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Re: County of Humboldt Proposed Relocation Policy

Dear Jefferson and John:

Thank you for the opportunity to review the County's proposed *Relocation Assistance Policy for Real Estate Acquisitions*. For the most part, the proposed policy attempts to track the California Relocation Assistance Act and its implementing regulations. Gov't Code §§7260, *et seq*., 25 CCR §§6000, *et seq*. However, as I mentioned on the phone this morning, we have a few concerns that arise from deviation from the existing law. We also propose that the County take advantage of this opportunity to adopt a meaningful policy for the residents of Humboldt County.

Moreover, we appreciate your willingness to meet with petitioners' counsel to attempt resolution of these issues prior to review by the Board of Supervisors. We agree that there is sufficient time to discuss our concerns while remaining in compliance with the settlement agreement. However,

since we will need to make public comment for any matters that are not resolved through our informal discussions, we request that you immediately advise, with a final draft of the policy, if and when the County elects to move the proposed policy forward to the Board.

Except for our first comment regarding the usefulness of the policy in general and the second comment regarding the overarching issue of "displacing activity", we make comments below for each Article in the proposed policy for easier reference. Thank you in advance for your consideration of these comments and for meeting with us to address any unresolved issues.

I. Consideration of Displaced Persons in Humboldt County

Our settlement agreement in *Martinson v. County of Humboldt* requires that the County adopt a relocation policy that complies with state regulations. This draft policy meets that minimum standard in many ways because it repeats the regulations nearly verbatim. But the ways in which the draft policy deviates from the regulations reveal the County's intent to craft a policy that is less rigorous and much narrower than the minimally-protective standards provided under state law.

Even though the draft policy likely complies with the terms of our settlement, once amended to include the recommendations herein, we expected greater clarity to enshrine Humboldt County's specific commitments related to relocation planning for its residents. The failure to create a more thoughtful policy is a missed opportunity for Humboldt County residents facing displacement. We urge the County to put more thought into considering the needs of displaced persons in our county, especially because they tend to be low-income and disadvantaged in the housing market.

II. Definition of Displacing Activity

Our primary concern is that the entire policy attempts to narrow displacing activity to real estate acquisitions. As you know, California law requires relocation assistance in a number of actions undertaken by the public entity, including rehabilitation, demolition or any other displacing activity (whether directly conducted by the public entity or undertaken with public funds)—in addition to acquisition. *See, e.g.*, §7260(c)-(j); 25 CCR §6608(f). This includes any person (rather than the public entity itself) who is carrying out a "public" program or project. *Id*. For example, displacing activity may occur when a private project is undertaken with the leverage of any public funds.

III. Article I

Section 1.1(c). The County includes language permitting the County to suspend or terminate a project if it determines that replacement housing is not available. This is not a permissible action under state law. While the County has the authority to suspend or terminate a project (such as the Fourth Street properties), the County will still need to comply with relocation law during this process. It is crucial that the policy clearly state that the County must comply with the relocation policy up to, and until it decides, to withdraw from a project, including providing relocation assistance and benefits for any person who is already displaced. Indeed, most jurisdictions begin a project with advance knowledge of any relocation requirements, and plan accordingly to avoid unnecessary staff time and the cost. This is consistent with the statute. §7260.5 ("The Legislature intends [that] [p]ublic entities shall carry out this chapter in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs.")

To avoid any misunderstanding of the County's obligations related to suspension or termination of a project and to encourage appropriate planning during all phases of a project, we request that the County omit this language from the policy.

Section 1.1(e). This section states that if federal funds are used, the policy does not apply. This is inconsistent with §§7272 and 7272.3 which declares legislative intent that the state establishes minimum requirements and to require compliance with other laws if greater protections are given. Some displaced persons, such as undocumented people, are eligible for relocation under state law but not under federal law—even if the public entity is using federal funds. Ultimately, the displaced person is given the choice of what relocation assistance, if otherwise applicable, they want to invoke. Thus, the language refusing relocation assistance if federal funds are used should be removed.

Section 1.5(g)(2). The definition of "Displaced Person" is missing important language about owner participation agreements. *See* 25 CCR § 6608(f). To be consistent with the state regulations, please add the following language: "This definition shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for or in connection with a public use where the public entity is otherwise empowered to acquire the property to carry out the public use."

Section 1.5(i). The County attempts to limit its exposure to relocation obligations by redefining "Initiation of Negotiations" (ION). The County adds that "Discussions and/or exchange of documents preceding the making of an offer are not negotiations." The regulatory definition of ION refers to "the initial written offer made by the acquiring entity [or its representative.]" The County should be aware that the exchange of documents and/or discussions regarding possible acquisition may indeed trigger the ION. Since the ION is a factual issue and depends on whether the County has made information public, provided adequate notices and prevented potentially displaced people from moving, etc., it is important that the County refrain from relying on this unqualified addition when contemplating the purchase of real property.

Section 1.6. The proposed policy only includes part of the requirements imposed by state relocation law. It is missing specific and important

language related to requirements imposed by acquisitions. 25 CCR §6010(b). To maintain consistency with the regulations, the County must add the following language:

> "Acquisition. No public entity may proceed with any phase of a project or any other activity which will result in the acquisition of real property until it determines that with respect to such acquisition and to the greatest extent practicable [that] (1) Adequate provisions have been made to be guided by the provisions of Article 6 of the Guidelines [25 CCR §6180], and (2) Eligible persons will be informed of the pertinent benefits, policies and requirements of the Guidelines [California Code of Regulations]."

Id.

In addition, the County includes qualifying and impermissible language regarding "insignificant" displacement. This language must be removed because it is not consistent with state law.

IV. Article II

Section 2.3(b)(3). Section 2.3(b)(3) of the proposed policy purports to limit the County's relocation obligations if an "occupant was informed by the County's plans to demolish, rehabilitate or change the use of the property prior to taking occupancy of the property." Due to the subjectivity of "informed", the County's policy should be consistent with the applicable regulation. *See* 25 CFR §6034(b)(3). The County must comply with all state-mandated notice procedures to evade application of the relocation law.

Section 2. 6(a)(1). The proposed policy further adds a caveat that a post-acquisition tenant is not eligible for assistance where the County is demolishing, rehabbing, or changing the use of permanent housing on its own land or real property. As discussed in Section I, the County does not have any basis to depart from the state regulations that implement the CRAA. It is obligated to follow the CRAA. Thus, the County's policy cannot

ignore those situations where the County itself is not the entity directly acquiring, rehabbing, or demolishing a building, but is instead funding a private entity to do so. In reality, a private entity is often the vehicle for such displacing activity that is funded by local government, and excluding those situations from this policy is unacceptable.

The County's policy should, at a minimum, be modified to comply with the entire regulatory mandate set forth in 25 CFR 6040(a):

> Each relocation assistance advisory program undertaken pursuant to this Article shall include, at a minimum, such measures, facilities or services as may be necessary or appropriate in order to:
> (1) Fully inform eligible persons under this Article within 60 days following the initiation of negotiations but not later than the close of escrow on the property, for a parcel as to the availability of relocation benefits and assistance and the eligibility requirements therefor, as well as the procedures for obtaining such benefits and assistance, in accordance with the requirements of section 6046. <u>For projects by private parties with an agreement with a public entity, the "initiation of negotiations" shall be the later of the date of acquisition or the date of the written agreement between the private entity and the public entity for purposes of acquiring or developing the property for the project</u>….

The County does not have the authority to omit the underlined language from the state regulation in its relocation policy.

V. <u>Article III</u>

Section 3.12 and 3.13. Public entities are no longer permitted to follow the monetary amounts for relocation payments set forth in the regulations. Indeed, the regulatory "limits" governing relocation payments of $22,500 for homeowners and $5,250 for tenants were implemented over twenty years ago. See 25 CCR §§6102, 6104. Looking ahead, the Legislature created its "last resort housing" mandates because it understood that these amounts would not keep up with the California housing market.

Accordingly, while reference to the lower amounts in these sections of the County's policy is arguably accurate, it is also misleading. If it endeavors to make its policy a usable and informative document, the County should cross-reference its "last resort housing" provisions set forth in Article 4 which comply with state law. Such cross-referencing makes the policy more easily understood and maintains consistency with the state's last resort housing requirements.[1]

VI. Article IV

Section 4.3. This section complies with state law verbatim, but is a missed opportunity to develop a plan that is pertinent to the residents of Humboldt County. For example, the County should consider including housing agencies and organizations specific to Humboldt County, including non-profit developers and service agencies, non-governmental tenant rights groups, the Humboldt Housing and Homeless Coalition, the Human Rights Committee, and the Housing Trust Fund and Homelessness Solutions Committee. Citizen participation should also provide for engagement for any legal representative of a displaced tenant or homeowner.

VII. Article V

Section 5.2(a). This subsection closely mirrors the corresponding regulation, but it omits the public entity's property management practices from the grounds for complaint. Regardless of the County's plan to manage properties in the future, this is an important tool for aggrieved residents, and it should be included within the County's proposed policy. Further, we suggest adding a parenthetical after "Board of Supervisors" in the first sentence so that it reads, "…claim reviewed and reconsidered by the Board of Supervisors (or its designee)," to make clear that the Board of Supervisors must designate an officer if it was the entity conducting the review in question.

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[1] See, for example, 25 CCR §6120 (If comparable replacement housing is not available the public entity shall use its funds or funds authorized for the project to provide such housing), and §6139 ("Whenever comparable replacement dwellings. . .are not available with the monetary limits of Government Code section 7263 and 7264, as appropriate, the displacing agency shall provide additional or alternative assistance [including a replacement housing payment calculated pursuant to state regulations]....")

Section 5.5(a). This subsection matches the regulation. However, for consistency within the policy, we suggest the following amendment to the final sentence, as underlined, to avoid confusion regarding the availability of judicial review: "When a claimant seeks review, the County shall inform the claimant that the claimant has the right to be represented by an attorney, to present the claimant's case by oral or documentary evidence, to submit rebuttal evidence, to conduct such cross examination as may be required for a full and true disclosure of facts, and that the claimant need not exhaust an administrative appeal prior to seeking judicial review."

Section 5.9. This provision requires claimants to submit a Public Records Act (PRA) request for all files and records bearing upon the claim or the prosecution of the claimant's grievance. This seems like a ready mechanism for requesting such documents, but it is a hurdle not specified in the regulations. We propose removing the requirement that requests for such documents be made in the form of a PRA request. Such documents should be made available to claimants on demand within one week of the claimant's request so they might make timely objections to the County's determination.

Thank you again for providing this opportunity to submit these comments before forwarding the policy to the Board for review. We look forward to meeting with you.

Sincerely yours,

S. Lynn Martinez
Litigation Counsel

cc: Co-Counsel