certain testimony and evidence proffered at or immediately before the Reconsideration Hearing, the City Council finds, determines, and orders as follows:

1. The CHV Opinion directs the City Council to consider ***only*** whether the ***existing*** record and the ***existing*** Application comply with the law and are suitable, in the Council's discretion and based upon the existing administrative record considered as a whole, for approval. The Court of Appeal directed the City Council to review "the" Application, including determining whether "the" 2007 Survey and "the" Tenant Impact Report comply with the requirements of Section 66427.5. (CHV Opinion, pp. 21-22.)

2. Accordingly, all new evidence proffered (oral or written) at the Reconsideration Hearing that was not already in the existing administrative record before the

Council at the September 4, 2007 hearing is hereby excluded from the record and was not considered by Council in its re-hearing of the Application.

3. This includes, but is not limited to, the "Supplemented Tenant Impact Report" submitted by the Applicant; the privileged and confidential settlement documents submitted by Richard H. Close (which are further excluded pursuant to Evidence Code § 1152); paragraphs 2 thru 8, and 14, of the declaration of James F. Goldstein submitted by the Applicant; paragraphs 2, 4, 6, and the last three sentences of paragraph 8 of the declaration submitted by Richard H. Close; and all reference to the purported "2003 Survey" discussed in the declaration submitted by Linda Sue Loftin, because as Ms. Loftin's declaration admits at paragraph 18, the purported 2003 Survey was never accepted by the City as part of the Application.

4. All of the declaration submitted by L. Sue Loftin is excluded because it discusses the statutory compliance of the 2005 and purported 2003 surveys. This information is irrelevant because the CHV Opinion held the City Council is to consider the 2007 Survey, not any other survey. The CHV Opinion held the 2005 Survey was not compliant with Section 66427.5(d)(2). (CHV Opinion, p. 10.) And as noted above, the purported 2003 Survey was never accepted by the City as part of the Application.

5. All of the declaration of James F. Goldstein is excluded because the declarant was not present at the Reconsideration Hearing, and therefore was not available to be cross-examined. (*Manufactured Home Communities, Inc. v. County of San Luis Obispo* (2008) 167 Cal. App. 4th 705, 710-712 [reliance on testimony from persons not subject to cross-examination violates due process].) Notice was provided to counsel for Mr. Goldstein before the day of the hearing that his absence from the hearing would result in the exclusion of his declaration. All other written testimony submitted by persons absent from the Reconsideration Hearing is also excluded.

6. With the exception of the exclusions noted above, the City Council admits into the record of this re-hearing all oral and written testimony proffered at the Reconsideration Hearing that is not Prohibited "new evidence," but rather the same is deemed to be argument about, commentary on, or explanation of the existing record.

Section 3. With respect to the 2007 Survey, the City Council finds, determines, and orders as follows:

1. The Official Conversion Ballot for the 2007 Survey states, "Given the incentives reached in the negotiations between the Park Owner and the CHV-HOA, do you support the Conversion?"

2. The "incentives" the ballot refers to are those options for the residents memorialized in the 2007 Executed MOU, which contemplated a "deal" under which the conversion would be approved provided the residents were given certain incentives.

3. Thus, the 2007 Survey gauged support not for the conversion, but rather for the 2007 Executed MOU.

4. At the original July 17, July 30, and September 4, 2007 City Council hearings, testimony was received that the 2007 Survey only measured support for a "settlement agreement," i.e. the 2007 Executed MOU, between the parkowner and the residents.

5. The 2007 Survey therefore is not compliant with Section 66427.5(d).

Section 4. With respect to the *bona fides* of the conversion, the City Council finds, determines, and orders as follows:

1. Assuming it were statutorily compliant, the 2007 Survey demonstrates support of only 24% of the Park's total spaces. Assuming the 2005 Survey were statutorily compliant, it demonstrates support of only 11% of the Park's total spaces.

2. Even with the options package contemplated in the 2007 Survey, still only 24% of resident spaces indicated support.

3. The testimony from residents at the public hearing indicated that residents, in general, do not support the conversion of the Park or this Application.

4. With so little resident support, the Applicant cannot "*expect* to in fact produce a change from tenancy to ownership in a significant percentage" of lots.

5. The lack of resident support in these two surveys, while not dispositive standing alone, is circumstantial evidence that the Application is not *bona fide*.

6. Based on a survey conducted by the City in 2005, approximately 60% of the Park's residents are low-income or very low-income households as defined by United States Department of Housing and Urban Development.

7. Based on a survey conducted by the City in 2005, approximately 33% of the Carson Harbor Village's households are senior citizens.

8. Testimony was received that it is very difficult for low- and very low income persons to obtain mortgage financing from a lender for the purchase of real estate.

9. Testimony was received that some Park residents already have a mortgage on their mobilehome coach, and could be required to make two mortgage payments if they chose to purchase their space.

10. A resident's existing mortgage on the coach decreases the likelihood that the resident, especially a low- or very low-income resident, can qualify for a mortgage for a lot purchase.

11. When a mobilehome park is subdivided, local rent control (including vacancy control) is eliminated in the Park. Therefore, upon conversion, every coach in the Park instantly loses substantial value, because the coach no longer carries with it the value of rent control for its owner. Thus, Park residents lose nearly all the equity they have built up in their coaches (in many cases their entire life savings and what they wish to use for other housing

options such as assisted living). When nearly all of a resident's life savings vanishes, there is little capital remaining for a down payment to purchase a lot, especially for low- and very low-income residents.

12. An *en banc* panel of the Ninth Circuit Court of Appeals has recently recognized the above devaluation phenomenon. "Ending rent control would be a windfall to the [parkowner], and a disaster for tenants who bought their mobile homes after rent control was imposed in the 70's and 80's. . . . The present tenants . . . would lose, on average, over $100,000 each if the rent control ordinance were repealed. The tenants who purchased during the rent control regime have invested an average of over $100,000 each in reliance on the stability of government policy. Leaving the ordinance in place impairs no investment-backed expectations of the [parkowner who bought the park subject to rent control], but nullifying it would destroy the value these tenants thought they were buying." (*Guggenheim v. City of Goleta* (9th Cir. 2010) 638 F.3d 1111.)

13. Because of the special circumstances of this Park, even the Applicant himself, "a highly-educated, sophisticated businessman with extensive experience in the purchase of mobile home parks," had difficulty obtaining a refinancing of the Park in 1993 because the Park contains a wetlands area that was contaminated with tar-like and slag materials and lead at that time. (*Carson Harbor Village, Ltd. v. Unocal Corp.* (C.D. Cal. 2003) 287 F. Supp. 2d 1118, 1127, 1129, 1147-49; *Carson Harbor Village, Ltd. v. Unocal Corp.* (9th Cir. 2001) 270 F.3d 863, 869.) There was contamination because "[h]istorically, the site has been used . . . for oil production and storage" by Unocal Corporation. (*Id.* at 1128.)

14. There has been prior litigation involving contamination of the wetland. When contamination was discovered in the wetlands area in 1994, the Applicant's cost of remediating the same was approximately $285,000. (*Carson Harbor Village, Ltd. v. City of Carson* (9th Cir. 2001) 270 F.3d 863, 869.) Because the wetland accepts drainage from, among other areas, the Gardena Freeway (State Route 91), unincorporated portion of Los Angeles County known as Rancho Dominguez, the City of Carson and the City of Compton, it cannot be assured that future contamination will not occur within the wetlands due to illegal intentional or accidental dumping of contaminating materials into storm drains that flow to the wetlands. The Phase I Environmental Site Assessment submitted by the Applicant on December 28, 2004 indicates that "residual hydrocarbons, above regulated levels, remain from the oil field activities near Larronde #3 well" on the site. The Phase I Assessment also recognizes that there could be "unreported 'wildcat' oil wells on or near the site" that the Phase I Assessment did not consider. It is reasonable to conclude the low- and very low-income residents, even through HOA dues, will not be able to take on the risk of such liability (either in the form of reserves or insurance).

15. Further, the wetlands area in the Park is a "federally protected wetlands" that is highly regulated by the California Department of Fish and Game, the United States Army Corps of Engineers, Los Angeles County Vector Control, and Los Angeles County Department of Public Works—Flood Control. (*See generally*, letter from Applicant to City dated Aug. 7, 2006.) For example, any request to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the stream bed of the wetlands requires, among other permits, approval of an agreement regarding proposed stream or lake alteration from the Department of Fish and Game. Complying with the various permitting and regulatory

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requirements necessary to conform to all applicable state and federal laws and regulations regarding the wetlands will be the responsibility of the resident homeowners association after the conversion. (*See*, Article XXIII of Draft CC&Rs submitted to City by Applicant on Aug. 8, 2006.) Compliance with such regulations requires significant expense, time, and expertise. It is reasonable to conclude the low- and very low-income residents, even through HOA dues, will not be able to meet such financial obligations and will not have the necessary expertise to do so.

16. Even the regular maintenance and general upkeep of the wetlands involves significant cost, including actions such as "repair of flood control gates, removal of damaged trees and replacement of French drains." (Article XXIII of Draft CC&Rs submitted to City by Applicant on Aug. 8, 2006.)

17. The testimony from residents at the public hearing indicated that residents, in general, are concerned that expensive maintenance responsibilities and risks of liability will be assumed upon conversion of the park to resident ownership.

18. Unrebutted testimony at the hearing indicated that the Applicant owner of CHV, James F. Goldstein, settled a lawsuit with Unocal Corporation for a lump sum payment from Unocal to Mr. Goldstein, as well as Mr. Goldstein's agreement that the owner of the Park will take on any further contamination liability in the Park. This is further evidence that the residents will have responsibility for any contamination in the Park after conversion, over and above their normal liability as property owners under the law.

19. Testimony was received that, although the State provides the Mobilehome Park Resident Ownership Program ("MPROP") to assist residents with purchasing their space, it is very difficult to obtain financing through MPROP due to the qualifying criteria, inadequate funds in the program, and because the program is provided on a first-come, first-serve basis. There is no guarantee as to the availability of MPROP funding.

20. Given these substantial financial barriers to lot purchase and the difficulty of obtaining financing, especially for low- and very low-income residents and senior citizens, the Applicant cannot "*expect* to in fact produce a change from tenancy to ownership in a significant percentage" of lots. These barriers are therefore further evidence the Application is not *bona fide*.

21. The options in the 2007 Executed MOU, purportedly offered to facilitate sales of spaces, do not provide evidence of *bona fides*. For example, the early purchase discounts are stated in terms of percentages. But until the actual purchase price for spaces is known, it is impossible for the City Council to know whether an early purchase discount will incentivize space purchases. If sales prices are set prohibitively high, early purchase discounts will prove illusory. The July 25, 2007 letter from the President of the homeowners association clearly illustrates potential variables in the potential purchase prices and the resultant discounts.

22. Further, the early purchase discounts in the 2007 Executed MOU contain no provision that the purchase price be determined by any appraiser, much less a neutral appraiser. The Applicant thus has broad discretion to set the prices to which the discounts will

apply. This allows the Applicant to set an above-market price such that the percentage-based "discount" proves illusory.

23. A condition to all of the "incentives" in the 2007 Executed MOU is that the City's Application approval "is not subjected to legal challenge." This allows any person, including the Applicant himself, to unilaterally revoke the "incentives" by simply filing a lawsuit, even if the lawsuit is immediately voluntarily dismissed. Incentives the Applicant has the power to unilaterally revoke after the Application is approved are illusory and do not demonstrate *bona fide* intent of the Applicant to transfer lots.

24. Between the July 2007 City Council hearings and the September 4, 2007 City Council hearing, recognizing the critical need for financing in order to have a successful conversion, the Applicant and the City discussed additional options over and above the options in the 2007 Executed MOU, including parkowner purchase financing assistance. These additional options were made part of a ***draft and unexecuted*** "Settlement Agreement" for the City Council's and the Applicant's consideration, for the first time, at the September 4, 2007 City Council hearing on the Application. It is reasonable to conclude the Applicant offered to discuss these additional options because he recognized the options in the 2007 Executed MOU were insufficient to demonstrate a *bona fide* conversion. However, these additional options cannot be considered evidence to support a finding that the conversion is *bona fide*.

a. First, the additional options contemplated in the draft and unexecuted Settlement Agreement were discussed only verbally—the Settlement Agreement was never signed by the Applicant. The City would have had to rely on the Applicant's counsel's verbal vague representations at the September 2007 hearing that the Applicant would accept and then adhere to the Settlement Agreement after the City Council irreversibly approved the conversion.

b. Second, the underwriting requirements for the Applicant's financing program contemplated in the Settlement Agreement mirrored the loan underwriting requirements utilized in the state MPROP financing program and the City's First Time Home Buyer Program. Substantial and unrebutted testimony in the record demonstrates that it is very difficult to obtain financing through MPROP due to the qualifying criteria, inadequate funds in the program, and because the program is provided on a first-come, first-serve basis. There is no guarantee as to the availability of MPROP funding. Substantial and unrebutted testimony in the record also demonstrates that it is similarly difficult to obtain financing under Carson's First Time Home Buyer ("FTHB") Program.

c. Third and finally, even assuming *arguendo* that the Applicant did fully commit to the additional options contemplated in the Settlement Agreement, those additional options cannot be considered in the Council's deliberations here. Assuming *arguendo* that the 2007 Survey is statutorily compliant even though it only measured support for the 2007 Executed MOU, Government Code § 66427.5(d)(1) requires a survey of support "for the *proposed* conversion." (Emphasis added.) If the proposed conversion were a conversion with the additional Settlement Agreement options included, there would be no statutorily-compliant survey in the record because there is no survey in the record that measures support for a

conversion with the additional Settlement Agreement options, and the Application would have to be denied on that ground.

25. The TIR does not adequately report on expected lot purchase prices, maintenance costs of the wetlands, the risk of liability due to the potential for future contamination of the wetlands, maintenance costs of the common areas, the estimated loss of value of existing coaches in the Park due to the vacancy control caused by the conversion, and other costs and risks borne by the residents were they to choose to purchase their lots. Without such information, residents are uninformed of the risks of purchasing, and therefore less likely to purchase. This is evidence that the Applicant cannot "*expect* to in fact produce a change from tenancy to ownership in a significant percentage" of lots.

26. Testimony was received from Ms. Susy Forbath, a representative of the Applicant that the Applicant does not intend to proceed with selling spaces any time soon due to the state of the economy. This is further support for the Applicant's lack of *bona fide* expectation to transfer a significant percentage of lots, at least under the current economic conditions.

27. At the original City Council hearings on the Application, evidence was presented about the Applicant's excessive rent increase requests and litigation over virtually every decision of the City's rent review board. This is evidence that the Application is not *bona fide*, but rather that the conversion is being undertaken as a tool to escape from Carson's rent control ordinance about which this Applicant is a vexatious litigant.

28. Given all of the above evidence, the conversion is not *bona fide* because the Applicant cannot "*expect* to in fact produce a change from tenancy to ownership in a significant percentage" of lots.

Section 5. With respect to the Tenant Impact Report, the City Council finds, determines, and orders as follows:

1. The TIR fails to comply with the plain language of Section 66427.5(b). The TIR states, "The purpose of this [TIR] is to explain ***the protections*** afforded to those Residents that elect ***not*** to purchase a condominium interest." (Emphasis added.) That is only one part of what the statute requires. Section 66427.5(b) specifies that "[t]he subdivider shall file a report ***on the impact*** of the conversion ***upon residents*** of the mobilehome park to be converted to resident owned subdivided interest." (Emphasis added.) The statute does not ask merely for a report on the protections afforded to only non-purchasing residents. It requires a report on the *impact* of the conversion upon *all* purchasing and non-purchasing residents. The TIR fails to comply with the statute for this reason alone.

2. The "Wetlands Information" and "Displacement Information" that the City Council found was missing from the TIR at the original City Council hearing is generally described by the Court of Appeal in the CHV Opinion as follows:

a. Wetlands Information: (1) the maintenance costs of the wetlands, and (2) the liability risks and remediation costs that will be borne by the resident owners from potential contamination in the wetlands;

b. Displacement Information: (1) the availability of adequate replacement space in nearby comparable mobilehome parks, (2) the impact of rent increases on the continued financial viability of non-low-income non-purchasing residents, and (3) the likely increase in rental rates on non-low-income non-purchasing residents and whether such increases could or will result in displacement.

3. The Wetlands Information and Displacement Information is information properly sought to "clarify, amplify, correct, or otherwise supplement" the Application, and not prohibited "new or additional" information. This is because the Application already contains other information submitted by the Applicant regarding the wetlands and displacement of residents which the Wetlands Information and Displacement Information will clarify, amplify, correct, or otherwise supplement:

a. The Draft Declaration of Establishment of Covenants, Conditions, and Restrictions ("CC&Rs") submitted by the Applicant on August 8, 2006 discusses the "Wetlands Maintenance Obligations of the Association". For example, the CC&Rs state that "[t[he Association may be obligated, from time to time, to perform certain special maintenance of the Wetlands, which includes, but is not limited to, trash removal, repair of flood control gates, removal of damaged trees and replacement of French drains." (*See*, Article XXIII of CC&Rs.) The CC&Rs also indicate the Wetlands are "federally protected" without any explanation of what responsibilities on the residents that protection would entail.

b. The Applicant submitted "materials and information relevant to the regulation and maintenance of the wetlands within the Park" by letter dated August 7, 2006. The letter indicated that several state and federal government agencies are directly involved in the protection and maintenance of the wetlands, including the "Civil Corps of Engineers," "Vector Control," the "Los Angeles County Department of Public Works—Flood Control," and the "Department of Fish and Game."

c. The Applicant submitted "various materials from the California Department of Fish and Game relative to the protected wetlands at the [Park]" by letter dated May 1, 2006.

d. The Applicant submitted a Phase I Environmental Site Assessment on December 28, 2004, which recognized the existence of the wetlands in the Park and that stormwater discharges flow into the wetlands.

e. The Phase I Environmental Site Assessment indicates that "residual hydrocarbons, above regulated levels, remain from the oil field activities near Larronde #3 well" on the site. The Phase I Assessment also recognizes that there could be "unreported 'wildcat' oil wells on or near the site" that the Phase I Assessment did not consider. This information indicates there could be a contamination liability risk to the residents as owners of the Park after the conversion, which could be prohibitively expensive and cause displacement.

f. Section 4 of the TIR contains some cursory and conclusory information regarding displacement of residents, essentially just a regurgitation of the provisions of Government Code § 66427.5.

4. The findings herein regarding the maintenance costs of the wetlands and the liability risks and remediation costs of the wetlands are incorporated by reference herein as if they were set forth in full. These findings demonstrate that the Wetlands Information is necessary for an adequate report on the impact of the conversion upon residents of the Park.

5. When this matter was in litigation, the Applicant argued that the City did not have the authority to require disclosure of the Wetlands Information because the wetland is regulated by the California Department of Fish & Game. Even the trial court correctly rejected this argument and held the City is "entitled to require this information" in the TIR. The trial court held that "the potential liability for environmental cleanup, the assessments that would have to be imposed, and the displacement of residents that would occur for such costs" is "legitimate information required for purchasing residents" that "should be provided at the time of conversion". The trial court held the same for information regarding "what the rent increases will be like, how many will likely be forced out from rent increases, and the availability of space in nearby mobilehome parks" because "[c]ertainly, the displacement information is a resident impact." At oral argument, the trial court held that the Wetlands and Displacement Information should have been included in the TIR, analogizing that report to an Environmental Impact Report under the California Environmental Quality Act.

6. The TIR concludes, without evidentiary support, that there will be no displacement of residents due to potential increases in assessments to cover unusual and unexpected costs associated with the wetlands.

7. The TIR concludes, without evidentiary support, that there will be no displacement of residents because the Applicant will not exercise the right to terminate tenancies, and fails to acknowledge or consider the impact of rent increases on the continued financial viability of non-low income non-purchasing residents remaining as park renters following the date of conversion.

8. The TIR fails to estimate the likely increase in rental rates on non-low income non-purchasing residents, or the impact of such rental adjustments on available disposable income, to determine if such rent increases as are allowed in Government Code § 66427.5 could or will result in short or long-term resident displacement.

9. The TIR fails to address the availability of adequate replacement space in mobile home parks or other forms of housing such as apartments, etc, because the report concludes, without evidentiary support, that because there will not be immediate terminations of tenancies by the Applicant, there will be no displacement as a result of the Application.

10. The TIR is therefore deficient, under Government Code § 66427.5(b), for failure to include the Wetlands Information and the Displacement Information.

11. The TIR is also deficient, under Government Code § 66427.5(b), for the additional reason that it fails to include other information that is necessary for an adequate report on the impact of the conversion upon residents, which information will "clarify, amplify, correct, or otherwise supplement" the information already in the Application regarding displacement, including:

a. A discussion of the estimated loss of value of existing coaches in the park, due to the vacancy decontrol caused by the conversion;

b. The amounts of common area maintenance costs for which the resident HOA will be responsible after the conversion;

c. A statement of any inadequate, substandard, or negligently or poorly maintained infrastructure in the park which may lead to liability for injury or property damage;

d. Illustrative examples of the phased rent increases that will occur for low- and very low-income non-purchasing residents under Government Code Section 66427.5(f)(1) and (f)(2).

12. The findings herein regarding devaluation of existing coaches due to vacancy decontrol, the amount of common area maintenance costs, and risks of contamination and other liability in the park, including the potential costs of remediation of such contamination, are incorporated by reference herein as if they were set out in full. These findings demonstrate that this information is necessary for an adequate report on the impact of the conversion upon residents of the Park.

13. Even assuming ***arguendo*** that the City Council could consider the "Supplemented" TIR submitted by the Applicant during the Reconsideration Hearing, which it cannot, the same is also legally inadequate. The Supplemented TIR does not provide and estimated percentage devaluation of coaches, estimated HOA dues and common area liability risks, a statement of any inadequate infrastructure, or the availability of adequate replacement space in nearby parks. The Supplemented TIR's discussion of the wetlands forces residents to guess or perform independent research to determine the maintenance costs of the wetlands and potential exposure to liability. This is inadequate as the residents will not have the resources or expertise to conduct this kind of investigation, and it would have been rather easy for the Applicant to simply disclose this information but he refuses to do so.

Section 6. The City Council further finds, determines, and orders that:

1. In the recent, first and only, published opinion of *Colony Cove Properties, LLC v. City of Carson* (August 31, 2010) 187 Cal. App. 4th 1487, 1505-06 out of the same Appellate district as the CHV Opinion on the issue of survey of support, after nearly a decade of litigation up and down the State over the extent of local authority to regulate conversions based on the Legislature's 2002 addition of the "survey of support" language, the Court has held that the "contents of the survey, as opposed to its mere existence, are relevant to the approval process." (*Id.*)

2. The *Colony Cove* decision specifically holds that:

> "That subdivision requires applicants to obtain a survey of support of the residents of the mobilehome park, conducted in accordance with specific procedures, and to submit '[t]he results' to the entity or agency 'authorized by local ordinance to approve, conditionally

> approve, or disapprove the [subdivision] map.' This language alone suggests that the contents of the survey, as opposed to its mere existence, are relevant to the approval process. By thereafter specifically stating that the results are 'to be considered as part of the subdivision map hearing prescribed by subdivision (e),' the Legislature made that intention explicit. Construing the statute to eliminate the power of local entities and agencies to consider the results of the survey when processing a conversion application would consign the 'to be considered' language of subdivision (d)(5) to surplusage." (*Id.* at 1505-06.)

3. Under the *Colony Cove* opinion, the Council cannot ignore the results of the survey of support. In fact, the City has a legal obligation to consider the results of the survey as part of this hearing.

4. At least two trial courts have already followed *Colony Cove*:

a. One Court upheld a conversion denial for lack of resident support. The court stated at oral argument, "I believe *Colony Cove Properties* ... is the appropriate law in this area and I have cited it." "The survey verified that the residents overwhelmingly opposed the conversion and the county was exercising its appropriate discretion in denying this application." (See, Transcript of Proceedings in *Paul Goldstone v. County of Santa Cruz, et al.*, Santa Cruz County, Case No. CV 164458, p. 6; Judgment attached as Exhibit No. 6 to Staff Report in this case.)

b. The other decision is *Monarch County Mobilehome Owners Association v. City of Goleta*, Case No. 1337356 (Exhibit No. 7 to the Staff Report in this case.

5. Here two surveys were conducted: 1) the 2005 Survey and 2) the 2007 "Survey". The City Council will not consider the 2005 Survey because the CHV Opinion holds that it was not conducted in "agreement" with a residents' homeowners association, hence it is not a Government Code Section 66427.5 compliant survey. Even if it did, only 11% of the residents supported the conversion under that survey.

6. The CHV Opinion instructs the city to consider the 2007 "survey" in determining whether the conversion is *bona fide* however. As discussed above, the City Council finds that the 2007 "Survey" is not a survey of support as contemplated by Government Code Section 66427.5 and was merely conducted to gauge support of the residents for the 2007 Executed MOU and not the conversion; hence, it is not, because it cannot be, a Section 66427.5 compliant survey. However, even if the City were to consider the 2007 "survey," the results of that "survey" demonstrate that only 24% of residents supported the conversion, and even then they only supported the conversion "sweetened" with the 2007 Executed MOU. The City Council finds that 24% demonstrated support is not adequate support for the conversion. Hence, the City Council finds that the Application must be denied under *Colony Cove*, in addition to all the other reasons and factors discussed in this Resolution, based on lack of resident support.

Section 7. The City Council further finds, determines, and orders that:

1. The Court of Appeal in *Pacific Palisades v. City of Los Angeles* (2010) 187 Cal. App. 4th 1461, *petition for review granted* by the California Supreme Court, held that Government Code Section 66427.5 does ***not*** supersede other state statutes, particularly state statutes that require the preservation of low-and moderate-income housing on a long-term basis (in that case, The Mello Act and the Coastal Act).

2. The CHV Opinion in its disposition states that the City Council may not disapprove the application on the ground that it conflicts with the city's general plan. However, in addition to the *Pacific Palisades* decision, the *Colony Cove* published opinion found that in considering conversion applications under Government Code Section 66427.5, not all local regulation is preempted (*Colony Cove*, 187 Cal.App.4th 1487, at 1497).

3. City of Carson's Municipal Code § 9209.5(B) states that the City Council ***shall*** disapprove a tentative map or preliminary parcel map for a residential conversion project, if it finds that the map is not substantially consistent with the provisions of the City's General Plan or any applicable specific plans. Therefore, as an alternative ground for denial, and solely contingent upon the on the assumption that the City Council has such additional authority under the published *Colony Cove* opinion, the City Council finds that the tentative map must be denied for failure to comply with Carson Municipal Code § 9209.5(B) because it is not consistent with the City's general plan on several issues as discussed below in this Section of this Resolution, including but not limited to the City's Open Space Element and Housing goals.

4. As an additional alternative ground for denial, and solely contingent upon the on the assumption that the pending *Pacific Palisades* case in the Supreme Court confirms that the City Council has such authority, the City Council further finds that the tentative map must be denied on several additional grounds because other co-equal state statutes, as discussed below in this Section of this Resolution, require denial of the tentative map.

5. Government Code § 66473.5 provides that the City shall not approve a tentative map application unless it finds that the proposed subdivision is consistent with the City's general plan.

6. Government Code § 66474(a) further provides that the City shall deny approval of a tentative map application if it makes the finding that the proposed map is not consistent with the City's general plan.

7. Government Code § 65583 requires the City's general plan to contain quantified objectives and policies to conserve the City's current affordable housing stock inventory.

8. Carson's General Plan Housing Element Goal H-4 is "Protection of the supply of affordable housing, If Policy No. H-4.4 states "The City should limit the conversion of affordable rental units to ownership units, "Implementation Measure No. H-IM-4.2 states in part, "Protection of mobile home park tenants, ... Mobile home parks constitute a significant

portion of the low- and moderate-income housing in the City. The City has rent control for mobile home spaces only . . . ."

9. The 1999-2005 Action Plan from the Housing Element includes:

i. Continue to require rent control for the City's mobile home parks.
ii. Assist with mobile home park rehabilitation or conversion to ownership housing if appropriate and/or feasible.
iii. Assess the reasons for mobile home park closures and assist mobile home park owners in finding a solution to resist closure.

10. The City's overall goal is to preserve low and moderate-income housing throughout the City. The proposed subdivision will not advance that goal, in general, and, in particular, the proposed subdivision will not maintain the existing supply of affordable Mobilehome spaces because, under state law, upon the vacancy of any rental condominium unit, rents to future residents will be regulated to assure the same remain affordable to low-and moderate-income renters, and upon the date of conversion, rents for non-purchasing non-low income renting residents will rise to market rates not affordable to moderate or low-income residents. Purchasing residents will not be required to maintain their condominium unit as affordable.

11. The City Council reiterates and incorporates herein by reference, as if set forth in full, Section 9 of Resolution No. 07-106 as if the same had been set forth herein in the first instance.

12. The General Plan's current Housing Goals and Policies, specifically goals H-3 and H-4 provide that the City shall seek to provide an adequate supply of housing for all economic segments of the City and the City shall protect and preserve the existing supply of affordable housing. H-4.3 specifically holds that the City's policy is to "[e]ncourage the preservation of affordable rental housing and H-4.4 states that the City shall "[l]imit the conversion of affordable rental units to ownership units."

13. The proposed subdivision will not advance the affordable housing goals in the City's General Plan, and is therefore inconsistent with them. In particular, the proposed subdivision will not maintain the existing supply of affordable Mobilehome spaces for all economic segments of the City because, under state law, upon the vacancy of any rental condominium unit, rents to future residents will not be regulated to assure the same remain affordable to all economic segments of the City, and upon the date of conversion, rents for non-purchasing non-low income renting residents will rise to market rates not affordable to all income segments of the City. Purchasing residents will not be required to maintain their condominium unit as affordable. Nothing in the proposed subdivision either encourages the preservation of affordable rental housing or limits the conversion of affordable rental units to ownership units.

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14. The applicant has failed to provide the City with any information on the prices that the Park's subdivided lots would be sold for or the amount of other post conversion associated costs of housing at the Park to allow the City to determine whether or not the conversion would be consistent with the City's general plan's policies.

15. Government Code § 66474(e) requires that a city deny a parcel map if it finds that the subdivision would likely substantially injure fish, wildlife or their habitat.

16. Government Code § 65567 states: "No building permit may be issued, no subdivision map approved, and no open-space zoning ordinance adopted, unless the proposed construction, subdivision or ordinance is consistent with the local open-space plan."

17. Government Code § 65566 states: "Any action by a county or city by which open-space land or any interest therein is acquired or disposed of or its use restricted or regulated, whether or not pursuant to this part, must be consistent with the local open-space plan." Government Code § 65561 also states: "The Legislature finds and declares . . . . [t]hat in order to assure that the interests of all its people are met in orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands." Section 66561(d).

18. Government Code § 65560(a) defines "local open-space plan" as: "the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563." "Open-space land" is defined as "any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following: (1) Open space for the preservation of natural resources, including, but not limited to, areas required for preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands."

19. The City's General Plan's current Open Space Element identifies the wetland within Carson Harbor Village Mobilehome park as the only open space within the city identified by a local, regional or state open space plan pursuant to Government Code § 65560. This wetland covering approximately 17 acres, provides habitat for a variety of plants and small animals. The California Department of Fish and Game regulates all maintenance and activities associated with the wetlands. Any request to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the stream bed of the unnamed drainage tributary to the Dominguez Channel requires approval of an agreement regarding proposed stream or lake alteration from the Department of Fish and Game. The Open Space Element indicates that Open Space within the City is to be preserved.

20. During the review of rent increase applications pursuant to the Carson Rent Stabilization Control Ordinance and the subject application, the city has been routinely

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informed that compliance with the California Department of Fish and Game is complex and requires significant knowledge of applicable procedures. Park management is required to commit large amounts of time and resources to ensure compliance with applicable standards and procedures.

21. The uncontroverted testimony from residents at the public hearings indicated that residents, in general, are concerned that unreasonable maintenance responsibilities and liability will be assumed upon conversion of the park to resident ownership. From the current uncontroverted evidence in the record, the residents will not be able to maintain the wetlands as the City's only open space if the Application is granted.

22. The Carson Harbor Village wetland accepts drainage from areas located to the north and east of the park. Drainage is received from the Artesia Freeway, City of Carson, city of Compton and unincorporated areas of Los Angeles County. There has been prior litigation involving the wetland due to contamination caused by illegal dumping or drainage from outside of the wetland. There are insufficient protective measures to ensure that future contamination will not occur within the wetlands due to illegal dumping of materials into the storm drain or accidental spills that result in materials flowing into the storm drain and wetland area.

23. The proposed subdivision will impose unique and substantial burdens on the resulting Mobilehome park homeowners' association for compliance with federal and/or state laws with respect to the open space marsh within the proposed subdivision that could result in an inability of such homeowners' association to meet the goals of the City's Open Space Element. Under either the applicable condition, covenants, and restrictions, or the Davis-Sterling Common Interest Development Act, the resulting homeowners' association will lack the expertise, the financial resources (either in the form of reserves or insurance), or administrative oversight to address the maintenance, potential liability, or regulatory adherence of the open space marsh.

24. The Application is therefore inconsistent with the city's Open Space Element because it will result in substantial risk that the wetlands will not be preserved. For the same reason, the Application will also likely substantially injure fish, wildlife or their habitat.

Section 8. Pursuant to the trial court's writ dated October 26, 2010, the City Council hereby vacates Resolution No. 07-106 and declares the same to be null and void *nunc pro tunc*.

Section 9. Based on each and all of the foregoing findings, determinations and orders, and based upon substantial evidence taken from the existing administrative record when considered as a whole, the City Council hereby denies the Application for Tentative Parcel Map No. 27014.

Section 10. The City Clerk shall certify to the adoption of the resolution and shall transmit copies of the same to the Applicant.

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Section 11. The City Attorney is hereby directed to transmit a certified copy of this resolution to the Los Angeles County Superior Court in compliance with the writ of administrative mandate issued by that court.

PASSED, APPROVED, and **ADOPTED** this 5th day of July, 2011.

_____
Mayor Jim Dear

ATTEST:

_____
City Clerk Helen S. Kawagoe

APPROVED AS TO FORM

_____
City Attorney