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IN REPLY REFER TO:

January 9, 2013

Original Via U.S. Mail

Executive Office of the Board of Supervisors
500 West Temple Street, #383
Los Angeles, CA 90012

Executive Office of the Board of Supervisors
P.O. Box 866006
Los Angeles, California 90086

RE: WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION ("WMA") OPPOSITION TO PROPOSED LOS ANGELES COUNTY CLEAN WATER, CLEAN BEACHES MEASURE

To: Honorable Gloria Molina, Mark Ridley-Thomas, Zev Yaroslavsky, Don Knabe, Michael D. Antonovich, Los Angeles County Board of Supervisors:

These offices represent the Western Manufactured Housing Communities Association ("WMA"), and I am writing on its behalf with respect to the matter referenced above.

Summary: WMA respectfully contends that the proposed Los Angeles County Clean Water, Clean Beaches Measure ("proposal") is unenforceable on its face and in any conceivable application to owners and operators of manufactured housing communities (mobilehome parks) located in the County of Los Angeles. Moreover, due to the direct and immediate impact of such measure on mobilehome owners, and renters, the economic impact of this proposal would be inflicted most severely on those who can least afford it: the ultimate consumer. In mobilehome parks, that means low income consumers, poor families and seniors. Accordingly, the proposal cannot be put on the ballot because:

(1) the proposal is legally unenforceable, arbitrary and capricious;

(2) it results in a disparate treatment of mobilehome parks with no rational basis;

(3) it will punish the low income elderly, families and poor; and,

(4) if not unenforceable, the proposal is a special tax, requiring a 2/3 vote of affected property owners.

THE WMA

WMA is non-profit organization created in 1945 to preserve and to promote the interests of manufactured housing community owners, operators and developers. WMA is a statewide trade

association representing the owners manufactured housing communities located in all 58 counties of California.

WMA represents a coalition of representation for the entire manufactured housing industry in California. WMA represents the owners of approximately 1,608 manufactured housing communities, which contain about 160,000 homes. In California, there are 4,846 mobilehome communities, with 372,093 homes.[1] These communities provide Californians the opportunity to own their home at low cost compared to traditional foundation-constructed housing, and the flexibility to move their homes around the state. Manufactured housing, or "mobile homes," fill an important position in the range of housing options available to California. WMA stands behind the official policy of the State of California which is to advance the interests in manufactured housing as arguably the most viable source of future affordable housing.[2]

WMA hopes to assist the County Board of Supervisors in revealing important aspects of the proposed measure that would, if enacted, effect irrationally differential treatment of mobilehome parks, punish the poor and elderly, and result in additional costs to those least able to afford it.

● Taxes of this nature are invariably passed along as costs to be paid by the ultimate consumer. All businesses provide for the consideration of, *inter alia*, property taxes in determining overhead.

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[1] California Housing and Community Development, March 2004.

[2] *E.g., Health and Safety Code* § 50007.5 (this section declares that manufactured housing can provide a source of decent, safe, and affordable shelter for persons and families of low and moderate income. The Legislature intends to encourage the increased affordability and availability of manufactured housing for persons and families of low and moderate income); *Government Code* §65580 (subd. (a) declares, "[T]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every California family is a priority of the highest order"); *Government Code* § 65008(h) declares that "discriminatory practices which inhibit the development of housing for persons and families of low, moderate, and middle income, or emergency shelters for the homeless, are a matter of statewide concern." Section (a) prohibits any action by a local government agency if it denies residence, landownership, tenancy, or any other land use because a residential development is intended for occupancy by persons or families of low, moderate or middle income. Local government agencies are also prohibited from imposing different requirements on residential developments for persons or families of low, moderate or middle income than those imposed on developments generally. The term "residential development" includes manufactured homes); *Government Code* § 65583 (housing must be provided for all economic segments of the population. The housing authority, called the "housing element" shall "identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes." Under subsection (c)(1) the statute provides that adequate sites will be made available through "appropriate zoning and development standards . . . to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes"); *Health and Safety Code* §18551(a)(4) provides that once a manufactured or mobile home is installed on a permanent foundation, on property which is owned (or in some cases leased) by the homeowner, the home is a fixture to the real property.

● Mobilehome parks have very few customers. Park sizes range from a dozen to several dozen. 90% of parks have less than 100 spaces statewide.

● Mobilehome parks are not like other businesses, such as the "big box" store with *thousands* of customers to whom costs may be prorated. For park owners, it is the same unfortunate *few*, who must bear the burden of higher housing costs.

● The ultimate effect of this measure may be the dislocation of many of the most marginal of residents at the brink of inability to pay rents and other housing costs as they exist now.

THE CLEAN WATER, CLEAN BEACHES MEASURE

The Los Angeles County Clean Water, Clean Beaches Measure purports to "establish an annual fee . . . imposed on property owners within the Los Angles County Flood Control District"[3] to pay for clean water programs; said fee is nothing more than a tax in disguise. According to the proposal the fee is determined by the "average amount of runoff that properties generate, based on parcel size . . . and land use classification . . . ."[4] The measure provides the following formula for calculating the fee amount:

Fee Amount = (Parcel Size) x (Applied Impervious Percentage) x (Fee Rate)

The parcel size is the actual area of the parcel, measured in square feet.[5] The applied impervious percentage is the amount of the parcel expected to be covered by hard surfaces based on land use.[6] The fee rate is a constant number resulting from dividing the annual program budget by the total impervious square footage in a service area.[7] This formula purportedly results in a fee that is a function of the expected runoff from a property.

The fee is to be collected every year with property taxes and continues "annually until terminated by the County of Los Angeles Board of Supervisors."[8]

THE MEASURE IS BASED ON A CAPRICIOUS AND ARBITRARY FORMULA

As stated above, the formula on which the fee relies is supposedly a function of the

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[3] Los Angles County, Clean Water, Clean Beaches Measure, pg. 1

[4] Los Angles County, Clean Water, Clean Beaches Measure, pg. 3

[5] Clean Water, Clean Beaches Measure Fee Fact Sheet, pg. 1

[6] Clean Water, Clean Beaches Measure Fee Fact Sheet, pg. 1

[7] Clean Water, Clean Beaches Measure Fee Fact Sheet, pg. 1

[8] Los Angles County, Clean Water, Clean Beaches Measure, pg. 3

speculated runoff of a property. The formula is based on the theory that more impervious parcels generate more run off and thus should pay a higher fee. The fee amount relies on the size of the parcel, the applied impervious percentage, and the fee rate. The size of the parcel is measurable, and the fee rate is constant regardless of individual property characteristics. However, the applied impervious percentage is based on mere speculation, which pervasively undermines the entire formula.

The Clean Water, Clean Beaches Measure Fee Fact Sheet defines the applied impervious percentage as the "amount of the parcel expected to be covered by hard surfaces (percentage) based on land use."[9] Each parcel is categorized according to use. Each category of use is assigned a percentage. This percentage is based on the expected imperviousness of the parcels in that category, but not the actual imperviousness of parcels in that category or on the actual runoff of parcels in that category.

If the goal of the measure is to raise money to counteract runoff generated by parcels, then the formula should be tied to actual runoff, or at least actual imperviousness of a parcel instead of being tied to expected imperviousness of a loosely defined category.

Reliance on expectant as opposed to actual amounts makes the formula completely arbitrary. A parcel could easily be assigned an implied impervious percentage that is much too high or much too low. For instance, there is a huge disparity in applied impervious percentages for mobilehome parks that are considered low density and those that are not. Low density mobilehome parks are estimated at 42% impervious while mobile home parks, trailer parks, and mobilehome parks not designated as low density are estimated at 91% impervious. This could result in nearly identical parks being charged drastically different fees.

To illustrate this, assume that a park is designated low density at less than 30% occupancy. Assume also there are two parks identical in size, at 500,000 square feet. One of the parks is 28% occupied, designating it as a low density park. The second park is 35% occupied, designating it as a normal mobilehome park. If the formula is applied to these two parks, the first park (low density) pays $5,498.85 while the second park pays $11,914.75. The second park pays more than double in fees, when in reality, the difference in runoff is likely unremarkable. The fact is that by state regulation, mobilehomes were required to meet a three foot setback requirement when originally installed in most cases. Common facilities, greenbelts, open common areas, make for a widely divergent collection of types, sizes and forms of mobilehome parks. No class-wide definition, for the purposes of *this* proposal, can be fashioned.

The fee is entirely based on the amount of runoff the County *imagines* a particular parcel might generate, which is the very definition of arbitrary.[10]

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[9] Clean Water, Clean Beaches Measure Fee Fact Sheet, pg. 1

[10] Merriam Webster Dictionary defines arbitrary as "depending on individual discretion . . . and not fixed by law" and "based on or determined by individual preference or convenience rather than by necessity or the intrinsic nature of something."

THE MEASURE RESULTS IN DISPARATE TREATMENT OF MOBILEHOME PARKS

The measure results in disparate treatment toward mobilehome parks because the fee formula is flawed. The formula places emphasis on parcel size and categorization of parcels based on loosely defined uses. The average impervious percentages are based on sheer speculation instead of actual runoff generated, and the formula as a whole relies more on size of the parcel as opposed to occupant density.

Mobilehome parks are particularly negatively impacted by this proposed fee because mobilehome parks are large parcels of land that by their nature are only one story high. Thus the occupancy is much less compared to other types of residential communities (apartments, condominiums, etc.) situated on the same size parcel. However, the average impervious percentage does not account for this.

The average impervious percentage for apartment complexes with five or more units but no more than four stories is 86%. The average impervious percentage for apartment complexes with five or more apartments with five or more stories is 90%. However, the average impervious percentage for mobilehome parks is 91%, higher than either of the categories of apartments, though the occupancy, and thus actual runoff generated, is likely considerably less since mobilehome parks are limited to being one story.

To illustrate this, assume there is an apartment complex and a mobilehome park, both situated on parcels of land that are 500,000 square feet. The apartment complex has four stories, making the inhabitable square footage nearly quadruple that of the mobilehome park and thus allowing for nearly four times as many occupants, likely producing four times the amount of runoff. The mobilehome park would pay a fee that is five percent (5%) higher despite that fact that it is has an imperviousness, and thus a runoff, that is seventy-five percent (75%) lower. This is completely disproportionate.

In an Opinion issued by the Office of the Attorney General, the method in which the Vallejo Sanitation and Flood Control District calculated fees charged for maintaining a storm drainage system was found to not meet constitutional requirements.[11] The method specifically violated the requirement that fees and charges "imposed upon any parcel . . . shall not exceed the proportional cost of service attributable to the parcel."[12] The Attorney General pointed out that landowners of parcels "used for such purposes as storage buildings and parking lots are benefitted by the district's storm drainage system services. Yet they are not charged any fees if they are not connected to the

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[11] Opinion No. 97-1104, Office of the Attorney General, State of California, March 5, 1998; 1998 WL 97493 (Cal.A.G.)

[12] Cal. Const., art. XIII D, s 6, subd. (b) (3)

districts sewer system."[13] Thus, the costs of operating the system were paid completely by those connected to the sewer system. "There fore, those who are charged the fees must pay more than the proportional cost of the services attributable to their own parcel" which is not permissible under the Constitution.[14]

Similarly, in this case, the average impervious percentage applied by this measure is completely out of alignment with reality, and will most certainly result in disparate treatment of mobilehome parks. Mobilehome parks would be required to pay a disproportionate fee, as described above, in direct violation of the California Constitution.

In addition to causing disparate treatment as a result of a disproportionate fee, the measure fails to include fee reductions for parcel owners who already pay for on-site capture and treatment. As a result, parcel owners who capture and treat one hundred percent (100%) of their storm water runoff, must still pay the fee even though they are receiving no service.

Moreover, parcel owners have no ability to pass through the fee to their tenants. While this may not be an issue for most categories of use, it certainly results in disparate treatment for Mobilehome Park owners. Under most residential categories (apartments, condominiums, single-family-homes etc.) the person or organization that owns the land parcel typically also owns the buildings on the land; this is not the case with Mobilehome Parks. Unlike owners of residential communities, Mobilehome Park owners typically own only the land, while most or all buildings are owned by tenants. Without being able to pass the fee through to tenants, Mobilehome Park owners are being required to pay fees for services that should be charged to owners of the impervious structures, the tenants.

As such, Mobilehome Park owners again are paying more than their fair share of the fee as calculated by the formula proposed by the measure. This is clearly disparate treatment as a result of being required to pay a disproportional amount for services rendered to others.

THE MEASURE APPEARS PURPOSELY BEREFT OF GENUINE PUBLIC SCRUTINY

This measure has not been appropriately vetted. Surprisingly, it appears the intent of the Board to purposely hoodwink the voters.

The proponents of this measure could be criticized for disregard of concern for public awareness. The transcript of past proceedings relative to this proposal reveal that proponents sought "to have a successful measure" even if that means sneaking it through.[15] Instead of putting the

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[13] Opinion No. 97-1104, Office of the Attorney General, State of California, March 5, 1998; 1998 WL 97493 (Cal.A.G.)

[14] Opinion No. 97-1104, Office of the Attorney General, State of California, March 5, 1998; 1998 WL 97493 (Cal.A.G.)

[15] Transcript 46:10 (Gail Farber)

measure on a more widely read ballot, they want to put this "multibillion dollar tax that doesn't have a sunset in it" on a mailout ballot in the spring. [16] Even Supervisor Yaroslavsky admitted "we're attempting to do a mail ballot in an off year when people are asleep instead of putting it on the general election when people are aware of ballot initiatives. . . ."[17] Indeed, the proposal has been described as nefarious (a "sneak attack"[18]). Certainly, the voters should have the opportunity to vet new laws; at least, not to be subjected to laws which were specifically designed to evade the public eye.

In 1978, California voters passed Proposition 13 and incorporated into the California Constitution the axiom that the power to tax property should lie with the voters. Much to the dismay of the "Prop 13" drafters and taxpayers alike, the California Supreme Court, in *City and County of San Francisco v. Farrell*, found an exception in the proposition allowing local governments to circumvent the voter approval provision on special taxes.[19]

In 1986, California voters passed Proposition 62 in order to close the loophole created by the Court's decision in *Farrell*. The proposition was designed to return "rights the State Supreme Court took away"[20] from Californians that Californians won with the passage of Proposition 13. While this proposition effectively closed the general tax loophole, it left open an alternative method for governments to raise revenue without voter approval; local governments simply used fees and assessments instead of formal taxes.

The levying of these fees and assessments was just another run around on voter approval. Thus, on November 5, 1996, California voters passed Proposition 218, also known as the "Right to Vote on Taxes Act," which explicitly forbids the imposition, extension, or increase in "any special tax unless and until that tax is submitted to the electorate and approved by a two thirds vote."[21] Additionally, the proposition specifically addressed property related fees, stating that "[n]o tax, assessment, fee or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership" unless it was provided for in the article or it was a special tax that was approved by a two-thirds vote.

The drafters clarified their definition of a fee that was "incident to property ownership" as

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[16] Transcript 44:2 (Sup. Antonovich)

[17] Transcript 43: 1-4 (Sup. Yaroslavsky)

[18] Transcript 43:15 (Sup. Antonovich)

[19] Proposition 13: A Ten Year Retrospective (Frederick D. Stocker, Ed., 1991); see also Cal. Const. art. XIII A, §§ 3-4.

[20] John S. Throckmorton, What is a Property-Related Fee? An Interpretation of California's Proposition 218, 48 Hastings L.J. 1059, 1065 (1997) citing Cal. State Voter Pamphlet 43 (Nov. 1992).

[21] Proposition 218

including but not limited to, the use of property, rental property, or the use of services related to the property."[22]

Clearly a fee based on anticipated runoff would fall under this category, and thus be subject to two thirds voter approval. But no one even conceived that such a proposal would not receive due consideration and fair public debate.

CONCLUSION

WMA works to promote the interests of community owners and operators across the state. One paramount concern in this endeavor is continuing affordability of manufactured housing. Manufactured housing is the future of affordable and moderate cost housing in California. The interest in providing manufactured housing for families, the poor and elderly is jeopardized with government regulations which serve no purpose for the affected parcels, which are devised in palpably arbitrary fashion in the case of mobilehome parks, and which are scheduled for expedited consideration based on the plain reality of expected unpopularity with the voters at large.

In sum, the proposal effects a palpably differential treatment of mobilehome parks, punishes the poor and elderly, and results in new costs without any discernable impact on the burdened residents paying it. The ultimate effect of this measure may be the dislocation of many of the most marginal of residents at the brink of inability to pay rents and other housing costs as they exist now.

Moreover, there is no specificity about the services the measure would fund; it only lists samples of project that "could be funded" by the funds collected. The measure itself proclaims that is "does not earmark funds for specific project and program" and instead only establishes vague and nebulous criteria for use of funds which will more than likely result in the money being diverted to other initiatives.

For all the aforementioned reasons, the measure should not be put on the ballot.

Thank you for your kind attention to the foregoing matters. Please feel free to contact me at any time if you have any questions or comments.

Very Truly Yours,

Terry R. Dowdall, Esq.
For
DOWDALL LAW OFFICES, A.P.C.
Attorneys for the Western Manufactured Housing Communities Association

cc: WMA

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[22]Water Rates Under Proposition 218, by Johnathan M. Coupal and Jack Cohen