THE 48 LEVELS OF ILLEGALITY IN THE VILLAGE TRAILER PARK DEVELOPMENT AGREEMENT ("DA") NO. 07-005[1]

Following is a summary of all the levels of this DA's illegality, which future plaintiffs Brenda Barnes and Peter Naughton have presented to the City of Santa Monica over the course of the last two years:

New levels of illegality that emerged at the City Council ("CC") level:

(1) Holding the CC hearing on the DA before the Rent Control Board ("RCB") hearing on the removal permit application, when the Charter requires the RCB act first (City Charter § 1803(t)), shows complete disregard for law, violates plaintiffs' right to due process of law, and violates the MOU entered into with the Proposed Developer in 2007. It is therefore also arbitrary and capricious;

(2) The City's Housing Element contains a provision requiring retaining existing housing stock in compliance with state law, but this DA does not comply with that provision, in that it destroys existing housing stock, and it also does not comply with the provision of state law requiring housing elements to provide housing for all income levels, and housing of various types including mobilehome parks (Gov't C. § 65583),[2] The City's consultant at the Landmark Commission found that the City has since 2002 put permanent housing at Mountain View Mobile Inn, thereby converting it from a mobilehome park, so without Village Trailer Park there is no provision of mobilehome park space in Santa Monica, violating state law. There also is no provision for retaining the 109 space rents averaging $416 per month anywhere in this DA. Likewise, there is no provision for determining what the income level is of each resident of Village Trailer Park and making sure provision of housing in Santa Monica is made for each such person with his/her income level.

(3) With the pending application for a removal permit proposing a new and different development plan--one that is so vague it does not even say how many units would be agreed to be under rent control, or how they would be so agreed (would they go to market level first and then be controlled, as Deputy City Attorney Alan Seltzer on May 23, 2012 told the Planning Commission would happen, or would the rents of 109 units be average $416 and stay controlled at that rate and as allowed by the RCB thereafter, and what would be the size of those units, etc.?--there are now nine (9) different plans that have not been withdrawn pending and located in various

1 These levels of illegality are given as they manifested themselves while the Development Agreement was being processed since 2007, in reverse chronological order, so the ones plaintiffs have been stating the longest come last, for ease of reference of people who have heard those older ones so many times they do not need to be reminded of them.

2 Gov't C. § **65583:** The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. {Emphasis added.]

City databases, as shown in Exh. 1, adding the plan stamped received by the RCB on July 10, 2012. It denies plaintiffs notice of the issues and a meaningful opportunity to be heard (procedural due process of law), for the EIR to be concerned with one plan, the PC recommendation be concerning another, the Staff Report for the CC be 546 pages issued six (6) days including a weekend, so four (4) business days before the CC hearing, concerning yet another plan, apparently, to the extent it can be understood at all, and at the same time to have six (6) more plans in various City databases. Plaintiffs are somehow supposed to be able to reconcile all these plans with each other and understand what has been dropped, what added, what changed, what left the same. After doing that, plaintiffs would not know they had properly figured out the Proposed Developer's plans, since their reconciling may be in error, so they have no way (to say nothing of no time left) to discuss the issues in any meaningful way;

(4) The Sequoia Park v. City of Sonoma case relied on by plaintiffs at the PC and Landmark Commission hearings for dicta stating a developer changing use of a mobilehome park would be subject to Gov't. C. § 66427.4, which has no limit on what the developer has to pay to mitigate effects of the development upon current residents of the park if it is impossible to provide adequate replacement space in a mobilehome park for themselves and their mobilehomes, [3] has been followed in its ruling on its own facts (which are not the same as these, which is why the language plaintiffs have been using—like that the City Attorney has been using—is dicta). However, the fact the 6th District ruled against the developer even when the preemption problem had originally been present—and when the developer was represented by the same attorney who THREATENED to litigate a different preemption issue against the City, leading to the 2007 MOU, should make the City pause. View Slip Opinion published 7/17/12: http://www.courts.ca.gov/opinions/documents/H036273.PDF;

(5) Demolition without representation denies plaintiffs' right to substantive due process. No resident of zip code 90404, the zipcode of the current residents of Village Trailer Park including plaintiffs, has ever been elected to the City Council, so 90404 is not represented and suffers environmental injustice at the hand of oppressors who are whiter, richer, and younger than they, as is the Proposed Developer, who told the PC he lives in zipcode 90402 and has for 21 years. There is therefore no representative of plaintiffs' interests, the effects of which lack of representation are shown particularly by the first suggestion that homes people own can be destroyed for development, since the 50s and 60s when it was also poor, minority people whose homes Santa Monica destroyed for development. New London presumes there is greater good for the city from eminent domain being used to turn land over to private developers. Here, there is no such good. In fact , there are many

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3Gov't C. § 66427.4: (a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

(b) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(c) The legislative body, or an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

(d) This section establishes a minimum standard for local regulation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures.

(e) This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership. [Emphasis added.]

instances of the FEIR still admitting there are significant impacts with no possible mitigation, and putting off discussing many more elements required to be put to intelligent discussion by the public until too late a time. See separate submission by Peter Naughton dated today. In addition, particularly let plaintiffs point out here if they have not adequately pointed it out before, that Santa Monica's water supply has always been an issue, for whether there is an adequate supply to support this DA, to say nothing of the cumulative effect of the many more Das being submitted or already having been submitted. Plaintiffs also are aware that the Planning Department promised developers in their bus tour of the City last week that there would be a "more streamlined" approval of projects in the future. How the City could promise an even more streamlined approach to development--when this DA was approved in 2007 without any proof whatever of hundreds of things developers have to prove to have such a project approved under CEQA, to say nothing of the just compensation and due process problems of demolishing homes, all waved away just by a THREAT of litigation that had already been shown by the RCB to have no basis, poof—is beyond belief. This is particularly so as the City has recently put off determining whether there is a sufficient water supply to last until 2020 even under current conditions.

(6) The speed-up at the end of the processing of this DA, after almost six years of delay, just so the interim ordinance will not expire (and the PD's friends on the CC will not be voted out of office) is unconscionable violation of plaintiffs' right to due process of law and violation of the CC's fiduciary duty to them.

(7) Developer is seeking to change a 62-year-old status quo. He and the City have the burden of proof. He and the City have the duty not to cause irreparable harm in changing that status quo. None of this has been satisfied, as shown repeatedly herein.

(8) Spot zoning of Mountain View Mobile Inn as a MHP compared to claiming VTP has not been properly zoned as a MHP because it is adjacent on one side (west) to industrial and on another side (east) to commercial is invalid because MV is spot zoned in the City's favor whereas VTP is surrounded on three sides (NW, North, and NE) by R-2 zoning and in its current density of 28 units an acre satisfies the 15-10 units per acre density of R-2 residential zoning. To change it to 4.45 times as dense mixed use development and have such mixed use only present on one side (maybe, if the Roberts development ever happens, and that cannot be presumed at this point, when no EIR has been prepared), which would make VTP still having only two sides be anything but R-2 whereas it would have 90-100 units per acre, itself spot-zoned into an island of density amid a sea of 15-30 units an acre.

(9) Arguments that continue to be made that the City would be liable for inverse condemnation if it did not approve this DA ignore the primary requirement of Penn Central that the owner must be deprived of ALL viable economic use of its property in order to make such a finding. This developer bought into a property that had been a functioning MHP paying its bills for 56 years. He did not apply for rent increases, thereby foreclosing forever the argument that the property was not making a fair return. He signed an MOU with the City (which he is now claiming to the RCB that it entered into as well—since none of the current members of the RCB were there at the time or remember six years ago—when in fact it did not. He did not even apply for a removal permit from the RCB on the ground of the property not making a fair return. If all that had been required of landlords under rent control during the 15 years plaintiff Barnes litigated cases against the RCB was that the landlords were asked whether their profits "penciled out," as has been the way this PD has been treated by the City, her job would have been a lot easier. Every landlord in Santa Monica would have gotten a removal permit. To sum up on this issue, the City has the burden of proof. No proof whatever has been presented at any level—just the PD's vague statements about "not viable," "we considered it," "doesn't pencil out," etc. That does not satisfy either the requirement under the General Plan (LUCE) to keep VTP to the extent it is feasible, or the requirement under the DA to consider other possibilities for this property that would not require displacing current residents, or the requirement under the

MOU that a project be found that qualifies for a removal permit (as shown by receiving one, not just applying and having a Staff Report recommend one).

New levels of illegality that emerged at the Planning Commission ("PC") level:

(10) Violations of the Brown Act

(a) The members of the PC held a series of meetings with individuals in violation of Government Code Section **§ 54952.2** (b) (1): A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. [4]

(b) The PC failed to give notice to the public that speaking with individual members of PC outside the PC meetings was lawful (if it is), resulting in the developer and a few insiders who offered to sell out half the Park each getting over five (5) hours private time to make their cases to the PC, while plaintiffs and the rest of the residents of the Park got three minutes (3 min.) total each in the public meeting.

(c) See number 13 below for Brown Act violations combined with others

11) The unlawful claim made in front of the PC by the Deputy City Attorney (the same claim made by another one at the Landmark Commission and made to the City Council repeatedly by the City Attorney), that the developer has a right to close the Park under a state law regardless of what the City Council ("CC") does, resulted in the PC ultra vires dereliction of its duty, by going to discussion of matters so trivial as to equate to what color the deck chairs should be on the Titanic, rather than discussing the overriding legal issue of whether the Development Agreement should be approved at all, in spite of the environmental impacts, depriving residents of homes they owned without due process of law or just compensation, unconstitutional matter of this being done in the most minority and elderly section of the City and such actions never have even been considered in the white rich section, etc, as discussed herein, which approval could only be recommended. because the benefits of the development to the community (not the City) override its many unmitigable significant environmental impacts and illegalities;

(12) The PC allowed the Proposed Developer's pro formas to go to the City Council as he prepared them, using a mythical $22 million land cost, with a vote recommending approval without putting on the record the PC's recommendations the effects of using actual land costs/value (which pro formas plaintiffs submitted and herewith submit again, Exh. 1);

(13) No tract map was on any PC agenda so if the PC approved a tract map it was unlawful under the Brown Act to do so. The Supplemental Staff Report presented at 2 pm. That very day for the PC on May 30, which was never given to the public for the May 30 meeting, does mention a tract map. This was the last time the public was allowed to speak, but it was a meeting where at the prior meeting on May 23 the public had been told it would not be allowed to speak on May 30. This Supplemental Staff report was then after May 30 issued in writing to the

4 Gov't C. § **54950:. . . . .**
"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."

public on the City's website (between May 30 and June 20, the next PC meeting), but was labeled there that it was presented on May 23. All these machinations to pretend notice was given to the public when it was not violate not only the Brown Act, but also civil rights laws: deprivation of property without due process of law, pursuant to Federal civil rights law and state Constitution art. 1, sec. 15. [5]. It also violates state law and municipal code requirements for notice to residents before consideration of a tract map. No notice was given to residents.

(14) PC requires many changes in size and type of units whereas peer review of proformas (defective as it was in not clearly discussing the actual land cost applicable), states if any assumptions of the project change, it will become infeasible. Staff Report before the Planning Commission, May 23, 2012, p. 51. New peer review of the new plan responding to PC requirements for approval of Development Agreement is required to make the PC's actions have any meaningful application to what the PC recommended to the City Council.

New levels of illegality that appeared at the abortive Rent Control Board removal permit application process noticed for the Rent Control Board meeting of 6/28/12:

(15) The RCB said Gov't Code sections we cited about city relocating Mobile Home Park residents do not apply because this is about a developer changing use of a park. That is what we have been saying all along, but now a separate and sovereign agency of the City government is agreeing. This makes our argument that there is no limit on the relocation costs as there is when the City is closing a park that much stronger, and the City's continuing pretense it does not understand what we are saying that much weaker. The RCB understands the distinction between when a city is closing a park and when a developer is seeking to close a park to change the use of the land. Why can't the City understand that distinction when we have been pointing it out for almost two years??

(16) The RCB said the Development Agreement must include a cash payment from the City to the developer or a density bonus as consideration for an agreement not to have vacancy decontrol of rents (not to be exempt from RCCA as new construction), as the Costa -Hawkins law requires, but that is impossible: density bonus not possible because no zoning regulations, cash payment not possible because developer owes City many millions under the DA. The new application is even worse on this subject, as it does not say even how many units will be agreed to be exempt from rent control. Much less how the PD agrees that will be done and what consideration there will be for the agreement, so as to avoid the buyer he flips the proper4ty to after we are gone and our homes are demolished saying—as a court allowed in Parker v. City of Los Angeles—that he received illegal consideration for the agreement and therefore it is unenforceable, plus the flipee received no consideration at all for it.

(17) The RCB confuses the TWO sets of replacement units involved in granting a removal permit for developing a site where there are rent-controlled units that would be demolished, moved, or converted to ownership rather than rental housing. Following the City, the RCB Staff Report and Supplemental Staff Report also get the law for BOTH SETS wrong. Therefore, this layer of illegality revealed at the aborted RCB removal permit level should be seen as two levels of illegality.

(a) The first set of replacement units needed is a set of relocation units or payments to current residents of the units to be removed. In the case of mobilehome park residents, the requirements for this first set are determined by state law, in this case Government Code , as explained herein. The RCB states City is responsible for the relocation plan for current residents, although in 505 Olympic case the RCB determined the

5 Persons may not . . . . . be deprived of life, liberty, or property without due process of law.

legality of the proposed developer's relocation plan. The RCB implies the City being responsible for the relocation plan for current residents is some kind of preemption of RCB power by the City, since for no stated reason and giving no authority in the Charter, the City Council passed a relocation fee ordinance covering apartment units. This issue of whether the RCB has authority to pass a relocation fee ordinance—as it did for many years—is apparently the issue that caused the RCB to suspend the Chapter 5 Regulations in 1999. However, under the RCCA the Board has authority to regulate removal of units from Rent Control, which means it has ALL the authority to do so. The City under the Charter has NONE. Therefore, if there is a preemption problem with state law, it is not solved by violating the Charter.--whether or not that is lawful following just the Rent Control Charter Amendment ("RCCA"), as the RCB claims to be doing in this case, rather than the RCCA and Ch. 5 regulations as the RCB was doing in the 505 Olympic case. Under the RCCA, there is no such thing as City preemption of RCB power to control removal of units from rent control. Therefore, the RCB's refusal to even discuss what is required for a lawful relocation plan for current residents is ultra vires. The RCB, not the City Council, is required to determine whether the developer's plan for such relocation satisfies the requirements of state law, in order to determine whether to exercise its discretion to approve a removal permit.

(b) The second set of replacement units is return to the public of the removed rent-controlled housing units. In the case of any units to be removed, the requirements of what has to be returned to the public are determined by the RCCA (and, if there are any, regulations of the RCB pursuant to the RCCA). In the 505 Olympic case the RCB required 42 spaces with mobilehomes owned by the residents and space rent at the former rents under rent control to be built on a contiguous site by the developer, which in that case was the City. The RCB in this case did admit it is its job to determine requirements for this set of replacement units, CA section 1800—preserving the housing stock for low-income residents is one of the purposes of the RCCA, but it failed to admit it and it alone is responsible for requiring like-for-like replacement of at least the number of rent-controlled current units. Under the Board's former Chapter 5 regulations that replacement had to be on the site proposed to be developed, or a contiguous site. Under the RCCA those controlled units are both the trailer spaces and the trailers. Under neither are the replacement units lawful, which the developer proposed to give the public to replace the formerly rent-controlled ones. This is because he proposed to remove owned homes and rented spaces, but return to the public only rented apartments, less than all of which would be agreed not to be exempt from Rent Control.

(18) Neither RCB Staff Report adequately covered the issue Staff Attorney Seltzer claimed to the Planning Commission, that rents would first be at market and then be controlled. Nothing in the RCCA allows this. The Staff Report claims the RCB has "discretion" to consider requiring all the rents to be at the level they would have been if the units had not been removed. This is unlawful under the RCCA requirement for agreeing units built are not exempt from Rent Control. It is not subject to the Board's discretion (other than the same discretion the RCB has to deny a removal permit even if the proposed developer meets all the requirements of the RCCA, a discretion the Staff Report claims the RCB has never exercised (see #10 below). Either the developer agrees the units are not going to be exempt from Rent Control, which means their rents are the same as rents were in the rent-controlled property being developed, or else he has not agreed they will not be exempt, as he is required to do under the RCCA to get a removal permit.

(19) Both Staff Reports disingenuously claimed "may" in the Charter Amendment means "shall," in claiming the RCB has never exercised any discretion to deny a removal permit for proposed development when a proposed developer meets all the requirements of RCCA section 1803(t)(2)(ii). Neither Staff Report gives any authority the RCB ever even considered the issue. Moreover, whatever the RCB did in the past, even if a Staff Report gave authority that whatever it claims happened in the past actually did happen, no administrative agency has jurisdiction to violate the terms of its enabling statute. When an enabling statute uses "may," it means the

administrative agency has discretion. When it uses the word "shall," it gives mandatory directions. No administrative agency has jurisdiction to change the plain meaning of words. Finally on this topic, even if the RCB in the past had never acknowledged it had discretion to deny a removal permit even in circumstances where a proposed developer met all the requirements of RCCA 1803(t)(2)(ii), since the RCB has no regulations now, and is following only the RCCA, it has to actually do so, not rely on some past practice, and as indicated above, no administrative agency has discretion to change the meaning of plain words in its enabling statute. **THIS LAYER OF ILLEGALITY IS PROBABLY THE MOST IMPORTANT LEVEL MENTIONED IN THIS ENTIRE DOCUMENT, SINCE IF EVERYTHING ELSE HEREIN WERE INCORRECT, THIS LEVEL DETERMINES THAT THE PROPOSED DEVELOPER HAS NO ENTITLEMENT TO DEMOLISH UNITS AT THE PARK. IF HE HAS NO ENTITLEMENT TO DEMOLISH UNITS AT THE PARK, HIS CLAIM OF ENTITLEMENT TO A DEVELOPMENT AGREEMENT FAILS UNDER BOTH STATE AND MUNICIPAL LAW.**

(20) The RCCA, unlike the RCB's former Chapter 5 regulations, requires "the units" proposed to be built on the rent controlled property to be agreed not to be exempt from Rent Control--"the multifamily dwelling units," not "the rental multifamily dwelling units." The RCCA does not mention numbers, so it is reasonable to interpret it to mean as many as were removed, and also reasonable to interpret it as meaning all the units built because of the RCCA purpose to maintain the housing stock for poor, elderly, students, etc.

Layers of illegality that had emerged in the last two years:

(21) Proposed Developers' plans have never complied with the General Plan Land Use and Circulations Elements (LUCE) adopted 7/10 in the following respects:

(a) Some plans had no required creative use, so did not comply with the creative part of Mixed Use Creative District designated as the land use for the subject property;

(b) Other plans had no required creative or commercial use, and therefore did not comply with the General Plan Mixed Use part of the Mixed Use Creative District;

(c) All proposed plans by Proposed Developers proposed approximately 60-100 units per acre far beyond current density and that proposed in LUCE for the surrounding neighborhood , which is R2 (density 15-30 units/acre) to both the East and North, so they failed to comply with General Plan (LUCE) [6]goal to "preserve existing neighborhoods, p..."

(22) EIR and Proposed Developers' plans all failed to comply with General Plan goal to "preserve Village Trailer Park as feasible, (p.) in that no definition of "feasible" was used as a standard, no application of facts to that standard was made, and no conclusion was reached as to feasibility other than that no joint venture with the other two adjacent property owners could be worked out, FEIR, p. 448.
Even as to the latter conclusion, the DEIR and FEIR used criteria to enter into a joint venture that ipso facto foreclosed it (there are no trading of development rights--TDR--provisions in place yet under LUCE, and three

6 Everywhere in this document where plaintiffs refer to General Plan and then say LUCE, they do not mean to and do not waive the argument that the General Plan is not complete, and that two elements, land use and circulation, do not constitute a general plan. Neither does adding a Housing Element and an Urban Forest and a Parks and Recreation element make the General Plan complete. Until all the elements required of a general plan by state law are complete, the old General Plan remains in effect because the Municipal Code requires a Master Plan and no Master Plan exists for what the City keeps calling its new general plan.

properties are not sufficient to arrange the magnitude of transfer necessary, p. 448 of FEIR). No legal provision in code or case law allows such a foreclosure of one possibility of making feasible retaining Village Trailer Park as a trailer park.

(23) DEIR and FEIR fail to take environmental consequences of Proposed Developers' plans into effect as required by law as to :

(a) environmental injustice, which was proposed by plaintiffs in 6/10 as a topic fitting into the neighborhood legal framework , population and housing topics proposed by the City to be discussed in the DEIR, and that it was missing in the DEIR was pointed out by plaintiffs again, with the unlawful response in the FEIR being merely that "environmental injustice" was not a required category to be considered under CEQA guidelines, FEIR p. 478. .In fact and law, "environmental injustice" is a mere subtopic of all the categories of required discussion under CEQA guidelines as to which plaintiffs proposed it must be discussed , and defining the categories so as to exclude "environmental injustice" is not proceeding as required by the plain meaning of the words of each of those categories;

(b) FEIR fails to adequately take into account the environmental consequences of proposed development plans in all the following aspects as required by CEQA:

1) No soil test
2) No water table test;
3) No water supply need determined, and no evidence there is that water supply
4 and beyond) See separate submission of Peter Naughton dated 7/24/12.

(c) All the other ways our comments to DEIR were ignored, discounted, not properly answered in FEIR—see separate submission of Peter Naughton dated 7/24/12.

(d) FEIR changed the plan being considered, and the conclusions of the City regarding that plan compared to the DEIR and did not give the public a meaningful or adequate opportunity to discuss changed facts and conclusions by recirculating the FEIR as a DEIR for comment in the respects shown in the separate submission of Peter Naughton dated 7/24/12.

(24) The City improperly participated in coercing current residents to move by offering, stating they were lawful, and repeatedly sending up to six City employees to meet with current residents including plaintiffs to coerce them into accepting relocation payments that, under municipal code establishing such relocation payments, were unlawful to be offered until the Proposed Developers had all local permits required which he did not have at any of those times and does not have even at the time of the City Council hearing of 7/24/12. See Exhibit 3 as to details of what is required of replacement of demolished owned homes. Having no guarantee the PD will have to build anything under penalty of losing a bond as great as our irreparable harm if our homes are demolished and he does not build anything is a separate reason the DA does not comply with law.

(25) The City unlawfully deprived plaintiffs of the benefit of the public's comments by repeatedly claiming falsely, as in the notices of Planning Commission's meetings of May 23, May 30 and June 20, 2012, that if an issue was not brought up before or at that hearing it could not be used as an issue in court, with the result than an unknown number of people may have been convinced it was futile to bring up an issue that had not occurred to plaintiffs later, so those unknown people did not do so, and plaintiffs cannot use that issue in court.

(26) The City violated the 2007 Memorandum of Understanding by failing to consider a resident owned mobilehome park or any other alternatives to the Proposed Developers' plan requiring closing of the Park as a mobilehome park and change of use to other uses.

(27) By conspiring with the Proposed Developers to foreclose any discussion in the DEIR or FEIR of proposals for use of the land that would retain Village Trailer Park as a mobilehome park, the City unlawfully took for itself the power designated by the Charter in chapter 18 solely and exclusively to the Rent Control Board to take actions to retain the existing inventory of low-cost housing in the City.

(28) By conspiring with the Proposed Developers against its own citizens with rights under the Charter protecting them from eviction unless requirements he could not meet were met, and by presenting the Proposed Developers' arguments as the law to the Landmark Commission and the City Council and the Rent Control Board, the City violated its fiduciary duty to its citizens to represent their interests, and even in a case where (as was not the case here) the interests of the Proposed Developers were far superior to those of the current residents, the City had a duty to remain neutral and to promote the interests of the current residents rather than the Proposed Developers.

(29) Even under federal law, on a subject as to which state law is much more restrictive of City the City has no lawful right to condemn homes that are not blighted in favor of private development, even if it used eminent domain, which it did not do, since under the New London case the value to the City as a whole in such a case must be well established whereas in this case no value to the City as a whole from producing a far-above-density for the neighborhood, gridlock traffic producing, possibly flood causing (no drainage analysis, no curbs and gutters draining East of 26th Street) development was not established at all.

(30) By constantly implying in public documents and statements that the Proposed Developers' density was part of "integrated planning for transit", when in fact the subject property is outside the Bergamot Transit District as the City itself drew the District and is far too far away from the proposed transit station, according to all extant research, for residents to choose public transit over cars, and while including two subterranean levels of parking for 500-800 cars, thereby acknowledging cars rather than public transit were the likely mode of transportation to be most commonly used by the proposed residents, the City proceeded to intentionally deceive and defraud the public, in violation of its fiduciary duty to tell the public the truth.

(31) By promoting for six (6) years plans by the Proposed Developers that (a) would deprive people of their homes (current homeowners), 90% of whom were elderly and disabled or both, and a higher percentage of whom were minorities, women, or families with children than in the rest of the City where such developments are not permitted, (b) deprive those suspect classifications of their right to quiet enjoyment of tenancies under rental agreements protected by the City Charter against such violations, and (c) deprive them of their separate and independent right under the Charter not to be harassed by a landlord into moving, the City violated the Unruh Act and federal civil rights acts by intentionally or at least grossly negligently [7] promoting plans with highly disparate negative effects on groups protected from discrimination by state and federal law. This discriminatory behavior revives policies over 50 years old and long thought to be remnants of reprehensible but forever ended pre-Civil Rights Movement era policies of doing everything possible to destroy established minority communities lest

7 This could have been just grossly negligent until what it was doing was pointed out, certainly no later than comments of plaintiffs to proposed DEIR in June 2010, at which point continuing to promote the plans having such known effects became an intentional and knowing policy of the City, if it had not been so before that time.

minorities increase their political power. [8] No upper-class white people in area code 90402 have ever been subjected to such atrocities, 50 years ago or now. Discriminatory policies created the very core of "modern" Santa Monica. Now they have been declared to be and are unconstitutional.

(32) By promoting relocation plans of Proposed Developers that provided no compensations whatsoever for loss by current residents of homes they owned or of leasehold rights under Rent Control, the City proceeded in violation of the current residents civil rights not to be deprived of property without due process of law and without just compensation

(33) By doing all the acts referred to in numbers 24-32 above, the City, which has a fiduciary duty to protect the civil and property rights of its current residents against unlawful encroachment and deprivation by known third parties, committed neglect of the property and civil rights of elders in the terms defined in the California Elder Abuse statutes and is liable to those citizens in damages for an unlawful City policy carried out from the City Council level throughout City government for over six (6) years.

(34) By claiming the state statute limiting damages to mere relocation costs for moving residents from a mobilehome park when a city is closing a park applied to a situation where the statue begins with a section reading "except when a tentative tract map is required," as was the case with all proposed development plans for the subject property, and where there is a separate state statute with no limit on costs a developer must pay when moving residents from a MAP to change its use, the City failed to proceed as required by law, in that:

(a) it used a statute stating explicitly the statute did not apply when a tentative tract map was required, in a situation where a tentative tract map WAS required;

(b) it used a statute applying when a city is the agency closing the mobilehome park, in a situation where the City was not the agency closing the subject mobilehome park, and instead the Park was proposed to be closed by Proposed Developers, who proposed to change the use of the land where the Park was located after demolishing all the houses owned by current residents on that land;

(c) it failed to use a separate statute explicitly and clearly by the plain meaning of the words that statute uses, applying when a developer wants to close a mobilehome park and change the use of the land where that mobilehome park is located;

(d) by doing the acts listed in (a)-(c) above, it conspired with Proposed Developers

(i) to mislead current residents into moving into rental housing not in a mobile home park, when they had a right under the applicable statute to move themselves and their mobilehome into a mobilehome park, or be fairly compensated for their

8 As the e-mail to the Council from Zina Josephs dated 7/22/12 outlines this sad and embarrassing history: "In the 1950's, the Belmar Triangle, an African-American neighborhood was destroyed by the City of Santa Monica in order to build Santa Monica Civic Auditorium. Also in the 1950's, "the city acquired 259 parcels of land along the beach south of … Ocean Park Boulevard [mostly lower-income people's property], displacing 316 families and 212 businesses, to build Santa Monica Shores [allegedly low-income apartments]." The "affordable" apartments in The Shores now seem to rent for about $4,000 a month. In the 1960's, the Santa Monica Freeway was built through the Pico neighborhood and, according [to] the *Los Angeles Times*, "Nearly 600 families, mostly Latino and black, were displaced to make room for the freeway's path.'"

damages if such was "not possible"

(ii) the City conspired with Proposed Developers to require other current residents such as plaintiffs to expend hundreds of hours and suffer untold physical and psychological damages fighting being offered highly inadequate relocation costs by Proposed Developers and

(e) by doing the acts listed in (a)-(d) above, the City violated the civil rights of plaintiffs and other current residents not to be deprived of property without due process of law, and used color of law to conspire with Proposed Developers and others to deprive plaintiffs on unlawful grounds of equal protection of the laws, under both the Unruh Act and federal civil rights statutes pursuant to the 1st, 4th and 14th Amendments to the United States Constitution.

(35) By accepting $85,000 from Proposed Developers to pay for a Tenant Impact Report the City was required to pay for under the statute it was knowingly and unlawfully following as described in #24 above, and by accepting payment by Proposed Developers to current residents of relocation costs the City was required to pay under that statute it claimed at all relevant times to be following when it accepted credit for those payments by Proposed Developers, the City unlawfully accepted bribes and /or other unlawful promotion payments to act in favor of Proposed Developers.

(36) By failing to accept without the $400 filing with fee waiver papers appropriately filled out showing inability to pay, plaintiffs timely filed appeal of the Landmark Commission's denial of landmark designation for the subject land without plaintiffs and the other then current residents' trailers (as was unlawfully denied by the Landmark Commission because of the same known City misstatement of the right to close a Mobilehome Park referred to above in #24, so was a separate violation of plaintiffs' rights for all the reasons stated in that appeal), the City denied plaintiffs equal protection of the laws in violation of their civil rights in that:

(a) Any member of the City Council or the Landmark Commission, may file the same kind of appeal without paying a filing fee; and

(b) the City conspired with its counter clerk to have him claim plaintiffs "left papers at the counter" when in fact they filed the papers and their appeal was checked in as "pending."

(28) By conspiring with the Proposed Developers to claim demolishing trailers on the site where plaintiffs lived was not "demolition" the City failed to proceed as required by law in that:

(a) the Proposed Developers had been required by SCAQMD to obtain prior asbestos inspections and clearances explicitly because demolishing a trailer constituted "any demolition;"

(b) the Proposed Developers demolished not only trailers, but also additions thereto for the addition of which property owners had been required by the City to obtain building permits, so even if trailers themselves did not constitute "buildings" being "demolished" under City law, the additions did so constitute items requiring a demolition permit;

(c) the Proposed Developers also demolished landscaping, lush and in some cases growing over roofs of trailers, appearing to be 40 to 60 years old to the extent that the City consultant hired by the Landmark Commission to evaluate the property stated in some cases trailers were "enmeshed" with landscaping. Since the City has a mandatory reuse and recycling program of solid waste including landscaping and building

materials demolished, requiring 65% of such landscaping and building materials be reused or recycled at the expense of the demolisher, it violated its own statute by not requiring a SWM plan and inactivation of that plan by Proposed Developers as to the landscaping and building materials be demolished, and

(d) By allowing, after explicit notice from plaintiffs, Proposed Developers to demolish trailers, additions that had been issued required building permits, and landscaping and building materials required by its laws to be reused and recycled, to instead be broken into smithereens by Proposed Developers, with effects of polluting air, soil and water on land occupied by plaintiffs at the time, the City violated its fiduciary duty to protect the health and safety of surrounding residents by requiring permits for demolition followed by proper procedures for demolitions.

(37) The City in doing the acts listed in item #28 violated its policy demonstrated at every mobilehome park in its jurisdiction, and specifically City owned Mountain View Mobile Home Inn in the past ten (10) years of requiring demolition of a trailer, additions to a trailer that required a building permit, and/or landscaping and building materials in the yards surrounding such travel trailers. The City thereby demonstrated its knowing conspiracy with Proposed Developers to violate City laws and procedures to make destroying Village Trailer Park less expensive than it otherwise could be and must be under due process of equal protection of the laws and to unlawfully lessen the environmental impacts to be considered in an EIR of development of the land where VTP is located, in violation of the plaintiffs rights under CEQA.

(38) In conspiring with Proposed Developers after it was pointed out to City that Proposed Developers had violated the 2007 Memorandum of Understanding by destroying trailers when he agreed therein not to do so until he got a removal permit from the Rent Control Board, and by Proposed Developers anticipatorily breaching the Memorandum of Understanding by stating he would not as he had agreed in the Memorandum of Understanding to do, build the building to which current residents would then be permitted to move, while they in their trailers remained on the VTP site (so they would not have to move anywhere else and their trailers would not be demolished until after their replacement housing was already built), both of which agreements were conditions precedent to the City's entering into the Memorandum of Understanding, without which the City's entering into the Memorandum of Understanding would have been even more unlawful than it was anyway in 2007, the City in 2012 showed even more clearly than ever before that it was a knowing willful violator of the rights of current residents as alleged herein.

(39) In entering into ex parte negotiations with the Rent Control Board to conditionally approve a removal permit, an application for which had not at the time been set for hearing, and in reporting to the Planning Commission on May 23, 2012 how the Rent Control Board would conditionally grant that application, the City violated and solicited violation of both the Brown Act requiring all the decisions of the Rent Control Board to be made in a public meeting, and the Charter requiring the Rent Control Board to make decisions independently of and sovereign to the City Council as far as those decisions affect--as granting a removal permit does--maintenance of the rental housing stock of the City of Santa Monica.

(40) By four (4) times deciding against dismissing the Development Agreement and/or taking steps to make it less likely VTP would be closed, between July 2010 and March 2012, the City through the City Council showed by the totality of circumstances that it had decided to approve the Development Agreement before it had reviewed the EIR. Such a decision fatally violates CEQA to the extent such violation can never be undone, so that approving the DA after that is impossible lawfully, and the DA must therefore be dismissed. It also was shown that the approval had actually been pre-determined in 2007 because the City Attorney told the CC in 2008 that if it did not approve the DA it would have liability to PD under the 2007 MOU whereas the MOU itself states there is no

guarantee of approval; Jing Yeo told the residents of VTP in meetings in 2008 and 2012 that "the Council told us to work out a DA, and that is what we are doing;" the Housing Department in 2011 sent the residents a letter saying they were "being displaced," which is present continuing tense, not hedged with any possibility that something might happen in the future or is contingent on approval by the Council; relocation fees were paid and six City employees participated in coercing residents to take them—throughout 2008-2012—when the Municipal Code says relocation fees are not to be paid to tenants being displaced until after all permits are obtained (which, by the way, includes building permits); Deputy City Attorney Alan Seltzer told the Planning Commission on May 23, 2012 in the middle of the night when he thought we had all gone home so he was talking among friends, that in 2007 the City Council and the Developer negotiated an MOU involving closing the Park, and whereas other cities had passed ordinances about closing mobilehome parks, "we decided since we had only one privately-owned park, we would do it [close it] by development agreement;" Councilmember Shriver saying in 2011 he was voting against directing the staff to look out for the interests of current VTP residents because that would subject the City to liability under the MOU (when the Council had not seen the EIR and in fact the FEIR was not issued); the Planning Department's holding an as for now (pending discovery in later litigation) untold number of meetings with the developers working out strategies against the current residents; and other circumstances. The City has not even tried to hide that the decision was already made, since apparently the threat of litigation by the developer was all the City was afraid of.

(41) RICO: The City in a conspiracy of numerous people stole tenant TORCA funds of about $4 million in 2002 to buy Mountain View Mobilehome Inn, for the City, not for tenants (whether or not that would have been lawful, since the TORCA funds were tenants to buy TORCA units, not mobilehome parks). Then in 2012, again through a conspiracy of numerous people, many of them the same ones involved in the 2002 conspiracy, the City accepted bribes from the proposed developer in this case by allowing the developer to pay fees the City itself owed if the statute it claimed applied for relocation fees had applied, accepting those bribes and others consisting of claimed "community" benefits in the form of payments to the City not to be earmarked to be used to benefit the community affected by the development. At t he same time the City conspired with numerous employees to accept money from the federal government for protecting Village Trailer Park and to continue even while conspiring to demolish it to make reports to the federal government that the City was "protecting" Village Trailer Park. The City entered into these conspiracies in return for applying a relocation state law code section that begins "except in cases where a tentative tract map is required," in this case where because the proposed developer was going to build condominiums among other things, a tentative tract map was always known to be required, and which for the other reasons listed above clearly did not apply in the circumstances. The 2002 through 2012 two sets of criminal conspiracies subject the City to RICO, with both civil and criminal penalties.

The Seven (7) Levels of Illegality of this Development Agreement, which we started with in June 2010:

(42) Approving entering into negotiations for the Development Agreement in 2007 constituted in the totality of circumstances they present, predetermination prior to review of the EIR to approve the Development Agreement. These circumstances included but were not limited to the facts that the City agreed in the MOU to get a removal permit, which was under the separate and sovereign jurisdiction of the Rent Control Board, so as to which the City Council had no power of its own and as to which it could not lawfully represent entering into the MOU before the Rent Control Board and as to which the Rent Control Board had notified the Proposed Developers in writing that its notice of closure of VTP and eviction notice to the then current residents was unlawful under state law because Proposed Developers did not have and could not obtain a removal permit from the Rent Control Board for the change of use stated in Proposed Developers' amended notice, which was for the

purposed of leaving the land empty for future investment. Entering into the MOU in 2007 also constituted per-approval of the Development Agreement prior to review of the EIR because it explicitly contemplated closure of VTP, which had 109 rent controlled spaces the occupants of which were then protected from eviction from according to the terms of the City Charter, as to which terms the City Council was explicitly and specifically prohibited from interfering with the Rent Control Board's jurisdiction to govern sovereignty and separately from the City, even as to adopting its own budget, much less making its own decisions about whether or not a property should be removed from Rent Control. By entering into the MOU without the Rent Control Board, the City also showed it had predetermined to approve the Development Agreement prior to review of the EIR because it agreed alone without the Rent Control Board's consent to try on behalf of the Proposed Developers to get a removal permit from Rent Control.

(43) By approving entering into negotiations for a Development Agreement that violated the then current General Plan in 2007, the City unlawfully entered into Development Agreement negotiations, unlawful pursuant to both state law and municipal code, which both require a development agreement to comply with a city's General Plan.

(44) That the City had already predetermined to approve the Development Agreement when it entered into the 2007 MOU is indicated by later statements by the City Attorney that if the City did not approve the Development Agreement it would be liable to the Proposed Developers, even though the terms of the MOU itself state the opposite: that the MOU does not constitute an agreement to approve the Development Agreement and that the City has no liability under the MOU to Proposed Developers if it decides later not to approve the Development Agreement, that such approval is discretionary and the Proposed Developer has no entitlement to it, and that such discretion is dependent at least upon prior consideration of an EIR then not prepared.

(45) that entering into the 2007 MOU constituted in the totality of the circumstances present at the time pre-approval of the Development Agreement prior to review of the EIR is also indicated by the fact that the City entered into the MOU agreeing to try to get a removal permit allowing 109 replacement units to be built on the VTP land site not to be exempt from Rent Control, when in 1999 the Rent Control Board's regulations so requiring had been suspended and the Charter itself requires an agreement by a Proposed Developers not to exempt the "multifamily dwelling permits" to be built on a site where Rent Controlled units were situated, not just as many dwelling units as were removed, and not just the rental dwelling units, but "the units", referring to "multifamily dwelling units to be built on the site".

(46) That entering into the 2007 MOU constituted pre-approval of the Development Agreement prior to consideration of the EIR in violation of CEQA, considering the totality of circumstances at the time is also indicated by the fact the City agreed to enter into the MOU not only with all the problems indicated in 1-4 of this section, but also agreed to try to help the Proposed Developers get a removal permit to build 109 replacement units on the site in compliance with a new General Plan the City was going to consider, the terms of which the City could not have known in 2007 and in fact did not know until two new elements of the General Plan applicable to the VTP site were adopted by the City Council in July 2010, over two (2) years later. Given the requirements of state and municipal law for public input into the contents of a new general plan, the City could not lawfully have known whether 109 replacement units of the type then proposed in 2007 by Proposed Developer could be built at the site after the new General Plan was adopted.

(47) To agree in 2007 to try to help Proposed Developer get a permit from a separate and sovereign City agency that had already told Proposed Developer he was not entitled to such a permit with the plan he was then proposing constituted ultra vires violation of the separation of powers of the City Council and the RCB under

the City Charter; and

(48) To agree in 2007 to try to help Proposed Developer get a permit from a separate and sovereign City agency that had already told Proposed Developer he was not entitled to such a permit with the plan he was then proposing constituted ultra vires and unlawful violation of the City's fiduciary duties to its then current residents and violations of the City Council's sworn duty to uphold the federal and state Constitutions and faithfully enforce the laws of the state and the City, as further stated herein.

CONCLUSION

For each of the foregoing reasons, the DA must be disapproved, approval must be delayed, or approval must be contingent, as stated above as to each reason.

DATED: July 24, 2012

Respectfully submitted,

Brenda Barnes and Peter Naughton
"Plaintiffs"