We ARE Marina del Rey P.O. Box 9096, Marina del Rey, CA 90295

December 16, 2009

Commissioner Leslie G. Bellamy, Chair
Commissioner Wayne Rew, Vice Chair
Commissioner Esther L. Valadez
Commissioner Harold V. Helsley
Commissioner Pat Modugno
Regional Planning Commission
Department of Regional Planning
320 West Temple Street
Los Angeles, CA 90012

Re: Project R2006-01510 and Project R2006-02726 (together the "OT/21 Project") COMMENTS on the OT/21 Project and combined Draft Environmental Impact Report (DEIR) - : OPPOSE

Honorable Commissioners:

We ARE Marina del Rey ("WAM") strongly urges your Commission to continue the hearing on Project R2006-02726 (Parcel 21 Project) including all applicable Plan Amendments, Coastal Development permits, Conditional Use permits, Variances and Parking permits and disprove Project R2006-01510 (Parcel OT Project), including all applicable Plan Amendments, Coastal Development permits, Conditional Use permits, Variances and Parking permits based on the following issues and comments on the projects and the DEIR.

1. REJCECT/DISAPPROVE PROJECT R2006-01510

Project R2006-01510 proposes to build a 114-unit senior retirement facility based on a new land use category in the LCP of Active Seniors Accommodations to be described as:

> *a specialized facility for the housing of active persons over age 60 who may or may not be retired. Units shall contain no more than two bedrooms and shall not provide a kitchen. However, communal dining facilities shall be available on-site. Mixed use services provided on-site for residents may include, but are not limited to, one or more of the following: concierge, dry cleaners, laundry, hair and beauty salon, spa (excluding massage), recreation room, lounge, shuttle/limousine, travel, maid, linen, and other similar personal services. The accommodations may be rented or leased on a monthly or yearly basis. Accommodations may be rented, for no more than seven (7) days, to relatives or friends who are visiting residents of the facility. Units within an Active Seniors Accommodations facility are not considered residential uses for purposes of allocating dwelling units, assessing affordable housing requirements, or assessing transient occupancy taxes or fees.*

We ARE Marina del Rey believes the 114-unit senior retirement facility proposed on public parking lot OT (Project R2006-01510) and the corresponding LCP Amendment to create a new land use category for Active Seniors Accommodation should be disapproved because both the

type of facility proposed as well as the new land use category proposed are both discriminatory and in violation of California Government Code §65008 titled Planning and Zoning Law, which states in part:

> "(a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:
>
> "(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, **disability, or age of the individual or group of individuals**. . . .(emphasis added)

Attorney General Opinion #04-704 dated 10/20/2004 includes the following statements and citations:

> In *Gibson By Gibson v. County of Riverside* (9th Cir. 1997) 132 F.3d 1311, the court reviewed the applicability of Government Code section 65008 to zoning ordinances adopted by the County of Riverside that limited certain residential areas of the county to senior citizens only. The court stated:
>
> ". . . The district court properly held that the plain language of § 65008(a) rendered the County's age-based zoning restrictions 'null and void.' Section 65008(a) is clear on its face and requires no assistance from any other source in interpreting its meaning. The County's argument that the section does not mean what it says is unpersuasive. . . ." (Id. at p. 1313.)

The question being opined on in Attorney General Opinion #04-704 was:

> In light of the prohibition against discrimination based upon age contained in the Planning and Zoning Law, may a city adopt a zoning ordinance or issue a conditional use permit that limits a specified parcel of land to use as a mobilehome park for senior citizens?

While this opinion discussed senior mobilehome parks, it found that the only reason such land use designation was not discriminatory was due to the existence of more specific state code that allowed senior mobilehome parks. Without such code, the senior mobilepark homes would have been deemed discriminatory. There are no more specific state code that would allow such senior facilities in Marina del Rey.

Additionally, this facility and this new land use category do not meet the requirements of California Civil Code §51.2 and thus are discriminatory in nature. §51.2 (a) reads:

> *Section 51 shall be construed to prohibit a business establishment from discriminating in the sale or rental of housing based upon age. Where accommodations are designed to meet the physical and social needs of senior*

> *citizens, a business establishment may establish and preserve that housing for senior citizens, pursuant to Section 51.3*

§51.3 reads in part:

> *(a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.*

It is clear from the above description and the project description contained in the DEIR, that this new land use category is for the "healthy, wealthy senior" with Limousines to take them to work (they may not be retired), to the doctor, to the restaurants, etc.

Here, public land is being converted to luxury senior living for seniors who do not have special physical needs as is intended by the legislature. Additionally, this project and new land use category DO NOT MEET THE NEEDS of senior housing in Los Angeles County and the State of California as established by the Legislature.

In fact, this new land use category claims to straddle the residential and hotel land use types, thereby avoiding any affordable housing component, which IS NEEDED and avoiding the payment of transient hotel tax.

2. <u>PREMATURE HEARING PROJECT R2006-02726</u>

The scheduled Regional Planning Commission hearing today is premature because it should not precede compound LCP Amendment. The above referenced projects are included in the bundle of the projects labeled by Los Angeles County Departments of Beaches and Harbors and Regional Planning as the "pipeline" projects (see Roadmap Letter Exhibit D). While WAM does not agree with roadmap approach which includes the bundling of project-driven LCP amendments into one overall compound amendment or the limited scope of the LCP amendment vis-à-vis a comprehensive LCP update as recommended by the Coastal Commission, the fact is, the Departments of Beaches and Harbors and Regional Planning are proceeding in this direction and the Board of Supervisors approved this direction on September 1, 2009.

Given this, we respectfully urge this commission to further continue the hearing on Project Project R2006-02726 until such time as both the Regional Planning Commission AND the California Coastal Commission have reviewed and taken action on the compound LCP Amendment that is currently being prepared by the Department of Regional Planning in conjunction with the Department of Beaches and Harbors.

As stated by your Commission on October 14, 2009 during the hearing for the Neptune Apartments and Woodfin Suites Hotels (project #s R2006-03647, R2006-03652, TR067861, R2006-03643 and R2006-03644), it is premature and out of order to hear these individual projects now <u>prior to</u> the drafting of compound LCP amendment that would allow these projects to proceed let alone prior to any action being taken on it by your Commission, the Board of

Supervisors and the California Coastal Commission - all required steps that need to be completed before these projects can be ultimately approved.

The Department of Regional Planning's response to this issue included in a letter dated December 3, 2009, Attachment II, #10 states that the Permit Streamlining Act and CEQA do not allow the Department of Regional Planning to place projects on hold once an application has been deemed complete.

However, the Permit Streamlining Act requires a project to be approved within 180 days after final certification of the EIR. The continuance of the EIR certification process in order to properly review and analyze cumulative impacts of the projects and proposed LCP amendments from these and other Pipeline projects would not affect the Permit Streamlining Act timeline.

Furthermore, how can this Commission properly review these projects given that the Department of Regional Planning has not completed its response to the Coastal Commission's Periodic LCP Review Recommendations that members of the public spent much time providing input.

And finally, moving forward with these projects now is a waste of taxpayer funds. When Los Angeles County states they cannot afford to carry out a comprehensive LCP update; that they cannot build a public park for its residents; and that they cannot fix a broken playground, how can this project proceed at this time with the risk that it will not be approvable. The Department of Beaches and Harbors spends hundreds of thousands of dollars a year of taxpayer money to pay for consultants that work on these projects and make presentations before your Commission.

Once again, we respectfully urge this commission to further continue the hearing on Project R2006-02726 until such time as both the Regional Planning Commission, the Board of Supervisors AND the California Coastal Commission have reviewed and taken action on the compound LCP Amendment that is currently being prepared by the Department of Regional Planning.

3. <u>PARKING REQUIREMENT FOR OT PROJECT</u>

The DEIR along with response to DEIR comments provided by the applicant and the Department of Regional Planning insist that .36 space per unit constitutes legally sufficient number of parking spaces for the 114-unit retirement facility. The .36 space per unit is based on "observations" of a similar facility in Culver City. However, the name of the facility has not been disclosed, no data has been supplied on how and when the "observations" were made.

It is far fetched to think that seniors over 60 who may or <u>may not be retired</u> will not have a need and/or desire to own a car(s). This facility will include 67 1-bedroom suites and 47 2-bedroom suites. Table 8(a) of Traffic study (pg 41-43) use the term congregate care for this project but it is not congregate care, it is a cross between residence and hotel, yet parking spaces offered are substantially lower. And what about guest parking?

In the comments letter from the applicant dated December 10, 2009, the Under Culver city standards are provided. We ARE Marina del Rey calculated the number of space that would be required for the 114-unit facility based on the Culver City standards as follows:

> Senior housing (1 space/unit + 1 guest parking per 10 units) would require 114 + 11 guest spaces = **125 spaces**
>
> Congregate care (1 space/ 2 units + 1 space for each 4 units for guests and staff) would require 57 + 28 guest/staff spaces = **85 spaces**
>
> Residential care facility (1 space per 3 patient beds) would require 67 one-bedroom and 47 two bedrooms based on one bed per bedroom = 67 +94 beds = 161/3 = **54 spaces**

This project offers 41 spaces. In all cases, the required spaces fall short of all Culver City senior housing standards. It is clearly insufficient.

4. TRANSFER OF UNITS BETWEEN ZONES

The Marina del Rey LUP specifically states that development units may not be transferred between zones (Section C.8). The argument that precedence now exists because Parcel 20 was granted a transfer of development units for that specific parcel only as part of LCP Amendment 1-01 is also baseless. Instead of changing the LCP through amendment to allow transfer of development units, County has created the exception and is now making it the rule. This is another form of piecemeal development that obviates the planning law. When the LCP as written suits County, they quote the LCP. When it does not, they make exceptions to the rules without officially changing the rules.

Additionally, the Marina del Rey LCP does not allow the conversion of units to traffic trips for transfer from one type of development unit to another unless the transfer occurs within the same development zone and that zone is a Mixed Overlay Zone. For Project R2006-01510, 114 hotel units are being transferred into the Oxford Development Zone (not a mixed overlay zone) from the DZ 7, a transfer of dissimilar development units which are then converted to traffic trips.

5. PIECEMEALING CEQA/OVERALL MARINA WIDE EIR

Taken from page 4-5 of *CEQA RULES FOR AGENCY ACTIONS AFFECTING CLIMATE CHANGE by Barry H. Epstein, Paul S. Kibel and Sara N. Pasquinelli (copyright Fitzgerald Abbot & Beardsley LLP)*

> *CEQA requires a complete "project description" and does not permit piecemealing or segmentation of a larger integrated project into smaller discrete parts. The proper identification of all of the activities of a project (for purposes of the project description section of an EIR) will provide the basis for identifying those project activities that may result in environmental impacts (including but not limited to GHG emission increases or reductions). As a leading CEQA treatise explains: "The adequacy of an EIR's project description . . . is closely linked to the adequacy of its analysis of significant environmental effects. Failure to include a significant component of the project in the EIR project description often results in a failure to analyze the impacts of that*

component." Therefore, it is important to properly identify all of the aspects and components of a project.

WAM states once again that we believe that Los Angeles County including the Department of Beaches and Harbors and the Department of Regional Planning (together "the County") is piecemealing the redevelopment of Marina del Rey in violation of state law, including the California Coastal Act ("Coastal Act") and the California Environmental Quality Act ("CEQA"). County has admitted on the record and it is widely known, that County intends to redevelop Marina del Rey (the "Marina Redevelopment Project"). This "Marina Redevelopment Project" constitutes "a project" under CEQA. According to Public Resources Code § 21065, a project is defined as the whole of an action, which has a potential for resulting in either a direct physical change in the environment.

The Marina Redevelopment Project consists of all the County's individual developments within Marina del Rey now making their way through the public approval process (Fisherman's Village, Mother's Beach, Western Marina residential complexes, etc) and including Projects R2006-01510 and R2006-02726. County is dividing "the Marina Redevelopment Project" into smaller redevelopment projects (e.g. the projects cited above) in order to reduce and hide the environmental impact of the "Marina Redevelopment Project." Therefore, County is piecemealing the "Marina Redevelopment Project," in violation of CEQA. California Supreme Court case law holds that the County cannot "hide" the redevelopment project from the public by breaking the Marina Redevelopment Project into little parts, and the County's behavior – actions and words - confirms there is "a Marina Redevelopment Project."

An Environmental Impact Report prepared for the whole "Marina Redevelopment Project" should be County's highest obligation to determine the overall environmental impacts of all projects in the Marina.

Furthermore, the Roadmap approach adopted by Los Angeles County fails to carryout an overall Environmental Impact Report and instead opts for a cumulative impact assessment that may not be CEQA compliant and which may not involve full public participation as required under the California Coastal Act. The Roadmap approach also hides the "Marina Redevelopment Project" by compiling individual, project-driven LCP amendments into one overall LCP Amendment prior an overall project CEQA-compliant environmental review.

6. <u>GREENHOUSE GAS EMISSIONS</u>

The DEIR includes an analysis of potential greenhouse gas emissions for both projects during construction and post construction. However, the DEIR fails to analyze cumulative greenhouse gas emissions from all proposed projects in the Marina. This is another reason the piecemealing of the overall Marina del Rey redevelopment fails to properly analyze cumulative impacts including greenhouse gas emissions. Given the acreage of Marina del Rey is half water and half land, with most residential and commercial development alongside water, the cumulative impacts of greenhouse gas emissions and its effect on global warming and rising sea levels would be critical to any redevelopment in Marina del Rey.

7. TRAFFIC TRIPS FOR LIMOUSINE SERVICE

The DEIR for Project R2006-02726 and R2006-01510 fails to include traffic trips for the limousine service that will be shuttling up 150 residents around the clock on a daily basis.

How many limousines will be used daily? What size? How often? And at what times will they operate?

Where will the limousines park? Will their engines idle and what effects on pollution and air quality will this have.

What happens if more residents want cars than there are spaces?

8. TRAFFIC TRIPS MISCALCULATION

Page 730 of the DEIR Volume II, Table 14(c) applies an incorrect traffic trip rate to the incoming 114 hotel units. The rate used is 3.53 when it should have been .353. This results in an overstatement of surplus traffic trips in the Oxford Development Zone after transfer of

Oxford DZ Recalculated:

A. Allowable Phase II Development		0
B. Total Approved Trips		0
C. Remaining Allowable Phase II Trips		0
D. Development Transfers In		
Hotel units 114 x 0.353	40.24	
5000 sq ft retail	11.05	51.29 (the DEIR states 413.47)
E. Net Proposed Project Trips		
Retirement units 114x 0.17	19.38	
5000 sq ft retail	22.20	41.58

Surplus/(Deficit) DZ 6 Allowable Trips 9.71 (the DEIR states 371.89)

The problem here is the traffic trip generation rate of 0.17 used for the retirement facility is a congregate care facility rate (page 679 DEIR V II) from the Marina del Rey LCP. This facility is not congregate care. How accurate is the trip rate? Does it include trips from limousine service? An increase in the trip rate could potentially change the calculation above such that there would not be sufficient allowable trips for this project (barring the fact from # 4 above that transfer of development units between zones is not permitted).

CONCLUSION

Based on the above comments, we once again urge your Commission to continue Project R2006-02726 and until such time as the above issues are resolved and/or actions taken and DISSAPROVE Project R2006-01510.

Together,
We ARE Marina del Rey

David Barish
Co-Director
davidb@wearemdr.com
www.wearemdr.com

CC: Michael Tripp, Department of Regional Planning
Santos Kreimann, Department of Beaches & Harbors
Peter Douglas, Executive Director, California Coastal Commission
The Honorable Senator Oropeza, 28th Senate District