



## **Two-Year Roadmap**

*A Two-Year Roadmap to Preserve Aging and Distressed Multifamily Properties  
Along the Purple Line.*

Submitted to the Housing Accelerator Action Team by the Distressed Properties  
Working Group.

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## Executive Summary

In May 2021, the PLCC Housing Accelerator Action Team created a Prince George's County Purple Line Distressed<sup>1</sup> Properties Working Group (Working Group) including elected leadership, agency leadership, tenant organizers, developers, and other stakeholders who have expressed a commitment to preserving affordable housing options for residents in the Purple Line Corridor.

Working Group members include Councilwoman Deni Taveras, Councilwoman Danielle Glaros, Housing Initiative Partnership (HIP), CASA, the National Housing Trust, Enterprise Community Partners, and Kaiser Permanente.

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*The goal of the Working Group is to make recommendations that, when implemented, will preserve the affordability of properties, and protect the residents who currently reside in several aging and/or distressed properties along the Purple Line Corridor.*

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The Working Group intends to lead a more coordinated and intensive focus on a select number of properties and the larger issues they represent. This aligns with the broader PLCC zero net loss affordable housing goal, which has been accelerated with the support of the Center for Community Investment's Accelerating Investments for Healthy Communities Initiative. With growing capacity and momentum within the PLCC, there is potential to generate solutions for these specific properties and other such properties along the corridor.

The Working Group was created in response to media reports about the Bedford and Victoria Station properties, which are in deteriorated condition. Bedford and Victoria are not unique. Other rental properties (aging multifamily properties / distressed properties) present similarly poor housing quality and living conditions for tenants, with additional challenges in code enforcement on the Prince George's County side of the corridor.

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<sup>1</sup> The term distressed is used to refer to aging multifamily properties, and may not necessarily represent actual code violations at a multifamily property.

The Working Group has created this Two-Year Roadmap to provide Prince George's County with a set of recommendations for considering the preservation needs of individual affordable housing properties along the Purple Line Corridor. Our recommendations are categorized as follows:

- **Explore and Employ Available Financial Tools for Intervention in Aging / Distressed Properties.**
- **Invest in and Expand the Prince George's County Department Permitting, Inspections, and Enforcement (DPIE) to Protect Residents.**
- **Utilize and Invest in Existing County Capacity to Protect Residents.**
- **Center and Collaborate with Impacted Tenants and Landlords.**

We also include a pathway and decision tree to help determine how to proceed in a situation where substantial violations at certain properties have been found. Finally, we include a graph and timeline for the adoption of the recommendations by relevant parties including landlords and property owners, the Prince George's County Executive, DPIE, and other actors within the County and State of Maryland who are involved in the development of the Purple Line.

## Background

The Purple Line light rail line is intended to link Maryland suburbs and operate between New Carrollton in Prince George's County and Bethesda in Montgomery County. The Line will be integrated into the existing metro system, with connections to the Green, Red, and Orange lines. Although not completed<sup>2</sup>, the Purple Line's promise of increased connectivity has already enticed development to the area, and rents along the proposed line are increasing faster than other areas in the affected counties.<sup>3</sup> The current plan assumes full-scale construction will resume sometime in 2022.

Some prominent large multifamily properties along the corridor are located in Langley Park, a vibrant and largely immigrant neighborhood with dense multifamily housing. The neighborhood has been a popular destination for immigrants from Central America, South America, the Caribbean, Asia, and Africa for over 30 years. In 2016, Langley Park's employment rate was half that of the county and the state. Many of those who are employed work in low-wage, intermittent jobs, often as day laborers. Residents are primarily employed in construction, retail, health care, and social assistance, accommodation and food services, and waste management.<sup>4</sup> The diversity along the Purple Line is a significant benefit to Prince George's County:

“.... the rich cultural and economic diversity of the Purple Line neighborhoods represent a tremendous set of community assets. Walking into an apartment building near Piney Branch, one can hear dozens of different languages spoken. Local restaurants and bodegas along the corridor serve a variety of cuisines, and retailers cater to a diverse clientele from high-end shoppers to those on food stamps. The faith-based organizations reflect this diversity and are an important community partner, especially to the large immigrant community living along the corridor. People feel connected to their neighbors, to the creeks and parks, and to the local schools.”<sup>5</sup>

The approximate 600-unit Bedford and Victoria Station property has been the subject of several media reports because of the lack of attention given to the deteriorated condition of the property by the current owner. The property is one of the identified aging /distressed properties in Langley Park. The absentee landlord of Bedford and Victoria Station is associated with a New York-based real estate investment trust. With a high number of residents living in overcrowded apartments, the property presents an intersecting set of challenges with an unclear solution. The use of the traditional affordable housing finance, redevelopment, and code enforcement tools that have been

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<sup>2</sup> This report was completed December 2021. As of this date, the Purple Line is not in active operation.

<sup>3</sup> Koma, A. “The Purple Line Could Endanger up to 17,000 Affordable Homes. A New Action Plan IDs Ways to Preserve Them.” bizjournals.com. (2019, December 12). <https://www.bizjournals.com/washington/news/2019/12/12/the-purple-line-could-endanger-up-to-17-000.html>

<sup>4</sup> CASA. *Housing Matters: Ensuring Quality, Safe, and Healthy Housing in Langley Park, Maryland*. (2017).

<sup>5</sup> *ibid.*

advanced by the Purple Line Corridor Coalition could lead to the displacement of hundreds of residents, contrary to the Coalition's "no net loss" housing goal. At the same time, leaving residents in uninhabitable buildings is inconsistent with the PLCC's housing equity goals.<sup>6</sup>

Partners of the PLCC have independently attempted to solve the deteriorating conditions of the Bedford and Victoria Station property but have not achieved a promising resolution. Notably, CASA has led tenant organizing efforts for years and is responsible for much of the recent media response. HIP has also been at the table for years, bringing both developer and tenant advocacy perspectives to the work.

Supported by the Center for Community Investment, the Working Group:

- Retained a law firm that provided various legal options to pursue against slumlords;
- Researched how other cities and states have managed distressed properties and uncooperative owners to preserve aging / distressed affordable housing stock and limit tenant displacement;
- Researched what state, local, and federal resources are available to repair aging / distressed multifamily properties; and
- Retained an architect and builder to get rough cost estimates for renovating or redeveloping specific properties.<sup>7</sup>

The Working Group hopes that this unified effort will ensure equitable outcomes in the preservation of the affordability of the aging / distressed properties and quality living conditions for the current residents.

The postponement of construction of the Purple Line gives the County ample time to develop a targeted, aggressive plan to dramatically reduce housing distress along the Line over the next 24 months. Below, the Distressed Properties Working Group has identified practicable tools that can lead to the redevelopment of aging / distressed multifamily housing along the Purple Line Corridor.

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<sup>6</sup> The PLCC Housing Accelerator Action Team is working to address the following disparities between these populations and places:

- Cost burden for renters, homeowners, and small property owners of color;
- Available stock of quality single-family and multi-unit housing options for low and middle-income renters and owners;
- Risk and opportunity caused by displacement.
- Access to homeownership opportunities, capital, and resources; and
- Affordable housing located in safe, healthy neighborhoods with access to quality jobs and schools.

<sup>7</sup> The general contractor and architect will be providing updates related to the rehabilitation/renovation and upzoning of the identified aging and/or distressed properties in the near future. The results of this work will be available to HAAT for consideration during the two-year implementation planning period.

## Roadmap

### Initial Steps

As an initial step in analyzing an aging /distressed multifamily property, the County, developer, or other interested stakeholders should establish basic information about the site and property. (Depending on how the parties are identifying the property or properties for preservation, these details may or may not be known already.) This information can be gleaned from County records or CoStar property software:

- Property name
- Property ownership
- Property size, number of units, and bedroom mix in each unit
- Number of residents
- Vacancy rate
- Current area median income of residents that the property serves, including unit breakdown
- Current affordability restrictions (if any) and expiration dates
  - If applicable, what program or policy created these restrictions?
  - If applicable, do the restrictions limit rents on the property?
- Physical condition of the property
- Notice of violations
- Current zoning and land use
  - Existing zoning on-site
  - By-right development opportunities
- Any purchase rights, right of first refusal, or other rights the City may have on the property
- Current market value of the property
- Owner identification

Interested parties must also consider the specific goals and objectives related to the property at hand. Understanding that preservation of an existing affordable housing property can take various forms—on-site, off-site, same building structure, new building structure—potential concessions that can be made to accommodate variations must also be considered.

Does preservation include the physical structure or just the affordability? Would the interested parties, including the tenant population that currently resides at the property, prefer to see the units preserved on the same site, or is serving the specific population the priority, even if the property is located elsewhere in the County or neighborhood? Some approaches for preservation, depending on the target property, include but are not limited to the following:

- Maintain the physical structures of the property and the affordability requirements on all units for an extended period.
- Offer the same number of units, serving the same population, for an extended period, potentially on a different site in the County.
- Redevelop the existing structures on-site and set aside the same number of units to serve the same population at an affordable level for an extended period.

Next, in consultation with the community, the County, the owner and purchaser need to consider financing for the property's rehabilitation or redevelopment.<sup>8</sup>

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<sup>8</sup> A Decision Tree below lays out the steps to follow should DPIE determine repairs are needed at a distressed multifamily property.

## **What Will It Take to Achieve Our Goals?**

### **Recommendations:**

#### **Explore and Employ Available Financial Tools for Intervention in Aging / Distressed Properties.**

- 1. Prioritize Funding for Properties along the Purple Line.*
- 2. Set Aside a Dedicated Funding Source for Aging / Distressed Multifamily Properties along the Purple Line. Begin with \$8 million from American Recovery Plan funds.*
- 3. Create an Emergency Repair Fund for Existing Owners Who Lack Resources to Make Necessary Repairs.*
- 4. Encourage the Prince George's Housing Authority to Issue Bonds to Rehabilitate Aging / Distressed Multifamily Housing.*
- 5. Encourage the State of Maryland to Prioritize the Use of the Low-Income Housing Tax Credit for the Preservation of Existing, Affordable Multifamily Housing.*
- 6. Request Forward Funding from the Department of Housing and Urban Development of Approximately \$30 million in Section 108 Funds.*

#### **Invest in and expand the Prince George's County Department Permitting, Inspections, and Enforcement (DPIE) to protect residents.**

- 7. Ensure Proper Staffing for the DPIE.*
- 8. Mandate Annual Inspections of Distressed Rental Housing Complexes.*

#### **Utilize and Invest in Existing County Capacity to Protect Residents.**

- 9. Enforce Existing Law.*
- 10. Adopt a Strong Consumer Protection Ordinance That Protects Residents in Rental Properties.*
- 11. Use the County's Power of Receivership to Take over an Aging/Distressed Property.*



**Center and Collaborate with Impacted Tenants and Landlords.**

*12. Require Owners Who Up-zone to Develop and Implement Tenant Relocation/Protection/Priority Return Plans as Part of any Up-zoning Approval Process.*

*13. Encourage and Respect Tenant Participation.*

*14. Fund a Part-time Community Development Network Organizer .*

## **Explore and Employ Available Financial Tools for Intervention in Aging / Distressed Properties**

### ***1. Prioritize Funding for Aging / Distressed Properties along the Purple Line.***

Mission-oriented developers need access to quick and flexible financing to acquire unsubsidized properties, especially when competing in a hot real estate market. The County should prioritize aging / distressed properties through its existing right of first refusal (ROFR) regulations. Developers should be made aware of the following resources at their disposal to rehabilitate affordable housing in Prince George's County. Notably, the following resources may be used in connection with the redevelopment of an apartment community regardless of the citizenship status of those who occupy the property:<sup>9</sup>

- a. Prince George's County Housing Investment Trust Fund
- b. Payment in lieu of taxes available from Prince George's County Department of Housing and Community Development
- c. Coronavirus relief funds including those from the Coronavirus Aid, Relief, and Economic Security Act of 2020 and the American Rescue Plan Act of 2021 (see Recommendation below)
- d. Low-Income Housing Tax Credits (Housing Credits) (see Recommendation #5 below)
- e. Maryland Multifamily Bond Program
- f. Maryland Rental Housing Works Program
- g. Maryland Affordable Housing Trust Fund
- h. Maryland Rental Housing Program funds
- i. Washington Housing Initiative Impact Pool
- j. Maryland Multifamily Energy Efficiency and Housing Affordability (MEEHA) energy efficiency funds.

The repair of aging and distressed multifamily properties along the Purple Line Corridor requires significant dedicated funding. The Working Group engaged an architect and general contractor to create schematic redevelopment options as well as rough renovation cost estimates of a prototypical property. The results of this work will be available to HAAT for consideration during the two-year implementation planning period.

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<sup>9</sup> See Appendix A for the research paper authored by the National Housing Trust. The paper provides a detailed overview of different types of funding available to redevelop properties occupied by undocumented households. The paper also provides examples of how properties occupied by undocumented households have been rehabilitated.

## ***2. Set Aside a Dedicated Funding Source for Aging / Distressed Multifamily Properties along the Purple Line. Begin with \$8 million from American Recovery Plan funds.***

Based on the population of the State of Maryland and Prince George's County, each jurisdiction should anticipate receiving \$3.72 billion<sup>10</sup> and \$176 million<sup>11</sup> in American Recovery Plan state and local funds, respectively. The first 50% of the funding was dispersed in May 2021, with the final 50% to be dispersed in 2022. We urge:

- a) Prince George's County Executive should petition the State of Maryland to set aside American Rescue Plan funds for the rehabilitation of existing housing.
- b) Beyond the dedication of \$5 million to support the Housing Investment Trust Fund, an additional \$8 million should be set aside for the express purpose of rehabilitation of aging / distressed multifamily housing along the Corridor.<sup>12</sup>

## ***3. Create an Emergency Repair Fund for Existing Owners Who Lack Resources to Make Necessary Repairs.***

When an owner is uncooperative or fails to make repairs, a transfer to a mission minded owner, probably via the County's Right of First Refusal law, is appropriate. However, there are cases where an owner is without the resources to make the repairs to return the property to a habitable condition. In those cases, the County should have a low interest loan or grant program for emergency repairs. In return, the owner should agree to a long-term level of affordability (at least ten years) in exchange for the County's assistance.

The Emergency Repair Fund should also be used by existing owners who lack resources to make necessary repairs to retrofit aging and/or distressed properties with sustainable green features. The PLCC will support and provide advice where possible, to support Prince George's County Government's willingness to provide financial support to incentivize property owners to retrofit older properties with sustainable green building techniques. This will require legislative action by the County, and the County would need to identify a revenue stream to support such a fund.

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<sup>10</sup> Internal Revenue Service, *Fiscal Recovery Funds—State Funding*, <https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-statefunding1-508A.pdf>

<sup>11</sup> Internal Revenue Service, *Fiscal Recovery Funds—County Funding*, [https://home.treasury.gov/system/files/136/fiscalrecoveryfunds\\_countyfunding\\_2021.05.10-1a-508A.pdf](https://home.treasury.gov/system/files/136/fiscalrecoveryfunds_countyfunding_2021.05.10-1a-508A.pdf)

<sup>12</sup> Prince George's County instated a County Right of First Refusal in 2013. This acts as a mechanism for revitalizing and preserving housing options for low-to-moderate income households. When the owner of a multifamily property with 20 or more units enters into a sale agreement, they are required to offer the County the right to buy the property before selling it to another party. The County may also assign their right to purchase to a third party. If the owner of Bedford and Victoria were to enter a contract of sale for the properties, this action would qualify under the ROFR ordinance for Prince George's County DHCD to either purchase the property or assign their rights to a qualified entity. <https://www.princegeorgescountymd.gov/984/Apartment-Multifamily-Rental-Owners>

#### ***4. Encourage the Prince George's Housing Authority to Issue Bonds to Rehabilitate Aging / Distressed Multifamily Housing.***

As a local issuer, the Housing Authority may have greater flexibility in how it underwrites bond deals, which will be important when addressing seriously aging / distressed properties. As a local issuer, the Housing Authority may also be able to keep the costs of issuance lower, enabling more bond proceeds to go toward actual development costs.

#### ***5. Encourage the State of Maryland to Prioritize the Use of the Low-Income Housing Tax Credit for the Preservation of Existing, Affordable Multifamily Housing.***

The Low-Income Housing Tax Credit (Housing Credit) accounts for the majority of production and preservation of affordable housing in the State of Maryland. The State of Maryland's Qualified Allocation Plan (QAP), the policy document that governs the selection of Housing Credit awards, expresses a preference for the preservation and redevelopment of existing affordable housing. However, anecdotal evidence reveals that the QAP does not award sufficient points to preservation applicants to be competitive to receive an allocation of Housing Credits under the 9% program.

To address the preservation of aging and/or distressed properties along the Purple Line corridor, 9% Housing Credits will be needed as part of a developer's capital stack, given the cost per unit in repairs. Preserving and rehabilitating existing housing has proven to be a cost-effective method to provide rental housing to low-income families and seniors. Nationwide, rehabilitation projects require almost 40% less tax credit equity per unit than new construction developments. In addition, preservation prolongs federal investment in affordable housing properties. As such, allocating agencies around the nation have recognized that preservation is a common-sense response to America's affordable housing shortage, and have prioritized preservation and rehabilitation in their QAPs.

The preservation and rehabilitation of existing affordable housing can promote housing choice by:

- Acting as a vital tool for revitalization by catalyzing investment and development in distressed neighborhoods serving racial minorities;
- Preserving affordable housing in existing communities, enabling households who choose to stay in their neighborhoods to do so.

Increasing the competitive scoring categories or points in the QAP for the preservation and redevelopment of existing affordable housing may produce more Housing Credit funding opportunities for the aging / distressed multifamily housing along the Purple Line.

***6. Request Forward Funding from the Department of Housing and Urban Development of Approximately \$30 million in Section 108 Funds.***

The County Council's Housing Opportunities for All Comprehensive Housing Strategy had previously recommended the County consider five years forward funding of CDBG funds per Section 108. Should the Department of Housing and Urban Development (HUD) approve the request, the County could set aside \$30 million that could be used, in part, to repair or acquire aging / distressed multifamily properties along the corridor. This strategy would be particularly appropriate *before* the line is completed while property values are relatively low and before aging / distressed properties along the Purple Line slide into further disrepair.<sup>13</sup>

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<sup>13</sup> Property values along the Purple Line will increase. Locations Close to Public Transit Boost Residential, Commercial Real Estate Values - American Public Transportation Association ([apta.com](http://apta.com))

## **Invest in and Expand the DPIE to Protect Residents**

### ***7. Ensure Proper Staffing for the DPIE.***

Prince George's County should ensure there is sufficient staff capacity to inspect properties and hold owners accountable for the quality of residential buildings. The county can increase the amount property owners pay for rental licenses and use the additional funds to hire more code inspectors. Fines imposed by the County should be dedicated to DPIE to hire additional staff. New staff members should include those with proficiency in languages common to residents throughout the county, including Spanish.<sup>14</sup>

### ***8. Mandate Annual Inspections of Distressed Rental Housing Complexes.***

DPIE should be required to inspect all multifamily rental housing complexes that consist of twenty (20) units or more on the following timeline to ensure upkeep and compliance with local building and housing codes:

- Buildings that are less than 20 years old should be inspected every five (5) years, and upon complaint;
- Buildings that are between 21 – 40 years old should be inspected every three (3) years, and upon complaint;
- Buildings that are between 41 - 60 years old should be inspected every other year, and upon complaint;
- Buildings that are older than 61 years, should be inspected annually, and upon complaint.

Properties that are currently on or were previously on the distressed property list in the last ten (10) years should be inspected annually. Properties that receive multiple verified complaints from residents that are an immediate threat to the life, health, and safety of occupants shall be placed on the distressed properties list. Properties can be removed from the distressed properties list once all conditions have been addressed, but shall be subject to annual inspections for a minimum of five (5) years. To address the immediate staffing concerns of DPIE, the County Executive or County Council should consider the use of third-party inspectors to conduct the annual inspections of properties.<sup>15</sup>

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<sup>14</sup> Department staff should be increased to reduce the workload on current inspectors and increase department efficiency. Record-keeping practices should be updated to utilize newer technology and database systems that are easily accessible to the public. *Housing Matters: Ensuring Quality, Safe, and Healthy Housing in Langley Park, Maryland*. (2017). The County could model its program on the one run in Los Angeles. There, properties with major code violations are automatically enrolled in a rent escrow program. Until the properties are brought up to code, tenants' rents not only go into escrow, but are also discounted (between 10 and 50%). <https://ggwash.org/view/82739/why-upzoning-in-gentrifying-neighborhoods-like-langley-park-isnt-always-a-good-idea>

<sup>15</sup> CASA. *Housing Matters: Ensuring Quality, Safe, and Healthy Housing in Langley Park, Maryland* (2017)

Prior to an inspector being deployed from a compliant, DPIE must provide 48-hour notice to the tenant(s) of the unit(s). This will ensure that the tenant(s) has adequate time to plan to be present for the inspection of their unit(s) and an accompanying tenant advocate.

## Utilize and Invest in Existing County Capacity to Protect Residents

### ***9. Enforce Existing Law.***

The Code requires inspections of dwelling units to be conducted on a systematic basis, so long as the Code Official determines that doing so is necessary to properly apply and enforce the provisions of the Code (Id. § 13-110). However, in instances where a citizen<sup>16</sup> or official complaint is made, inspections are required to be conducted (Id.). Currently, the code official has opted not to conduct proactive routine inspections. Instead, inspections are only made in response to complaints. Following the inspection, the code official confirms the owner through a real property database on the website for the State Department of Assessments and Taxation and provides notice to the owner that the DPIE has grounds to believe a violation has occurred.<sup>17</sup>

General violations of the Code that do not constitute a structure as being “unfit for human occupancy” or “abandoned for residential use” are assessed as misdemeanors and upon conviction by a court of law, violations carry a five-hundred-dollar (\$500.00) fine, imprisonment not to exceed ninety (90) days, or both (Id. § 13-111). Each day that a violation persists constitutes a separate offense.<sup>18</sup>

The County’s Comprehensive Housing Strategy has indicated that lack of enforcement is an issue that needs to be addressed: “Code enforcement is another important tool the County can leverage to preserve the quality of its existing housing stock. The Department of Permitting, Inspections, and Enforcement (DPIE) does not have enough code enforcement officers to regularly check every property in the county. Instead, they are complaint-driven, which makes it difficult to preempt quality concerns.”<sup>19</sup>

### ***10. Adopt a Strong Consumer Protection Ordinance That Protects Residents in Rental Properties.***

Current Code does not protect residents should a building fall into complete disrepair. If the building becomes unfit, the County may close the building, leading to displacement of current residents.

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<sup>16</sup> The term “citizen” is undefined by the Code. Therefore, it is unclear whether the term refers to a citizen of the County, State of Maryland, or the United States of America.

<sup>17</sup> County Code §§ 13-110; 13-112.

<sup>18</sup> Other studies by the University of Maryland and others have recommended that the DPIE should require property owners to pay a fee for reinspections of properties because of reoccurring and unresolved violations. *Housing Matters: Ensuring Quality, Safe, and Healthy Housing in Langley Park, Maryland*. (2017).

<sup>19</sup> See attached Legal Memo from Alishia F. Tidwell McNamee Hosea.



The County should adopt a strong consumer protection ordinance that protects residents in aging / distressed rental properties. The model legislation should track the DC Consumer Protection Procedures Act (CPPA), allowing the Prince George's County States Attorney the power to intervene on behalf of the residents, order repairs and seek restitution from the owner.

D.C. Code Ann. § 28-3909 expressly allows the Attorney General to bring an action in the name of D.C. to obtain restitution of money or property. In 2017, The Office of the Attorney General (OAG) filed suit against the owners and managers of an apartment building located at 2724 11 Street NW for engaging in a pattern of neglect dating back many years. Like Bedford and Victoria Station and other aging / distressed properties along the Purple Line, these tenants were forced to live in a building that suffered from a multitude of recurring and ongoing code violations, which included vermin infestations, mold contamination, and lack of heat. Despite notices from tenants and District government agencies, the violations were continually ignored by the property's landlords. Following interventions from the OAG, the court appointed a receiver to oversee renovations to bring the property up to code and ordered the owners and managers to pay \$1.875 million to fund the receivership. The property remained under the control of the receiver as repairs continued.

As part of the final judgment, the court granted injunctive relief in as requested by the OAG, requiring the owners and managers of the building to take the following actions:

- **Pay a total of \$422,000 in rent restitution.** The restitution included 100% rent refunds for the 18 months between June 2016 and the appointment of the receiver in November 2017.
- **Pay penalties to the District.** The owners and managers were required to pay the District \$215,000 in civil penalties, which included the former maximum penalty for 215 violations of the CPPA. Additionally, the owners and managers were required to pay over \$42,000 in fees and costs incurred by the District.
- **Accurately represent the building's conditions.** The owners were permanently barred from misrepresenting the conditions of the building to tenants.
- **No longer manage the property.** The property managers were prohibited from engaging in any property management or other related activities in connection with the building.
- **Implement written policies and provide training to all staff at the property.** These actions helped ensure repairs and compliance with the District's housing code.

### ***11. Use the County's Power of Receivership to Take over an Aging / Distressed Property.***

The County implemented a Housing Receivership Program in 1998. The code official may apply for the appointment of a receiver so long as (i) the property owner has received notice of a Code violation, and thirty (30) days have passed without such violation being corrected, and (ii), the code official determines whether (a) the violation threatens public health, safety, or welfare; (b) the owner has not acted in a timely manner to correct the violations; and (c) abatement of the violations will further the County's housing policies and priorities, which warrant applying for the appointment of a receiver (Code § 13-304).

A court-appointed receiver can efficiently correct deferred maintenance and code violations, turning around troubled buildings and preserving affordable housing.

By way of example, the City of Chicago established the Troubled Buildings Initiative. A nonprofit was established for the particular purpose of rehabilitating aging / distressed buildings. The program:

- Evaluates the potential for rehabilitation of aging / distressed properties.
- Encourages owners of troubled buildings to correct their code violations.
- Acts as a court-appointed receiver when owners fail to make repairs. Receivership includes making court-ordered repairs, placing priority liens on the property to cover the associated expenditures, and occasionally managing the property.
- Pursues collection of funds spent for repairs to correct code violations.
- Pursues foreclosure and transfers the property to a responsible owner if repair expenditures are not repaid by the owner.<sup>20</sup>

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<sup>20</sup> "Chicago, Illinois: The City's Troubled Building Initiative Renovates and Preserves Deteriorating Apartments." huduser.com

## **Center and Collaborate with Impacted Tenants and Landlords**

### ***12. Require Owners Who Upzone to Develop and Implement Tenant Relocation/Protection/Priority Return Plans as Part of any Upzoning Approval Process.***

Over two years ago, a study conducted by Enterprise Community Partners determined that the economic cost of imposing inclusionary zoning did not justify the potential benefits.

However, since that study was commissioned, land values near the Purple Line have risen. Also, the County has all but approved upzoning for locations along the Purple Line. In light of current and anticipated future development along the Purple Line, we recommend:

- a) The adoption of inclusionary zoning for any property along the Purple Line that is upzoned. Our recommendation is consistent with the current Takoma/Langley Crossroads Sector Plan. The Coalition for Smarter Growth has submitted testimony urging postponing upzoning until protections to minimize displacement of current residents are in place.<sup>21</sup> Indeed, the Sector Plan called for the implementation of an affordable housing strategy before rezoning.<sup>22</sup> Upzoning will undoubtedly raise the values of properties and lead to the displacement of current residents.
- b) Given the overall shortage of housing in the County, particularly along transit corridors like the Purple Line, we favor upzoning where practical that can add to the housing inventory and provide more choices for residents. However, when a property along the Purple Line is upzoned, the County should require the owner to manage relocation or rehousing of current residents rather than allowing mass displacement.

### ***13. Encourage and Respect Tenant Participation.***

Tenants, organized tenant leadership, and the broader community must also be involved, whether to express their tenants' rights, apply pressure on the owner through the media, or advocate to government officials. When pursuing solutions for a particular property, the housing needs of current residents must be considered alongside issues of future affordability and housing quality.<sup>23</sup>

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<sup>21</sup> "Support for Prince George's Countywide Map Amendment with recommendation to address risk of displacement in multifamily zones in Transit Centers," CSG Testimony. September 15, 2021.

<sup>22</sup> "Therefore, it will be very important that programs are in place to encourage the provision of affordable housing *prior* to rezoning." Takoma/Crossroads Sector Plan, p. 31 (Our emphasis).

<sup>23</sup> A previous study recommended the following support for residents: "DPIE should partner with CASA or other community-based organizations to assist residents with housing inspections. Organizations can visit homes scheduled to be inspected ahead of time to inform tenants of their rights, how to prepare their home for inspection, and encourage them to cooperate with inspectors. This service can be especially helpful for non-English speaking tenants." *Housing Matters* (2017)

The County Council's Housing Opportunities for All Comprehensive Housing Strategy has, as part of their 2<sup>nd</sup> Annual Report 2020<sup>24</sup>, recommended the establishment of a centralized landlord/tenant assistance office. This office would:

- Coordinate and share information on rental programs, including tenant rights, landlord information and contacts, legal aid, tenant counseling, and other direct service-provision organizations.
- Develop public information campaigns about tenant-landlord laws and available resources.
- Interact with courts to share resource information; gather trend information from legal aid groups on trends; and identify opportunities to align programs and information.
- Interact with tenants, landlords, legal aid, and other service providers to gather information (e.g., gaps, opportunities, areas for partnerships) about their needs.
- Highlight existing community resources to increase their use and impact among renters.
- Provide technical advice. At times landlords or tenants need assistance or additional capacity when applying for County programs or resources.
- Educate and inform the tenant and landlord community about tenant rights and other related rental topics.

This list is not comprehensive, but highlights the expanded role of a landlord/tenant office which would allow Prince George's County to provide a wider range of services and share information with landlords and tenants. It would also continue to build a relationship between tenants across the County and the local government. The Working Group supports and intends to provide additional advice and comments to the Housing Opportunities for All in establishing a landlord/tenant assistance office.

#### *14. Fund a Part-time Community Development Network Organizer .*

The Community Development Network (CDN) of Maryland serves as the voice for the Maryland Community Development Community. Baltimore City and Montgomery County both have dedicated CDN staff supporting their local coalitions. As the Purple Line is built, CDN's organizer can assure that Prince George's County community development organizations are up to the challenge of meeting the increasing housing needs along the Corridor.

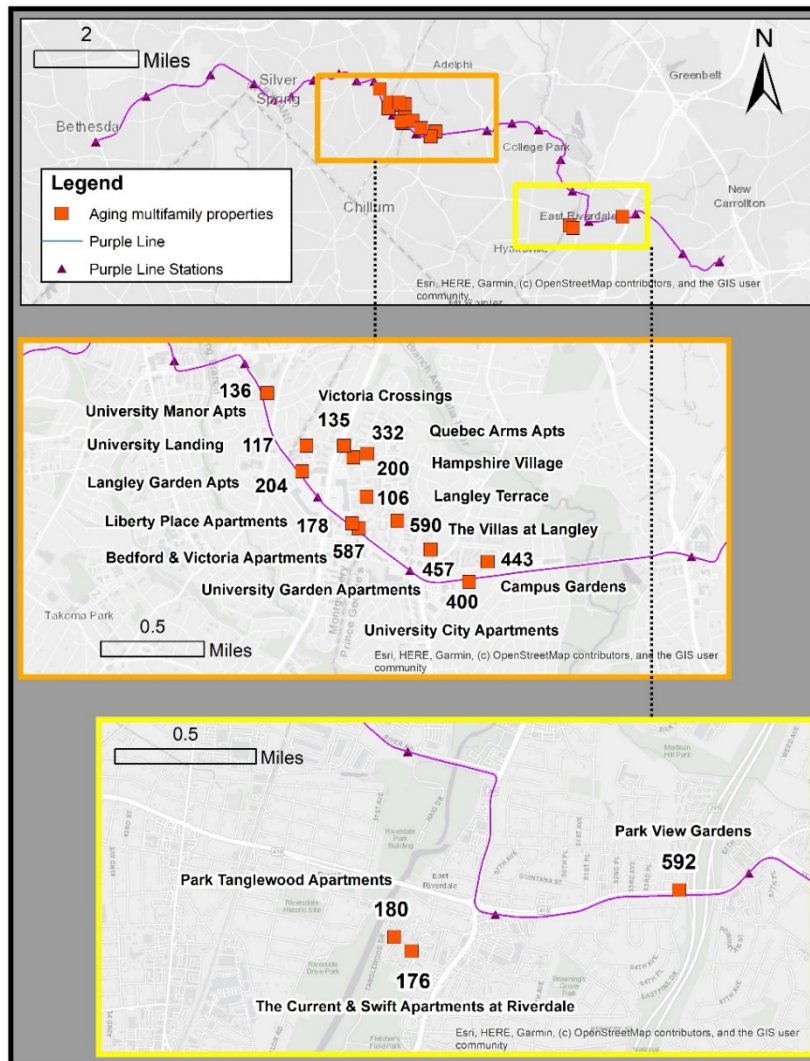
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<sup>24</sup> Prince George's County Housing Opportunities for All Workgroup February 2020 Annual Report to the County Executive and County Council – Appendices (pp. 20-21)

## What is the Scope of Older Multifamily Housing Along the Purple Line?

The map below references numerous multifamily properties along the Purple Line. Many of these properties are home to hard-working immigrants, principally from South and Central America, who provide essential services for the entire County. Most of the properties we have listed show positive cash flows, implying that residents are paying rent promptly. Attached is a table developed from CoStar that provides detail for the properties.

*Figure 1: Map of Aging Multifamily Properties*



Here are highlights that can be gleaned from the above map:

- There are over 4800 apartments in these 16 properties, meaning that the average number of units in each property is over 300 units/property.
- Properties range in size from 106 to 592 units.

## Pathway to Preserve Housing Along the Purple Line

As the Purple Line develops, prices of properties along the line will increase.<sup>25</sup> Now is the time for Prince George's County to put in place a plan that preserves housing along the line as is practicable, deploying a variety of methods to implement this strategy. If the goal is to preserve and rehabilitate as much affordable housing as possible along the Purple Line, the following decision tree is a useful way to approach this issue. We assume that

- DPIE has inspected the property, and,
- DPIE has found substantial code violations at the property.

### *Inspection Determines Substantial Violations at Property*

There are three scenarios AFTER an inspection discloses code violations:

1. The landlord complies and makes repairs.
2. The landlord wants to comply, but lacks the resources to do so.
3. The landlord is uncooperative and fails to comply.

**Scenario 1: The landlord complies and makes repairs—not an issue; the repairs are made.**

**Scenario 2: The landlord initially wants to comply, but lacks the resources to do so:**

- a) Determine the cost of repairs.
- b) Determine sources that could be used for repairs.
- c) Provide the landlord with a list of such sources.<sup>26</sup>
- d) Give the landlord time to repair with the sources.

(1) The landlord makes repairs: good.

(2) The landlord fails to make repairs:

- i. Fine the landlord.
- ii. Enter receivership to make repairs.
- iii. Encourage the landlord to transfer property under ROFR.

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<sup>25</sup> See: [Locations Close To Public Transit Boost Residential, Commercial Real Estate Values - American Public Transportation Association \(apta.com\)](#)

<sup>26</sup> The list of resources should include the those outlined in Recommendation #1 "Prioritize Funding for Aging / Distressed Properties along the Purple Line" and the resource outlined in Recommendation #3 "Emergency Repair Fund for Existing Owners who lack resources to make necessary repairs."

**Scenario 3: The landlord is uncooperative and fails to comply:**

- a) Determine the cost of repairs.
- b) Determine sources that can be used for repairs.
- c) After the landlord refuses to make such repairs
  - i. Fine the landlord.
  - ii. Enter receivership to make repairs.
  - iii. Encourage the landlord to transfer property under ROFR.

Figure 2: Pathway to Preserve Housing Along the Purple Line

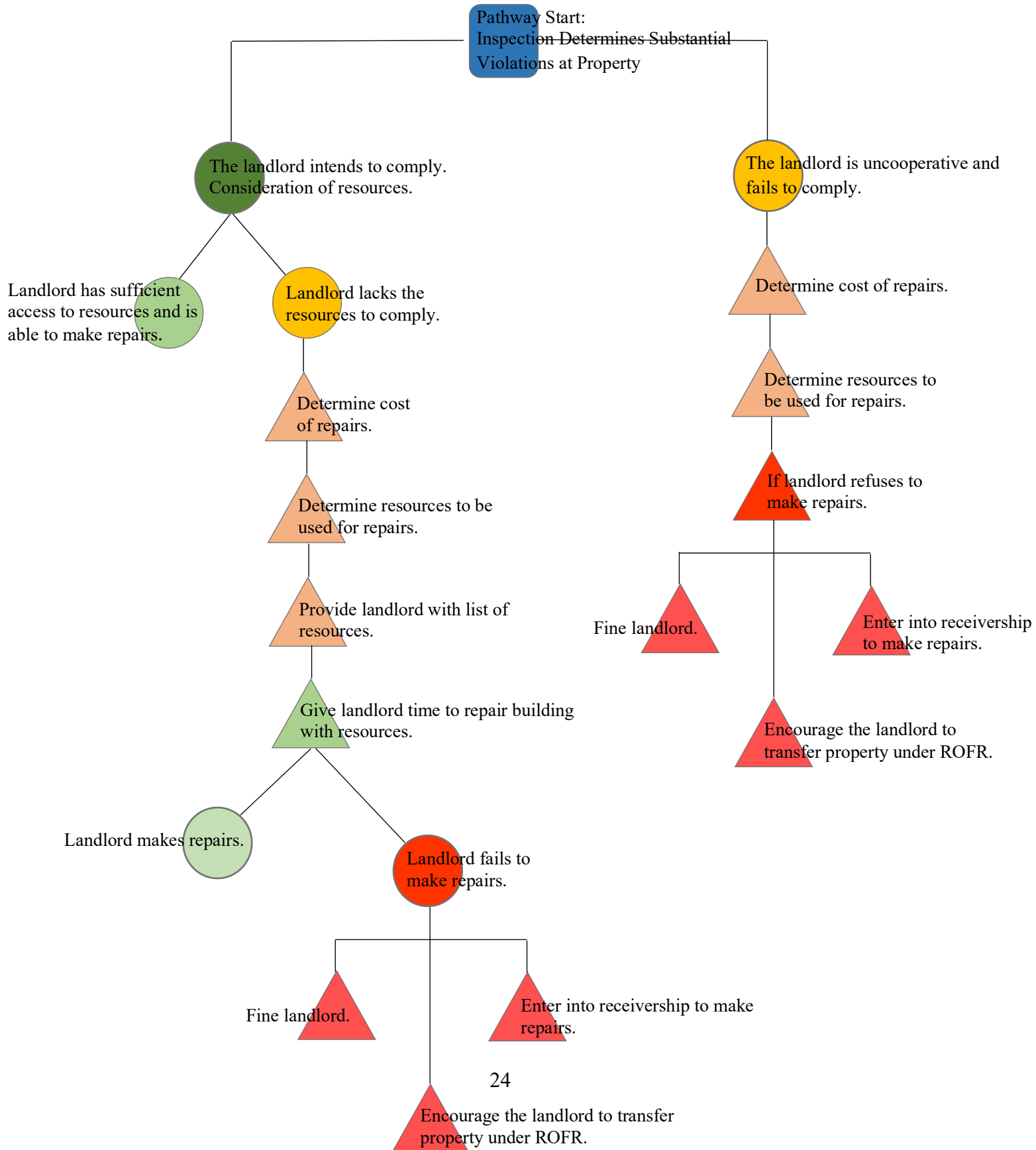




Figure 3: Timeline and Graph of Implementation of Recommendations

Activity	2022				2023			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1. Prioritize Funding for Aging / Distressed Properties along the Purple Line								
2. Set Aside a Dedicated Funding Source for Aging / Distressed Multifamily Properties along the Purple Line. Begin with \$8M from American Recovery Plan funds								
3. Create an Emergency Repair Fund for Existing Owners Who Lack Resources to Make Necessary Repairs.								
4. Encourage the Prince George's Housing Authority to Issue Bonds to Rehabilitate Aging / Distressed Multifamily Housing								
5. Encourage the State of Maryland to Prioritize the Use of the Low-Income Housing Tax Credit for the Preservation of Existing, Affordable Multifamily Housing								
6. Request Forward Funding from HUD of Approximately \$30 Million in Section 108 Funds								
7. Ensure Proper Staffing for the DPIE								
8. Mandate Annual Inspections of Distressed Rental Housing Complexes								
9. Enforce Existing Law								
10. Adopt a Strong Consumer Protection Ordinance That Protects Residents in Rental Properties								
11. Use the County's Power of Receivership to Take over an Aging / Distressed Property								
12. Require Owners to Develop and Implement Tenant Relocation/Protection/ Priority Return Plans as Part of any Upzoning Approval Process								
13. Encourage and Respect Tenant Participation								
14. Fund a Part-time Community Development Network Organizer								

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## National Housing Trust, Consulting Services – Purple Line research project

The National Housing Trust (NHT) is a member of the *Purple Line Corridor Coalition distressed properties working group* (Working Group)<sup>1</sup>. The Working Group has been set up to focus on two unassisted affordable housing properties that are along the proposed Purple Line in Prince George’s County, MD. The Working Group is interested in preserving the affordability of and protecting the residents at the Bedford and Victoria Station properties (B&V). Many of the traditional public resources accessed by owners and developers seeking to preserve a property may not be a viable solution due to the high number of undocumented immigrants who currently live in the property. To identify strategies for the acquisition and preservation of B&V, the National Housing Trust has conducted an analysis of the possible solutions and approaches to preserving housing for undocumented immigrants, including available financial resources.


As part of this analysis, NHT developed and disseminated a survey to affordable housing organizations and networks to identify and learn from those organizations who have found successful approaches to preserving unassisted or assisted affordable housing occupied by undocumented residents. This was supplemented with follow-up calls and additional stakeholder outreach. Building on these findings, NHT created a summary of federal, state, and local financial resources that can be used for the acquisition and preservation of unsubsidized housing. These resources, most importantly, do not prohibit, restrict, or impair undocumented occupancy.

To determine how the Working Group can support the preservation and/or redevelopment of the properties to remain affordable for the existing undocumented residents, NHT conducted a landscape analysis, researching and identifying successful approaches from around the country where unassisted affordable housing occupied by undocumented persons has been preserved through creative solutions and/or limited financing. These findings culminated in the creation of four case studies, each of which identify a number of tools and approaches that will help preserve affordable housing for undocumented populations to reside in both assisted and unassisted affordable housing.

The following deliverable outlines:

1. *Summary of Bedford and Victoria Station*.....Page 3
2. *Eligible Funding Sources for Acquisition and Preservation of Unsubsidized Housing*.....Page 5
  - a. *Eligibility for Federal Funding Sources*.....Page 6
  - b. *State and Private Funding Sources*.....Page 11
3. *Successful Approaches to the Acquisition and Preservation of Unsubsidized Housing*.....Page 19
  - a. *369 3<sup>rd</sup> Ave, San Francisco, CA*.....Page 20
  - b. *Hamilton Manor, Hyattsville, MD*.....Page 22
  - c. *Seasons Park, Richfield, MN* .....Page 24
  - d. *Sky Without Limits Community, Minneapolis, MN*.....Page 27

<sup>1</sup> Working Group members: National Housing Trust, Housing Initiative Partnership, CASA, Kaiser Permanente, Kairos Development, Enterprise Community Partners, Michael Bodaken and the University of Maryland, College Park



As a member of the Working Group, NHT will work alongside Working Group members, using the research from this scope of work to produce a set of actionable next steps. Together, we will lay the groundwork for the Working Group to work with County Council, residents, advocates, developers, and/or other stakeholders as appropriate, to protect the wellbeing of the vulnerable population currently residing at B&V.

## 1. Bedford and Victoria Station Summary

*The following summary of the Bedford and Victoria Station properties contains some sensitive information about the immigration status of a number of residents at the two properties. This information should be handled and shared with care.*

Unsubsidized affordable housing<sup>2</sup> plays a critical role in providing affordable housing options for low- and moderate-income families across a wide range of professions. Though unsubsidized properties are not clearly defined, tracked or analyzed, according to a 2016 data analysis by CoStar, these properties made up approximately 76%<sup>3</sup> of the affordable housing stock in the United States, a much greater number than housing units made affordable through either covenants, conditions, or other income restrictions. Units in unsubsidized properties are broadly affordable to households at or around 50% of the Area Median Income (AMI) without the use of any public or private subsidy. Rents at unsubsidized properties are more affordable as they are typically composed of Class B or C buildings. These buildings are often older, in need of varying degrees of renovation, and located in less desirable neighborhoods. While these factors keep rents low in unsubsidized properties, this housing has increasingly become at risk of exiting the affordable housing stock due to building obsolescence, inadequate unit quality, and market pressures.

Bedford and Victoria Station are two properties located at 1400 University Blvd E, Langley Park in Prince George's County, Maryland. The properties were acquired by Bedford United LLC, a Real Estate Investment Trust based in Brooklyn, NY, in April 2013. The owner has not met or engaged with tenants for almost 10 years. As of August 2021, Bedford and Victoria LLC is not in good standing with the State of Maryland for failing to file the 2021 Annual Report.


The properties currently have \$52.3 million of debt, of which \$6.5 million is from recent financing in May 2020 from Fannie Mae. The 587-unit properties are comprised of 288 one-bedroom units and 299 two-bedroom units. There are approximately 50 units that are vacant, in part due to the poor condition of the units.

At the Bedford and Victoria Station properties, 85% of families are primarily Spanish speaking. With almost 3,000 residents across the 587 units, there is widespread overcrowding. CASA estimates that approximately 30-50% of the families are undocumented, though there are a number of families (though far fewer) that are mixed status with at least one U.S. citizen. Though not an extensive issue at the Bedford and Victoria Station properties, there are some instances where the individuals who

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<sup>2</sup> Properties upon which covenants, conditions, and restrictions or other documents are recorded that require rents to be affordable to households at specified income levels are referred to as *subsidized properties* in this document. Other market-rate properties without any restrictions have rents that are affordable to households earning up to 60 percent of an Area Median Income (AMI). These are referred to as *unsubsidized* affordable units in this document and are also known as “naturally occurring affordable housing” (NOAH).

<sup>3</sup> Urban Land Institute. (October 18, 2016) *New CoStar Data Identifies 5.5 Million Units of Naturally Occurring Affordable Housing in Markets Across the United States*. <https://americas.uli.org/new-costar-data-identifies-5-5-million-units-naturally-occurring-affordable-housing-markets-across-united-states/>



currently reside in the units are not on the current lease. This has resulted in the current tenants being unable to receive rental assistance through Coronavirus Relief Funds (CRF) without the engagement of the actual lease holder.

Though a number of residents are undocumented, with approximately 50% of residents working in the informal economy, they are still able to provide the appropriate documentation for income verification. All community members are able to receive an Individual Taxpayer Identification Number (ITIN), or a W2 to complete annual tax documentation. Prince George's County accepts the completion of annual tax documentation as a form of income verification.

The properties are located only a few blocks from a proposed purple line metro station. The purple line will run between New Carrollton in Prince George's County and Bethesda in Montgomery County. It will also be integrated into the existing metro system, with connections to the green, red, and orange lines. Although not yet completed, the purple line's promise of increased connectivity has already enticed development in the area, and rents along the proposed line are increasing faster than other areas in the affected counties<sup>4</sup>. Although the owner has not yet expressed an interest in selling B&V, the properties' location near the new purple line makes them a valuable asset. A value-add minded owner is likely to consider higher rents and therefore higher profits down the line.

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<sup>4</sup> Koma, A. (2019, December 12). The Purple Line could endanger up to 17,000 affordable homes. A new action plan IDs ways to preserve them. bizjournals.com. <https://www.bizjournals.com/washington/news/2019/12/12/the-purple-line-could-endanger-up-to-17-000.html>

## 2. Eligible Funding Sources for Acquisition and Preservation of Unsubsidized Housing

In determining how the Working Group can support the preservation and/or redevelopment of the Bedford and Victoria Station properties to remain affordable for the existing undocumented residents, National Housing Trust has identified a number of funding sources that have no or limited reporting requirements that prohibit, restrict, or impair occupancy by undocumented persons. This list of funding sources will support the eventual set of actionable next steps, laying the groundwork for the Working Group to work with County Council, residents, advocates, developers, and/or other stakeholders as appropriate, to protect the wellbeing of the vulnerable population currently residing at Bedford and Victoria Station.

Purchasing and preserving unsubsidized properties, like Bedford and Victoria Station, is a challenge for mission-oriented developers, owners, and investors of affordable housing. These parties are competing in the same marketplace where the acquisition price of an unsubsidized property is set by a potential purchaser. This often includes market-rate and/or for-profit developers who plan to raise rents and can therefore justify a higher acquisition price than that supported by affordable rents. For prospective unsubsidized housing owners to compete and preserve affordability, they need access to financing which lets them offer the same, or higher, amount to the seller while also ensuring that there will not be an increase of rents for the existing or future tenants in return.

An additional consideration to this process is the citizenship or immigration status of existing residents at these properties. A number of federal public resources accessed by owners and developers seeking to preserve a property require potential tenants to disclose their citizenship status, making them an unviable solution if a property has a population of undocumented immigrants. Preserving and/or redeveloping unsubsidized properties at rents affordable to existing undocumented residents, as the Working Group seeks to do at Bedford and Victoria Station, necessitates alternate financial resources.

Finally, for the Bedford and Victoria Station properties, the applicability of any of these financial resources is wholly dependent on either the current owner accessing these funds or a sale of the property occurring – with the hope that the buyer would be a mission-driven owner committed to the preservation of the existing unsubsidized affordable housing and tenant community.

## Eligibility for Federal Funding Sources

In considering what resources could be used to either acquire and/or preserve Bedford and Victoria Station, a chief concern for the Working Group has been immigration status restrictions for many federal housing programs and funding. As federal resources are often used for the acquisition and/or preservation of affordable housing, it is vitally important that the Working Group members and any subsequent recommendations and next steps consider what federal funding resources are available to use in this situation. To determine which federal housing programs and funding sources do not have immigration status restrictions, a brief analysis below focuses on those programs that are most often considered for the acquisition and/or preservation of affordable multifamily rental housing. Coronavirus Relief Funds and the Low Income Housing Tax Credits are discussed separately due to additional guidelines and reporting requirements.

First, it is important to understand the two main sources of immigration status restrictions on eligibility for federal housing programs and funding: Section 214 of the Housing and Community Development Act of 1980 (Section 214) and title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

1. Section 214, which “prohibits the Secretary of the Department of Housing and Urban Development (HUD) from making financial assistance available to persons who are other than United States citizens, nationals, or certain categories of eligible noncitizens,” applies to most federally assisted housing programs, such as Public Housing, Section 8 Project Based Rental Assistance and Housing Choice Vouchers, Section 202 Supportive Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities and Section 207/223 (f) Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing.
2. PRWORA imposes restrictions on an immigrant’s ability to receive federal public benefits and state and local public benefits. This subsequently requires federal, state, and local agencies to report the immigration status of program recipients for programs that meet this definition of public benefit. Such immigration status reporting provisions apply to safety-net programs such as the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI). A number of federal agencies, including the Department of Housing and Urban Development (HUD), have not specified which of their programs specifically provide federal public benefits. Therefore, it is at the discretion of state and local agencies administering programs that receive funding from HUD as to whether they impose a requirement to report immigration status. These agencies are in no way obligated to verify the immigration status of applicants. Other assistance, such as Community Development Block Grant (CDBG), Emergency Solutions Grants (ESG) and the National Housing Trust Fund, are not specifically a federal, state, or local benefit, therefore PRWORA does not apply. The HOME Investment Partnerships Program (HOME) has certain provisions that are subject to PRWORA. However, disaster relief funding, programs necessary for the protection of



life and safety, and programs administered by nonprofit charitable organizations are all eligible for use, regardless of immigration status, under PRWORA.

Additionally, HUD Handbook 4350.3 Occupancy Requirements of Subsidized Multifamily Housing Programs discusses the requirements and procedures for determining whether applicant families may participate in HUD-subsidized multifamily housing programs.<sup>5</sup> Chapter 3, which focuses on Eligibility for Assistance and Occupancy, lists Program Eligibility Requirements<sup>6</sup> that tenants must meet to be eligible for occupancy and housing assistance, including but not limited to detailed information about income limits, Social Security Numbers (SSNs), and consent forms. Requirement F notes: Only U.S. citizens or eligible noncitizens may receive assistance under Section 8 (as mentioned above), Section 236, Rent Supplement, Rental Assistance Payment (RAP), and Section 202/8 programs.

### *Coronavirus Relief Funds (CRF)*

As mentioned above, the Working Group has expressed concern about the immigration status restrictions for federal funding resources. This includes the tranches of Coronavirus Relief Funds (CRF) from the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 and the American Rescue Plan (ARP) Act of 2021. Treasury guidelines released in accordance with tranches of CRF do not mention the exclusion of undocumented immigrants. Leading organizations such as the National Housing Law Project understand that the omission does not exclude undocumented immigrants from receiving or benefiting from CRF, except where state or local jurisdictions may apply additional regulations or reporting requirements. Neither Maryland nor Prince George's County has imposed additional reporting requirements or regulations for the disbursement of CRF.

According to David A. Super, Carmack Waterhouse Professor of Law and Economics at Georgetown University Law Center<sup>7</sup>, Sections 401(b)(1)(B) and 411(b)(2) of PRWORA make non-qualified immigrants, including undocumented persons, eligible for short-term, non-cash, in-kind emergency disaster relief. He writes that federal, state, or local programs that make payments directly to landlords, mortgage servicers, and utility companies also fulfill the non-cash, in-kind requirement. While CRF has value to the residents, is it explicitly not cash.

Nonprofit organizations are often critical allies to state and local governments, providing relief and recovery. CRF states explicitly that nonprofits may be used to assist in the distribution of CRF payments through programs and services such as food delivery, distance education, and caring for unhoused populations. If CRF are distributed to individuals, where the assistance has been provided by a

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<sup>5</sup> U.S. Department of Housing and Urban Development (HUD) Occupancy Requirements of Subsidized Multifamily Housing Programs (4350.3) [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/hsgb/4350.3](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgb/4350.3)

<sup>6</sup> HUD, Occupancy Requirements of Subsidized Multifamily Housing (4350.3), Chapter 3 pp. 4 [https://www.novoco.com/sites/default/files/atoms/files/hud\\_4350.3\\_ch\\_3\\_aug\\_112213.pdf](https://www.novoco.com/sites/default/files/atoms/files/hud_4350.3_ch_3_aug_112213.pdf)

<sup>7</sup> David A. Super, *Immigrants' Eligibility for State and Local Emergency Housing and Utility Assistance Programs*, Georgetown University Law Center. June 2020.

charitable nonprofit organization, those nonprofit organizations are not required to verify that an individual is qualified to receive those benefits or assistance under PRWORA.

Super writes that PRWORA provisions do not apply to any Coronavirus Relief Funds (CRF) for the following reasons<sup>8</sup>:

- The ARP and the CARES Act supersede the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) for CRF. ARPA was enacted a quarter-century after the 1996 law and creates several programs unknown to the Congress that passed the earlier law. In addition, Congress could have imposed explicit immigration-related restrictions on these components but did not do so. It did, however, impose explicit immigration related restrictions on the Economic Impact Payments (i.e., stimulus checks). The absence of a similar restriction on aid from CRF suggests that Congress did not intend for one to apply.
- The definitions of “federal public benefit” and “state or local public benefits” do not apply. The CRF are federal funds, thus benefits provided with them are not a “state or local public benefit.” A definitive HHS interpretation of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act shortly after it passed finds that aid is not a “federal public benefit” if Congress did not earmark the funds to provide benefits to “eligibility units” – successful applicants that meet specific income, resource, or age criteria – but provided the funds to benefit the community as a whole. Congress did not earmark CRF in this way. Instead, Congress is providing the funds to assist the states and localities in addressing the pandemic – its purpose is to benefit the community as a whole. States have the authority to use the funds for many different purposes, not just to provide benefits to individuals essentially making them a block grant to states, even though they are not called such.

Based on the population of the State of Maryland and Prince George’s County, each jurisdiction should anticipate receiving \$3.72 billion<sup>9</sup> and \$176 million<sup>10</sup> in Coronavirus Relief Funds, respectively. The first 50% of the funding was dispersed in May 2021, with the final 50% to be dispersed in 2022. As of the submission of this deliverable, the State of Maryland has not announced any set-aside or allocation of funds from the CRF. Prince George’s County has announced its intent to set aside approximately \$1 million of the first tranche of funds for single family rehabilitation and an additional \$4-5 million to ensure the County Department of Housing and Community Development has funding to support its exercise of its Right of First Refusal.<sup>11</sup>

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<sup>8</sup> Center for Budget and Policy Priorities, *Memo: Administering relief programs without an immigration test, when possible*. April 26, 2020.

<sup>9</sup> Internal Revenue Service, *Fiscal Recovery Funds- State Funding*, <https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-statefunding1-508A.pdf>

<sup>10</sup> Internal Revenue Service, *Fiscal Recovery Funds-County Funding*, [https://home.treasury.gov/system/files/136/fiscalrecoveryfunds\\_countyfunding\\_2021.05.10-1a-508A.pdf](https://home.treasury.gov/system/files/136/fiscalrecoveryfunds_countyfunding_2021.05.10-1a-508A.pdf)

<sup>11</sup> Prince George’s County instated a County Right of First Refusal in 2013. This acts as a mechanism for revitalizing and preserving housing options for low to moderate income households. When the owner of a multifamily property with 20 or more units enters into a sale agreement, they are required to offer the County the right to buy the property before selling it to

### *Low Income Housing Tax Credit*

The Low-Income Housing Tax Credit (Housing Credit) program is the largest federal resource for creating and maintaining affordable housing. The Housing Credit program facilitates partnerships between affordable housing developers and investors to create and preserve affordable rental housing for low-income families across the country. The program has helped to finance nearly 3.5 million affordable homes since 1986. The 9% tax credit, which subsidizes 70% of the low income unit costs, is used most often for new construction and substantial rehabilitation without any further federal subsidies. The 4% tax credit, which subsidizes 30% of the low income unit costs, is most often used for the acquisition of existing buildings for rehabilitation. A further discussion about the Maryland Bond Program is below. Both the 9% and 4% tax credits can be claimed pro rata over ten years.

By law, and as discussed previously in this report, only U.S. citizens and eligible noncitizens may benefit from federal rental assistance. The Housing Credit, however, has no such restriction. Section 42 of the Internal Revenue Code, which establishes the Housing Credit<sup>12</sup>, includes no mention of citizenship, noncitizens or immigrants. Further, while Treasury guidelines for the Housing Credit program record keeping provision (Treas. Reg. 1.42-5(b) (1)) require the owner of a low-income housing project to keep records for each qualified low-income building in the project for each year in the compliance period,<sup>13</sup> there is no requirement to request and keep records of the immigration status of residents.

The state of Maryland, through its Qualified Allocation Plan (QAP), also does not impose immigration status reporting requirements on owners. The state allocating agency does, however, require a project owner to receive an annual income certification of each low-income tenant per unit.<sup>14</sup> As discussed in further detail in the Additional Considerations portion of this report, programs that require income verification, such as the Housing Credit program, often place an additional burden on tenants to provide documentation to verify income such as ITIN, tax documents or W2. All of these could place a tenant at-risk by exposing their immigration and/or citizenship status and fear of displacement from their home.

For the Bedford and Victoria Station properties, there are a number of specific sections within the Maryland QAP, based solely on the language in the QAP and Multifamily Rental Financing Guide, as well as the current size, location and existing affordability of the properties, where a potential applicant may be able to receive points under 9% Competitive Scoring Criteria, making them competitive for an allocation of Housing Credits. Of a total 200 points in the Competitive Scoring

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another party. The County may also assign their right to purchase to a third party. If the owner of Bedford and Victoria were to enter into a contract of sale for the properties, this action would qualify under the ROFR ordinance for Prince George's County DHCD to either purchase the property, or assign their rights to a qualified entity.

<https://www.princegeorgescountymd.gov/984/Apartment-Multifamily-Rental-Owners>

<sup>12</sup> U.S. Department of the Treasury. Internal Revenue Service. (2015). IRC §42, Low Income Housing Tax Credit Retrieved from: [https://www.irs.gov/pub/irs-utl/IRC\\_42.pdf](https://www.irs.gov/pub/irs-utl/IRC_42.pdf)

<sup>13</sup> Monitoring compliance with low-income housing credit requirements, CFR § 1.42- 5  
<https://www.law.cornell.edu/cfr/text/26/1.42-5>

<sup>14</sup> Maryland Department of Housing and Community Development, Maryland Qualified Allocation Plan (2020). Retrieved from: <https://dhcd.maryland.gov/HousingDevelopment/Documents/rhf/2020QAP.pdf>



Criteria section, the Multifamily Rental Financing Guide awards the following points, all of which are relevant to the Bedford and Victoria Station properties and the broader Purple Line Corridor revitalization and preservation efforts of which they are a part:

- up to 16 points for Community Impact Projects to not only provide needed affordable housing, but also provide synergy, contribution to and an expansion upon broader State and local community development investments;
- up to 8 points for locating near transit;
- up to 8 points for providing 2- or 3-bedroom units that cater to families;
- up to 8 points for providing tenant services;
- up to 15 points for providing rents affordable to households with incomes below the program requirements; and
- up to 15 points for direct leveraging, including using state and local funds from Maryland and Prince George's County.

As mentioned elsewhere in this report, the use of Housing Credits as a viable financial resource for the acquisition and preservation of Bedford and Victoria is wholly dependent on either the current owner applying for and being awarded these funds or the sale of the properties to a mission-oriented developer/owner committed to the preservation of the buildings who does the same. This is important for the Working Group to know, as any commitment to receiving Housing Credits from the state of Maryland will require extended planning and engagement with various stakeholders and could take a number of months, if not longer, to finalize.

A number of the case studies, and additional considerations noted later in this report, highlight the strategy of buying and holding unsubsidized properties, providing valuable time to a mission-driven owner to make immediate and emergency repairs in the short term before applying for Housing Credits as part of a longer-term preservation plan.

Table 1: Summary of Federal Funding Sources

Funding sources that restrict eligibility based on immigration status	Funding sources that <i>DO NOT</i> restrict eligibility based on immigration status
Public Housing	Coronavirus Relief Funds
Section 8 Project Based Rental Assistance	Low Income Housing Tax Credits
Housing Choice Vouchers	Community Development Block Grant (CDBG)
Section 202 Housing for the Elderly	National Housing Trust Fund (NHTF)
Section 811 Housing for Persons with Disabilities	Emergency Solutions Grants (ESG)
Section 207/223 (f) Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing	
HOME Investment Partnership Program (HOME) <sup>15</sup>	

### State & Private Funding Sources

The following state and private funding sources, identified through stakeholder engagement and additional research, are potential sources for acquiring and preserving properties inhabited by undocumented persons as none implement any immigration status requirements. These funds are also specifically eligible for use for the acquisition and/or preservation of the Bedford and Victoria Station properties due to the existing affordability and location of the properties. This makes each funding source below directly relevant for the Working Group to consider. The first section lists programs that are managed by the Maryland Department of Housing and Community Development. The second section lists two private Preservation Funds that either target or have been historically used to acquire and, in the short term, preserve unsubsidized housing in the state of Maryland.

#### *Maryland Department of Housing and Community Development*

The Maryland Department of Housing and Community Development (DHCD) provides financing for both the development and preservation of affordable rental housing. Resources are available for both nonprofit and for-profit developers. The following multifamily financing programs accept applications through the year and award funding based on a project's readiness to process. The exception is the Rental Housing Program which awards funding through a competitive application round held once or twice annually.

<sup>15</sup> With the exception of disaster relief funding, programs necessary for the protection of life and safety, and programs administered by nonprofit charitable organizations.

- Multifamily Bond Program

The Multifamily Bond Program administers Tax-Exempt Bonds. As mentioned earlier in this report, Tax-Exempt Bonds are often paired with the 4% tax credit to support affordable housing development. Tax-Exempt Bonds can, however, be used without 4% tax credits. The purpose of the Multifamily Bond Program is to increase the new construction and rehabilitation of multifamily rental housing stock within the state, with a focus on families with limited incomes. The Bond program finances rental housing new construction, acquisition and rehabilitation. Both nonprofit and for-profit developers may apply, as long as a housing development is at minimum five units. If projects are pairing the tax-exempt bonds with 4% tax credits, they must comply with the Maryland QAP.

The bond functions as a loan, with terms generally 30 to 40 years, and can be provided to refinance existing high interest rate loans if the refinance is in conjunction with rehabilitation of the housing. All loans funded with tax-exempt bonds must comply with federal requirements established for tax-exempt revenue bonds.

- Rental Housing Works

The Rental Housing Works program provides subordinate gap financing to be used solely for projects financed using the Maryland Department of Housing and Community Development's Multifamily Bond Program and 4% Housing Credits, discussed above. New construction and preservation projects requesting Rental Housing Works funding must meet the requirements for both the Multifamily Bond Program and Housing Credits described in the QAP. Applications are accepted on an ongoing basis in conjunction with applications for the Multifamily Bond Program and 4% Housing Credits. In 2018, the Rental Housing Works program surpassed the \$1 billion investment milestone -- using \$107 million in state loan funds to leverage more than \$1.1 billion in private investment. As a result, 6,370 affordable homes in 56 properties across the state have been preserved.<sup>16</sup>


The maximum amount of loans per project is \$2.5 million. Loans are structured with a 40-year term, with 2% simple interest (though payments will be limited to 75% of a property's annual cash flow). The loan will be due on the sale, refinancing or any voluntary or involuntary transfer of the property or the occurrence of event of default prior to the 40 years. The Rental Housing Works program does not implement specific income restrictions.

- Maryland Affordable Housing Trust Fund

The Maryland Affordable Housing Trust Fund (MAHT) promotes affordable housing with a focus on households earning less than 50% of the state-wide or Area Median Income (AMI). The MAHT was

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<sup>16</sup> From the Field: Maryland Rental Housing Works Program Hits Major Milestone. (2018, July 30).  
<https://nlihc.org/resource/field-maryland-rental-housing-works-program-hits-major-milestone>.



created by the Maryland General Assembly to provide additional financing for affordable housing from the State of Maryland. A portion of the interest generated by title company escrow accounts is the basis of funding for the MAHT.

The MAHT supports capital costs of rental housing, provides financial assistance for nonprofit capacity building, supportive services for residents of affordable housing, and operating expenses for affordable housing developments. Nonprofit and for-profit organizations are eligible to apply, in addition to public housing authorities and local government agencies.

The MAHT serves residents at or below 50% of the state-wide or area median income (whichever is higher). Preference is given to households at or below 30% of the median income (state or area). Priority projects include those that:

- target very low-income individuals,
- provide housing for families with children under the age of 18,
- support long-term affordability,
- demonstrate a need or demand for housing in a geographic area that helps to achieve an equitable geographic distribution of MAHT funds,
- leverage other federal, state, local or private funds, and/or
- present a readiness to proceed.

The maximum award amount is \$75,000. Although the MAHT reserves the right to make its funding available as interest-bearing loans, funding for project-specific capacity building, operating expenses and support services are generally made as grants. Funding for capital costs are offered as deferred-payment loans or recoverable grants payable if the project is sold and/or ceases to be used for low-income occupancy. Pre-development awards are generally repayable.

- Maryland Rental Housing Program

The Rental Housing Program is a competitive funding process that supports the rehabilitation or creation of affordable rental housing. The program is designed to be compatible with tax-exempt or taxable bond financing, Housing Credits, and other private or public funds. Nonprofit and for-profit organizations are eligible to apply, as are as county governments, municipalities, and local housing authorities. As part of the competitive application process, priority is given to projects that:

- restrict units to tenants with incomes below 60% of median income,
- restrict units to low-income tenants for more than 40 years,
- provide tenant service packages,
- use non-State funds in addition to State funds,
- provide quality housing in a good location, and/or
- are sponsored by teams with demonstrated development and management ability.

Though other income restrictions may apply when combining the Rental Housing Program with others, generally, eligible residents must have incomes of no more than 60% AMI. An owner must reserve the same percentage of units for those tenants with 60% AMI or less as the percentage of Rental Housing Program funds are to the total project financing.

Rental Housing Program loans have a term of up to 40 years and are repayable through property cash flow. The maximum loan amount is \$2 million. Loans may be used for acquisition, construction, rehabilitation, and development costs. Development costs include lender fees, architectural and engineering fees, market studies, appraisals, legal fees, and other costs directly related to the development of the housing.

### *Preservation Funds*

- Washington Housing Initiative Impact Pool

The Washington Housing Initiative Impact Pool (Impact Pool) is based in the Washington, D.C. metropolitan area. Created in 2019 through a partnership between JBG Smith and the Federal City Council as a part of the Washington Housing Initiative, the Impact Pool is committed to the preservation of unsubsidized properties in the region. The Impact Pool provides financing for the acquisition of affordable, mixed-income multifamily properties primarily through tax-exempt junior mortgages and mezzanine loans, targeting affordable moderate-income housing in “high-impact” transit-accessible locations likely to experience increasing rents around the region.

The Impact Pool has also founded an independent nonprofit, the Washington Housing Conservancy, that serves as an owner and operator of the portfolio of affordable housing. The Impact Pool may provide subordinate loans to the Conservancy, which intends to be the long-term owner of the affordable housing properties. The Conservancy works alongside mission-aligned organizations to acquire the unsubsidized housing, with the goal of ensuring that the properties are mixed-income, cash-flow positive, and allow the owner to build equity over time.

The capital provided by the Impact Pool is intended to fill the gap between traditional first mortgage financing and available equity. This debt includes a 15-year affordability covenant requiring at least 51% of units serve residents at or below 80% AMI. These affordability levels were specifically designed to meet credit requirements of the Community Reinvestment Act, to target leading national and local banks to make investments in the fund.



At the end of 2020, the Impact Pool had a net \$114.5 million in investor commitments and deployed \$21.8 million to preserve 1,151 units of unsubsidized affordable housing.<sup>17</sup> The Conservancy has acquired two properties in Hyattsville, MD.

- Housing Partnership Equity Trust

The Housing Partnership Equity Trust (HPET, of which the National Housing Trust is a member) is a real estate investment trust (REIT). HPET was launched in 2013 by the Housing Partnership Network (HPN) in response to challenges that many mission-driven affordable housing organizations were facing in their work to preserve affordable rental housing. HPET raises long-term capital from institutional and impact investors and deploys that capital to enable non-profit developers to compete with market-rate purchasers in acquiring and preserving affordable rental housing, with a focus on neighborhoods in change. HPET, which has raised over \$80 million in investment capital, targets properties in communities that have critical amenities for household success—good schools, public transportation, key retail like grocery stores, and access to jobs—all with the goal of providing affordable housing for families of modest means. A REIT is a financing structure that, although unique for nonprofit housing developers, is a commonly used vehicle in traditional capital markets. HPET is only the second mission-oriented and the first nonprofit-sponsored and controlled REIT.<sup>18</sup>

HPET members acquire properties based on a member's business plan and portfolio, targeting the 50 to 80% AMI income level. Some of the properties that enter the HPET portfolio have existing use and occupancy restrictions at acquisition, some have new restrictions added as part of the business plan developed for the property, and some never have recorded restrictions. A number of properties financed through HPET are Housing Credit properties near the end of their initial compliance period, where rent restrictions will remain intact for the 15-year extended use period, but the property won't receive ongoing subsidy. In these cases, members use HPET funding as a long-term bridge to resyndication.

An important element of HPET is the speed at which funds can be accessed by members, compared with traditional affordable financing, which can take months if not years to gather. Access to timely capital is essential for non-profit developers to be able to compete with market-rate developers who customarily access private capital that allows them to move from offer to closing relatively quickly. This need for access to timely capital is discussed further in the following section of this report, as well as in the accompanying the case studies.

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<sup>17</sup> JBG Smith, (2021, February 24) JBG SMITH Announces Approximately \$115 Million in Private Sector Commitments to the Impact Pool and Funding for the Washington Housing Conservancy's Crystal House Acquisition [Press release]. <https://investors.jbgsmith.com/investor-relations/newsroom/news-details/2021/JBG-SMITH-Announces-Approximately-115-Million-in-Private-Sector-Commitments-to-the-Impact-Pool-and-Funding-for-the-Washington-Housing-Conservancys-Crystal-House-Acquisition/default.aspx>

<sup>18</sup> St.Clair, N. (2017). Capital for Communities: Preserving Affordable Rental Housing Through a Nonprofit Real Estate Investment Trust. <https://www.philadelphiafed.org/community-development/capital-for-communities-preserving-affordable-rental-housing>.

Since 2013, HPET has been used to purchase and preserve nearly 3,000 units across the country including three properties in Maryland. Because HPET is only accessible to a specific 14 high-performing affordable housing providers, 12 of whom were among the founding investors, accessing HPET to acquire and preserve Bedford and Victoria Station would require partnering with one of these members.

#### *Other funding resources:*

In addition to the state and private funds outlined above, there are a number of widely regarded acquisition and/or preservation funds that are managed at the state, local or private level around the country. These funds are neither based in Maryland or Prince George's County nor do they have a specific geographical footprint that includes these jurisdictions, and therefore could not be used to acquire or preserve the Bedford and Victoria Station properties. These funds, some of which are profiled in the following four case studies, may be considered as a model for implementation of a similar source of funding in Maryland and/or Prince George's County and should be considered as part of a long-term strategy to preserve unsubsidized properties.

#### Additional Considerations


While it is important to identify which financial resources are available for the acquisition and preservation of unsubsidized affordable housing with an existing undocumented immigrant resident population, this is not all a mission-driven developer and/or owner must consider.

Competing in the open marketplace where the acquisition price of an unsubsidized property is set by a potential buyer means that any mission driven developer and/or owner must be able to access capital which allows them to move quickly. Additionally, residents who have been misled or dismayed by previous owners may be untrusting of mission driven owners. Owners who are truly invested in not only the preservation of the physical property but also of the low-income community of undocumented residents must take the necessary steps to engage with and understand tenant needs.

#### *Speed of Capital*

A recurring strategy identified in the acquisition and preservation of unsubsidized affordable housing is to act quickly. When an owner signals their intent to sell in a desirable neighborhood, many value-add oriented buyers (those who anticipate raising rents, likely after a small, cosmetic rehab) are often interested in purchasing the property. Although the long-term goal of a mission driven owner/developer may be to permanently preserve the housing as affordable, the first step is to take the property off the speculative market.

The established model of receiving tax-credit equity plus a permanent mortgage via bond financing, Freddie Mac, or Fannie Mae first mortgages is often too slow and too limited to compete for the acquisition of unsubsidized affordable housing in a strong real estate market. It can take anywhere from a few months to a year, sometimes multiple years, before winning an allocation of Housing Credits,



during which time a market-rate/value-add developer will have likely already acquired the property. Because only a limited amount of Housing Credits are available every year, many viable projects are left unfunded, and owners may or may not have the financial wherewithal to survive and try again in subsequent years. The timeline to receive state or local affordable housing financing may also be too lengthy, as many programs do not have a specific Notice of Funding Availability.


This results in the need to acquire specific bridge financing to gain ownership of the property and make any necessary immediate repairs to the property before securing funds for long-term preservation. A bridge loan or interim financing will often be enough to hold over the property and ensure that it will be eligible for refinancing using public financing that will deed restrict and preserve the affordability of the property. There are a number of funds that have been specifically created to serve this need, and have done so successfully, including Housing Partnership Equity Trust.

### *Build Trust*

Acquiring financing that does not include citizenship or eligible immigration status is a significant step towards ensuring that tenants of any status are able to remain in their homes following acquisition. Cultivating trust between tenants and new ownership is also a key component to avoiding displacement and ensuring that residents live in safe quality housing.

While unsubsidized affordable housing may require only a paystub for income verification, many programs that place income restrictions on a property require additional documentation to verify income such as ITIN, tax documents, or W2 – all of which could reveal a tenant’s immigration and/or citizenship status. For undocumented residents, this can lead to fear that they may be reported to Immigration and Customs Enforcement (ICE), putting their lives and community at risk. Cultivating trust between ownership and the residents is key in ensuring that tenants feel comfortable remaining in their homes. If possible, ownership should engage with the tenant population prior to acquisition to start building that relationship. This is not only helpful for tenants, so that they may get to know the new owner and their intentions, but it is also helpful for ownership, so that they may begin to learn from residents about pressing issues at the property, such as overcrowding and capital needs. Tenants, for example may not be open about the number of people living in their unit to an untrusted source, but it is important for new owners to understand the extent of overcrowding and begin to identify solutions, such as relocating the tenants to a larger unit or placing some of the tenants in an additional unit. As mentioned at the beginning of this report, in the summary of the Bedford and Victoria Station properties, there is a concern about the overcrowding of tenants in a number of units at Bedford and Victoria Station. This is an issue that will need to be addressed by the current or a future owner of the property to ensure that tenants are both abiding by occupancy limits but also have enough space for their families.

If the property requires substantial repairs, ownership should keep in mind tenants’ concerns if considering temporary relocation as a necessary step. Concerns about income verification processes would resurface if tenants were to be moved to a new property. One solution may be to keep tenants



within the property, but temporarily transfer them to vacant units while work is conducted on their unit. Another possible solution is to master lease units for the use of tenants at an alternate property, so that the owner would be the tenant on file rather than the individual or family. The key is to understand tenant concerns and identify ways to address those concerns throughout the process of acquisition and preservation.

### Conclusion

The National Housing Trust (NHT), through the above analysis, has identified a number of federal, state and private funding sources that do not prohibit, restrict, or impair undocumented occupancy in affordable housing. Though the applicability of any of these financial resources is wholly dependent on either the current owner accessing these funds or a sale of the property occurring and a new owner accessing these funds, this research provides valuable information that will help to guide the next steps for the Working Group to take as it determines how best to support the preservation and/or redevelopment of the Bedford and Victoria Station properties to remain affordable for the existing undocumented residents. To support this summary of financial resources, NHT has also identified four successful approaches from around the country where unassisted affordable housing occupied by undocumented persons has been preserved and protected through creative solutions and/or limited financing. These four case studies are presented in the following section of this report and each highlights additional tools and approaches.

### 3. Successful Approaches to the Acquisition and Preservation of Unsubsidized Housing

The following four case studies highlight specific instances where an owner has successfully acquired and preserved an unsubsidized affordable housing property. In all cases, there was an existing undocumented tenant population prior to acquisition, all of whom were permitted to stay after preservation. To varying degrees, the owners have, through their acquisition and preservation process, understood and attempted to meet the needs of the undocumented tenant population with a goal to limit displacement of existing residents.

The case studies, together, also bring together a number of lessons that the Working Group must consider as it proceeds in its work to preserve the long-term affordability of, and the community at, the Bedford and Victoria Station properties. These include:

- There is no one-size-fits-all approach to acquiring or preserving an unsubsidized affordable housing property.
- To manage an unresponsive or unengaged owner, it is important for all levels of the community and government to be on the same page. This includes the local or state government ensuring their property inspection and code enforcement policies are adequate and that there is sufficient staff capacity to apply pressure and hold an owner accountable for the quality of a residential building. The tenants and the broader community must also be involved, whether it is to express their tenants' rights, apply pressure on the owner through the media, or advocate to government officials.
- Local and/or state government must be committed to the mission of preserving unsubsidized housing and protecting the existing undocumented immigrant community.
- Align policy goals with local or state funding resources, either through the creation of new and dedicated financial resources that support the acquisition and preservation of unsubsidized housing or through an increase in funds for existing programs that support this goal.
- The need for a developer to access quick and flexible financing to acquire an unsubsidized property, especially when competing in a hot real estate market.
- A new owner should engage with the existing tenant population before, during, and after acquisition, either directly or with support from a community engagement or tenant advocacy organization that may already be supporting the tenants.
- Understand what compliance terms must be met for each financial resource an owner intends to utilize for acquisition and/or preservation needs. Further, an owner must also note what they may need from the tenants to meet these compliance terms, and what barriers these may pose for an undocumented tenant population even if there is no explicit immigration or citizenship status requirement.

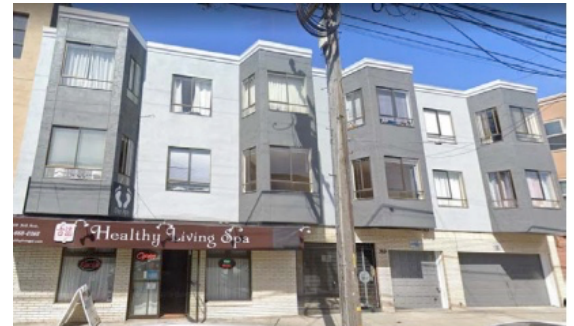
## 369 3rd Avenue, San Francisco CA

<b>Acquisition Sources</b>	<ul style="list-style-type: none"><li>• \$8.2 million from the San Francisco Housing Accelerator Fund Bridge Loan</li></ul>
<b>Preservation Sources</b>	<ul style="list-style-type: none"><li>• \$3.85 million in first mortgage financing from the San Francisco Mayor's Office of Housing and Community Development (MOHCD) Preservation and Seismic Safety (PASS) Program</li><li>• \$5.07 million subsidy loan from MOHCD's Small Sites Program (SSP)</li></ul>

### Background:

369 3rd Avenue is a 12-unit rental property located in the Richmond District of San Francisco. The tenants are a mixture of families with children, seniors, and individuals, with an overall median household Area Median Income (AMI) of 72%. Prior to acquisition, the building was unsubsidized, but residents benefited from rent control. Many of the tenants have lived at the property for over 10 years. Noting San Francisco's costly housing market, many would struggle to find affordable housing elsewhere in the city.

In 2019, the property was put up for sale. At the time, the Richmond District had already lost more than 500 rent-controlled units over a 10-year period due to Ellis Act evictions<sup>19</sup>, owner move-in evictions, and condo conversions<sup>20</sup>. The Housing Rights Commission (HRC), a community-based tenants' rights organization in San Francisco, was already actively engaged with the tenants of 369 3<sup>rd</sup> Avenue, who were concerned about the building sale and feared that their rent-controlled units would be lost. HRC alerted Mission Economic Development Agency (MEDA), a nonprofit community economic development corporation in San Francisco that aims to achieve economic justice for the city's low- and moderate-income families. Noting the status and imminent sale of the building, HRC recommended the tenants nominate their building to be a part of the Mayor's Office of Housing and Community Development (MOHCD)'s Small Sites Program (SSP). Once nominated, a nonprofit participating in the program vets the property for eligibility and can choose to purchase it if eligible. MEDA had already used SSP funding to acquire and preserve 25 multifamily properties across the city of San Francisco and decided to take on 369 3<sup>rd</sup> Avenue as their first property in the Richmond District.



369 3<sup>rd</sup> Avenue, San Francisco

Image source:

<https://sfmohcd.org/sites/default/files/CGOBOC%20Report%20-%20PASS%20Program%20June%202020.pdf>

<sup>19</sup> The "Ellis Act" is a California State law which states that landlords have the unconditional right to evict tenants in rent-controlled buildings to "go out of rental business." The law is frequently used by corporate landlords and developers to remove a property from rent stabilization, and convert it to condos or boutique hotels.

<sup>20</sup> Mojadad, I. (2020, January 6). *Mission Nonprofit makes First Richmond Purchase to Protect Tenants*. SF Weekly. [https://www.sfweekly.com/news/mission-nonprofit-makes-first-richmond-purchase-to-protect-tenants/?fbclid=IwAR2ATyBw02O3ijUc3jvQMvQfrLM1Lr2fdQAJu2PgAHAVz7VS61\\_oPWNNovo](https://www.sfweekly.com/news/mission-nonprofit-makes-first-richmond-purchase-to-protect-tenants/?fbclid=IwAR2ATyBw02O3ijUc3jvQMvQfrLM1Lr2fdQAJu2PgAHAVz7VS61_oPWNNovo).

### Acquisition:

MEDA worked with HRC to identify tenant captains who could help introduce the development team to, and begin to build relationships with, the existing resident community. In order to quickly remove the property from the speculative market, MEDA received a bridge loan of \$8.2 million<sup>21</sup> from the San Francisco Housing Accelerator Fund (SFHAF) to acquire the property. SFHAF provides bridge loans in partnership with the public sector in order to provide nonprofit developers with the immediate capital they need for acquisition and rehabilitation. The bridge loan included \$700,000 for crucial repairs and upgrades to the building. The property was acquired during the COVID-19 pandemic, and due to concerns for resident health and safety, an agreement was formed between the tenants and MEDA that would ensure tenants were not temporarily relocated to another building while repairs were made in their units. To accomplish this, two units within the building were left vacant and only two units would be worked on at a time, to ensure that tenants could relocate within the building.

### Preservation:

Permanent financing for 369 3<sup>rd</sup> Avenue is administered through the MOHCD Small Sites Program (SSP), and the Preservation and Seismic Safety Program (PASS). Both programs aim to protect low- and moderate-income tenants and establish long-term affordable housing in rental properties throughout San Francisco. SSP and PASS require average rents to be affordable to tenants earning 80% AMI or below. MEDA received \$3.85 million in financing for a first mortgage from the Preservation and Seismic Safety (PASS) program, and \$5.07 million (\$390,000 per unit) in subsidy loans from the Small Sites Program. This combination of financing has been typical for SSP projects since the introduction of PASS in 2019. There are no citizenship or eligible immigration status requirements included in either of these programs.

#### SMALL SITES PROGRAM (SSP)

The Small Sites Program targets at-risk rental buildings of 5 to 25 units with a predominantly low-income population. In order to be eligible for SSP, the property must not need major repair. The program provides 30-year loan with 3% annual simple interest to participating community organizations for the acquisition and rehab/permanent financing of small buildings where at least 66% of households earn below 80% of AMI. The maximum city subsidy provided through the program is \$300,000 per unit for buildings of 10-25 units, \$375,000 per unit for buildings of 3-9 units and \$175,000 per bedroom for group or single room occupancy housing. Following acquisition, the nonprofit owner is required to maintain an average of 80% AMI rents over time as the building experiences turnover.

#### PRESERVATION AND SEISMIC SAFETY (PASS) PROGRAM

The PASS program is funded through the repurposing of general obligation bonds. It provides MOHCD's borrowers with low-cost and long-term access to debt financing to acquire, rehabilitate, and preserve existing buildings as permanently affordable housing. Eligible projects may be small buildings like those typically funded by the City's Small Sites Program (e.g. 5 to 25 units), larger multifamily structures (e.g. 25+ units), or Single Room Occupancy housing (SROs) of all sizes. Projects utilizing PASS financing must deed-restrict all units to households earning no more than 120% AMI at turnover and require that the project's combined average rents are no higher than 80%AMI.

<sup>21</sup> *Our projects*. Housing Accelerator Fund. (n.d.). <https://www.sfhaf.org/projects/?project=369-3rd-ave>.



## Hamilton Manor, Hyattsville MD

### Acquisition Sources

- \$29.4M 1<sup>st</sup> mortgage from a Fannie Mae DUS lender
- \$1.2M equity investment from NHTC
- \$1.5M equity investment from WHC
- \$8.6M Washington Housing Initiative Impact Pool
- \$1M soft loan from Prince George's County

### Background:

Hamilton Manor is an unsubsidized, 245-unit garden style apartment community located in Hyattsville, Maryland. Hyattsville is a diverse, mixed income high-opportunity neighborhood with a 36.9% Hispanic, 25.4% White, and 29.4% Black population<sup>22</sup>. The property itself is 0.6 miles from a metro station that can bring commuters to the heart of downtown Washington, DC or the University of Maryland Campus. Although the property was built in 1946, the owner had made in-unit upgrades in over half of the units and invested in new boilers and hot water heaters within the last seven years. While the property still needed some upgrades, it did not require substantial rehabilitation. The owner, Kushner Companies, is a real estate firm notorious for their predatory practices towards their tenants<sup>23</sup>.



Hamilton Manor

Image source: <https://commercialobserver.com/2021/08/whc-buys-housing-complex-from-kushner-cos-in-40m-deal/>

In 2020, the owner listed and negotiated a purchase and sale agreement for Hamilton Manor with a value-add oriented buyer. However, this action triggered the County's Right of First Refusal (ROFR)<sup>24</sup>, which gives the Maryland Department of Housing and Community Development (DHCD) the right to either purchase the property or assign their right to a third party. DHCD assigned their right to a joint venture between Washington Housing Conservancy (WHC) and NHT Communities (NHTC), two nonprofit developers focused on the preservation of affordable

### PRINCE GEORGE'S COUNTY RIGHT OF FIRST REFUSAL

The County Right of First Refusal requires owners of multifamily properties with 20 or more units to notify the County when they enter into a bona fide contract of sale with an interested party. At that time, the County has the right to purchase the property, or assign their rights to a qualified third party. The County issues a "Request for Qualifications" to identify nonprofit, and mission-driven for-profit developers to serve as designees to exercise the right of first refusal

<sup>22</sup> Hyattsville, MD. Data USA. (n.d.). <https://datausa.io/profile/geo/hyattsville-md#demographics>.

<sup>23</sup> MacGillis, A. (2017, May 23.). *The beleaguered tenants of 'Kushnerville'*. ProPublica. <https://www.propublica.org/article/the-beleaguered-tenants-of-kushnerville>.

<sup>24</sup> If the owner of Bedford and Victoria were to enter into a contract of sale for the properties, this action would qualify under the ROFR ordinance for Prince George's County DHCD to either purchase the property, or assign their rights to a qualified entity.



housing. To purchase the property through the ROFR, NHTC and WHC had to match the aggressive purchase price originally negotiated with the value-add buyer of \$39.5M.

#### Acquisition:

NHTC and WHC successfully purchased the property in August, 2021. To meet the sales price, and have funds available to cover additional closing costs and reserve funding, NHTC and WHC provided a \$1.2M and \$1.5M equity investment, respectively. The remaining funds were secured by a \$29.4M first mortgage from Fannie Mae, a \$8.6M mezzanine loan from the Washington Housing Initiative Impact Pool, and a \$1M soft loan from Prince George's County. As required by the ROFR statute, there is a recorded land use restriction agreement on the property for 20 years, restricting 98 units (40% of the total units) to 60% AMI and 86 units (35% of the total units) at 80% AMI. The remaining 61 units will have unrestricted rents and will continue to operate as unsubsidized housing.

There are minor to moderate repairs planned for the property in the short term which were accounted for in the acquisition capital stack. Ownership has developed a 10-year Capital Improvements Plan, to be funded through cash flow. Repairs include replacing roofs across the site and continuing to renovate units. None of the financing used on the property has citizenship or eligible immigration status requirements. The management company, JBG Management, will use an income verification process that they have used at similar NOAH/mixed income properties that is less intensive than certification required in Low Income Housing Tax Credit properties.

#### WASHINGTON HOUSING INITIATIVE IMPACT POOL (WHIIP)

Managed by JBG SMITH, WHIIP uses private and philanthropic capital to support the creation and preservation of affordable workforce housing in the Washington, D.C. area by providing secondary loans for the acquisition of properties serving low to moderate income residents. Impact Pool financing includes a 15-year affordability covenant with 51% of units serving residents at or below 80% of AMI.

Returns on investments in the Impact Pool are capped, with excess proceeds used to support long-term affordability and neighborhood services across the portfolio.

#### Preservation:

NHTC and WHC are committed to the long-term preservation of the property past the initial 20-year affordability covenant. Possible avenues identified by the team are to refinance with a conventional/GSE loan or convert the property to a Low Income Housing Tax Credit financed project. The option chosen will depend on the capital needs at the time.

## Seasons Park, Richfield MN

<b>Acquisition Sources</b>	<ul style="list-style-type: none"><li>• Fannie Mae first mortgage</li><li>• Community Development Trust equity capital</li><li>• \$150,000 Richfield Housing and Redevelopment Authority loan</li></ul>
<b>Preservation Sources</b>	<ul style="list-style-type: none"><li>• \$34.5M first mortgage from Minnesota Housing Low to Moderate Income Rental Program</li><li>• \$8M subordinate financing from Minnesota Housing Flexible Financing for Capital Costs Program</li></ul>

### Background:

Seasons Park is a three-story, unsubsidized development built in 1965. It includes 422 one- and two-bedroom units. The property is located in Richfield, Minnesota, an inner-ring suburb of Minneapolis. The city has experienced an influx of Latinx residents in the last few decades, now making up 18% of the population, which is a nearly 200% increase from the number reported in 2000.<sup>25</sup> In 2017, there were over 1,200 people living at Seasons Park, including a significant population of undocumented immigrants. The owner of the property, Forum Real Estate Group, was taking steps to sell the property to a market-rate investor, who had recently purchased and upscaled a similar property in Richfield, ultimately displacing over 700 tenants.<sup>26</sup> Residents of Seasons Park feared a similar fate if the property were to be sold.

Councilwoman Maria Regan Gonzalez (now Richfield's Mayor) alerted Aeon, a local nonprofit developer and operator, to the potential loss of Seasons Park from the affordable housing stock and implored them to purchase the property themselves and maintain it as affordable. While Aeon was willing to pay market price for the property, the seller was hesitant as they were already in discussions with another buyer. Aeon organized a campaign to convince the seller, which included involving the Governor of Minnesota, and having Richfield's councilmembers call and text the seller. The commitment of local and state policymakers to preserving Seasons Park proved effective, and Aeon was able to successfully acquire the property in 2017.



Seasons Park

Image source: [https://www.housingfinance.com/developments/aeon-cdt-acquire-422-unit-community-in-twin-cities-area\\_o](https://www.housingfinance.com/developments/aeon-cdt-acquire-422-unit-community-in-twin-cities-area_o)

<sup>25</sup>Department of Community Development , 2040 Comprehensive Plan- Demographics (2018).

[https://cms9files.revize.com/richfieldmn/Document\\_Center/Department/Community%20Development/Planning%20and%20Zoning/Comprehensive%20Plan/3\\_Demo.pdf](https://cms9files.revize.com/richfieldmn/Document_Center/Department/Community%20Development/Planning%20and%20Zoning/Comprehensive%20Plan/3_Demo.pdf).

<sup>26</sup>Report to the FHIC by the Housing Justice Center . (2018). (tech.). *Local Strategies for Housing Support and Stability* . Retrieved from [https://www.dakotacda.org/wp-content/uploads/2021/02/HJC\\_Local-Strategies-for-Housing-Choice\\_June2018.pdf](https://www.dakotacda.org/wp-content/uploads/2021/02/HJC_Local-Strategies-for-Housing-Choice_June2018.pdf)

### Acquisition:

Aeon purchased the property using a first mortgage from Fannie Mae, and partnered with The Community Development Trust (CDT), which provided low-priced equity. The City of Richfield Housing and Redevelopment Authority provided a \$150,000 loan to help finalize the purchase. This loan intentionally included an income restriction requirement to qualify the property for Minnesota's Low Income Rental Classification (4d) program, which provides a 40% tax rate reduction on units that are made affordable to tenants at 60% of AMI for at least ten years<sup>27</sup>. Aeon committed 100% of the units at Seasons Park to this program, thus maximizing the tax rate reduction on the property. Aeon does conduct income verification to document compliance with the 4d program, but none of the financing sources used in the acquisition of the property included citizenship or eligible immigration status requirements.

Aeon and CDT assumed the existing financing placed on the property by the previous owner but were aware of the poor conditions at the property such as flooding, mold, and infestations. Approximately \$150,000 of upgrades were made following acquisition, but in order to address the substantial repair and remediation needs at the property, the team knew that additional capital was needed.

#### MINNESOTA LOW INCOME RENTAL CLASSIFICATION (4D):

4D is an existing state property tax classification in Minnesota serving primarily subsidized affordable housing developed with funding from federal and state affordable housing programs. Non-subsidized properties are eligible for the 4d tax classification if they meet two conditions:

1. The property owner agrees to rent and income restrictions serving households at 60% of the AMI or below.
2. The property receives financial assistance from federal, state, or local government requiring rent and income restriction

Both subsidized and unsubsidized property owners who apply to the 4d program must commit at least 20% of the rental units in a building as affordable to households whose family income is at or below 60% of Area Median Income for 10 years. In exchange for this commitment, the owner receives a 40% property rate reduction on all qualifying units. If the property is sold while still participating in the program, the requirements convey with the property and will be the responsibility of the new owner.

Minneapolis, St Paul, St Louis Park, Golden Valley and Edina Minnesota all have approved 4d programs to encourage market rate rental property owners to rent affordably. These programs provide financial assistance to property owners to trigger 4d eligibility and allow the owner to benefit from the tax reduction on all qualifying units.

<sup>27</sup> City of Minneapolis 4d Affordable Housing Incentive Program (n.d.). <https://www2.minneapolismn.gov/media/content-assets/www2-documents/residents/4d-Affordable-Housing-Incentive-Program-Guide-wcmsp-214368.pdf>.

## Preservation:

The Aeon and CDT team worked with Minnesota Housing for two years to close a \$42.5 million refinancing deal in October 2020. The deal includes a 35-year first mortgage of \$34.5 million from the Low to Moderate Income Rental program and \$8 million in subordinate financing from the agency's Flexible Financing for Capital Costs program. None of the financing received from Minnesota Housing included citizenship or eligible immigration status requirements.

With the additional capital in hand, improvements at Seasons Park began in August 2020 and are planned to continue for three years.

### LOW AND MODERATE INCOME RENTAL (LMIR) PROGRAM

The purpose of the Low and Moderate Income Rental Program is to provide long-term amortizing mortgage debt for multifamily rental housing affordable to low- and moderate income Minnesotans. Long-term, fixed-rate mortgage loans are available for financing new construction, stabilization of existing properties, and for the preservation of existing federally assisted rental housing. Income limits are in effect for the life of the mortgage. At a minimum, 40% of the units must be occupied by individuals/families whose income at initial occupancy does not exceed 60% of Multifamily Tax Subsidy Projects (MTSP) income limits (adjusted for family size); or 20% of the units must be occupied by individuals/families whose income does not exceed 50% of MTSP income limits. At initial occupancy, households must self-certify their gross annual household income.

### FLEXIBLE FINANCING FOR CAPITAL COSTS (FFCC) LOAN

The FFCC Program offers deferred loans and is financed through the Housing Affordability Fund, which are funds generated through Minnesota Housing resources. FFCC loans are typically structured as deferred loans with a low or no interest rate. These loans are co-terminus with the accompanying LMIR or Housing Infrastructure Bond (HIB) Loan and will be due and payable upon prepayment or maturity of the LMIR or prepayment, maturity, or forgiveness of the HIB loan. HIBs are limited obligation tax-exempt bonds issued by Minnesota Housing. The Proceeds of HIBs may be used to fund loans that finance specific multifamily housing development purposes. FFCC loans will be in a lien position immediately behind the LMIR or HIB loan. Developments that utilize FFCC loans will be subject to rent, income, and occupancy restrictions that are mandated under the accompanying LMIR or HIB Loan.

FFCC loans are used to:

- Reduce the overall interest rate to the development when structured in conjunction with a LMIR loan; or,
- To fund costs not otherwise funded under the HIB proceeds when structured in conjunction with an HIB loan.

## Sky Without Limits Community, Minneapolis MN

### Acquisition Sources

- A three-year, \$4.98 million acquisition and rehab loan from the Local Initiatives Support Corporation (LISC) Twin Cities
- \$3.45 million in 0% interest financing from the City of Minneapolis as part of the Small and Medium Multifamily Loan Program (SMMF)

### Background:

The Sky Without Limits Community is the name designated by the residents of five unsubsidized properties located at 3112, 3116, 3122, 3105 and 3141 22nd Ave. S. in the Corcoran neighborhood of Minneapolis, MN. The five buildings have a combined 69 units and are currently home to 34 families.<sup>28</sup> The Corcoran neighborhood is situated in the heart of south Minneapolis. While 54.6% of neighborhood residents are White, Black residents comprise of 20% of the population and Hispanic or Latino residents comprise 16.3% of the neighborhood.<sup>29</sup> The majority of housing stock in Corcoran was built before 1939. With a median household income (in 2019 dollars) of \$62,782, there are approximately 46.5% of renter households that are cost burdened.<sup>30</sup>



3116 22nd Ave. S. Minneapolis.

Image source: <https://www.nytimes.com/2020/10/13/magazine/rental-housing-crisis-minneapolis.html>

In 2011, landlord Spiros Zorbalas was stripped of his rental license across more than 60 apartment buildings (including the Sky Without Limits buildings) by the Minneapolis City Council for repeated violations and prohibited from renting in the city for five years.<sup>31</sup> When Zorbalas was stripped of his rental license, Stephen Frenz purchased the portfolio of properties. Hailed as a savior by City Council, Frenz promised to upgrade and renovate the properties. However, within months, tenants were once more complaining about the poor condition of the buildings – including the five buildings that are now part of the Sky Without Limits Community.

With the aid of Inquilinx Unidxs Por Justicia (United Renters for Justice, or IX), a local tenant’s rights group, tenants across the full portfolio brought a lawsuit against Frenz, suing over repairs, damages,

<sup>28</sup> Land Bank Twin Cities purchases five apartment buildings in Corcoran neighborhood with City, LISC financing support. (2020, May 18). LISC-Twin Cities. <https://www.lisc.org/twin-cities/regional-stories/revitalizing-corcoran-neighborhood-through-partnership/>.

<sup>29</sup> Corcoran *Neighborhood Data*. Minnesota Compass. (n.d.). <https://www.mncompass.org/profiles/city/minneapolis/corcoran>.

<sup>30</sup> *ibid*

<sup>31</sup> Furst, R. (2018, October 13). *Controversial Minneapolis landlords to pay \$18.5 million to SETTLE Tenants' class-action lawsuit*. Star Tribune. <https://www.startribune.com/biggest-tenant-class-action-suit-ever-settled-against-landlords-frenz-and-zorbalas/497307911/>.

bedbugs, rats, and a lack of heat.<sup>32</sup> Disputes over various buildings owned by both Zorbalas and Frenz stretched back over a decade by this point. In 2017, Stephen Frenz was also banned by City Council from holding rental licenses in Minneapolis for five years due to chronic neglect, fraud, and pest infestations. The landlord owned more than 60 apartment buildings in Minneapolis and faced one of the largest class-action lawsuits against a private landlord in the country. Though he settled for a record-setting \$18.5 million and served time in the Hennepin County workhouse for perjury related to the case, Frenz was able to maintain ownership of his portfolio, which were managed by a court-appointed administrator.<sup>33</sup>

Barred from collecting rent, Frenz opted to sell off his portfolio. In July 2018, he delivered letters to the tenants at Sky Without Limits to vacate the building, noting that he will be renovating the entire property and putting it up for sale. Tenants of the five buildings in the Corcoran neighborhood came together to work on an offer to purchase their buildings. IX, who had throughout this time been supporting the tenants in their advocacy, approached Land Bank Twin Cities to consider purchasing the buildings and preserving their affordability. Recognizing the need to preserve the unsubsidized affordable housing, Land Bank Twin Cities negotiated with the landlord to a fair market sale price and acquired the necessary capital to purchase the buildings. Land Bank Twin Cities also committed that ownership of some or all of the buildings acquired will be transferred to the tenants through a cooperative model within a three-year period.

#### Acquisition:

In 2020, the Land Bank Twin Cities bought the Sky Without Limits properties in the Corcoran neighborhood for \$7.1 million. The acquisition was made possible through a three-year, \$4.98 million acquisition and rehab loan from the Local Initiatives Support Corporation (LISC) Twin Cities and \$3.45 million in 0% interest financing from the City of Minneapolis as part of the Small and Medium Multifamily Loan Program<sup>34</sup> for the preservation of

#### MINNEAPOLIS SMALL AND MEDIUM MULTIFAMILY LOAN PROGRAM (SMMF)

The SMMF is a pilot program in partnership with the city of Minneapolis, LISC Twin Cities and the Land Bank Twin Cities. The goal of the pilot program is to get community control over Class B and C small-to-medium multifamily buildings that consist of 2-49 units that are currently without government subsidy.

The Land Bank and the City of Minneapolis identify SMMF rental properties at risk of market conversion and evaluate the property based on location, condition, adjacent acquisition opportunities, current affordability, and gentrification risk. To be an eligible building, 75% of the units must have rents affordable to households with incomes at or below 80% of the Area Median Income (AMI), of which 20% of these units must be affordable to households at or below 60% AMI, as evidenced by the current rent roll.

If eligible, the program can be used to acquire, rehabilitate (critical repairs), and/or operate a SMMF property in Minneapolis with up to \$50,000 allocated for repairs per unit. The term of the city loan is be up to 10 years. The City's Finance Officer may authorize extensions of the loan beyond 10 years.

<sup>32</sup> Nesterak, M. (2020, May 19). Tenants buy properties from negligent landlord who tried to evict them. *Minnesota Reformer*. <https://minnesotareformer.com/briefs/tenants-win-ownership-of-properties-from-negligent-landlord-who-tried-to-evict-them/>.

<sup>33</sup> Ibid,

<sup>34</sup> *Small and Medium Multifamily Loan Program*. City of Minneapolis (n.d.)

<https://www2.minneapolismn.gov/government/programs-initiatives/homes-development-assistance/smmf-loan-program/>



naturally occurring affordable housing .<sup>35</sup> The Small and Medium Multifamily Loan Program was created by the City of Minneapolis, Land Bank Twin Cities, and LISC Twin Cities to specifically target and support housing stability and create a path of potential future tenant ownership of affordable housing.

The loan from the City and LISC Twin Cities includes funding to make the necessary capital repairs and renovations to the properties. At no point along the way, with either the debt or equity providers, was the undocumented status of residents an issue, in terms of technical compliance or otherwise.

#### Preservation:

The Land Bank Twin Cities plans to make necessary repairs throughout the five buildings in addition to leasing out the 35 currently vacant units. So far, there have been \$1M in repairs at the property, but IX is seeking additional funds for further repairs and upgrades. While repairs were underway, tenants were moved to vacant units at the property until their units were completed, so no relocation was necessary. To address the overcrowding at the property, with large families living in one- and two-bedroom apartments, those families are now occupying multiple apartments, but there is desire to convert some units to larger family units in the long-term. Various stakeholders have agreed to an estimated two-year timeline during which Land Bank Twin Cities will transfer ownership of the properties to the residents.<sup>36</sup> The parties have already signed a Purchase Agreement, with the Land Bank providing interim asset management as well as technical assistance to the current residents as they learn to self-manage the buildings as a tenant cooperative. Inquilinx Unidxs Por Justicia will continue to support the tenant cooperative that will purchase some or all of the buildings from the Land Bank and preserve their affordability.

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<sup>35</sup> Land Bank Twin Cities purchases five apartment buildings in Corcoran neighborhood with City, LISC financing support. (2020, May 18). *LISC-Twin Cities*. <https://www.lisc.org/twin-cities/regional-stories/revitalizing-corcoran-neighborhood-through-partnership/>.

<sup>36</sup> Nesterak, "Tenants buy properties from negligent landlord"

## Appendix A: NOAH Preservation & Housing Undocumented Immigrants Survey


*NHT developed the below survey and disseminated it on July 26th, 2021, to the following organizations and networks: Stewards of Affordable Housing for the Future (SAHF), National Preservation Working Group (PWG) and Housing Partnership Network (HPN). All survey responses were collected by August 13th, 2021. A summary of the survey responses, including additional outreach conducted to respondents, can be found in the “Summary of Survey Responses” deliverable submitted August 20, 2021.*

The National Housing Trust is currently researching strategies to preserve unassisted affordable housing or Naturally Occurring Affordable Housing (NOAH) with a focus on properties occupied largely by undocumented immigrants. Thank you for completing this survey to support our research.

Link to survey: <https://docs.google.com/forms/d/1e9-ue79IWNhuUeeSl86BaW41TiRFquE2mDLSKnIQ2To/edit> 1/5

1. Has your organization provided temporary or permanent affordable housing for undocumented immigrants?
  - a) How does your organization serve or engage with residents who are undocumented immigrants?
  - b) What barriers to accessing affordable housing has your organization identified when engaging with undocumented immigrants?
2. Is your organization involved in the acquisition and/or preservation of unassisted affordable housing / naturally occurring affordable housing (NOAH)?
  - a) Has your organization preserved the affordability of NOAH through a subsidy?
  - b) Has your organization preserved NOAH in a largely undocumented immigrant community or where there is a pre-existing tenant population that is largely undocumented immigrants?
3. What role does your organization play in preserving NOAH?
  - a) Development
  - b) Property Management
  - c) Investor
  - d) Tenant Engagement/Community Organizing
  - e) Resident Services
  - f) Other
4. What financial resources have you used to preserve NOAH?
  - a) Is your organization cognizant of the immigration status of existing tenants when identifying financial resources to preserve NOAH?
  - b) Have any of the financial resources your organization has used to preserve NOAH required tenants to report their citizenship / immigration status?




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5. Are you aware of any other specific funding sources that do not have any citizenship or immigration status reporting requirements? For example; State or Local funding sources, Public-Private Preservation Funds
  6. When preserving NOAH with an existing undocumented immigrant tenant population, does your organization have any specific or additional policies in place?
    - a) What information does your organization require tenants provide in terms of demographic information and income verification?
  7. When preserving NOAH with an existing undocumented immigrant tenant population, has your organization ever had to temporarily relocate residents?
    - a) Were there any obstacles to relocating undocumented immigrants? Please describe.
  8. What else should we know about this topic? What haven't we asked, that you feel that we should know?

Thank you so much for completing this survey! If you are willing to be contacted for a brief follow-up conversation, please provide your contact information below.

## Appendix B: List of Stakeholders Consulted

- Aeon
  - Alan Arthur, President & CEO
  - Santiago De Angulo, Executive Vice President, Property Operations
  - Virginia Brown, Vice President, Advancement
  - Yamilka Burdier, Senior Site Manager
- CASA
  - Trent Leon-Lierman, Maryland Lead Regional Organizer
- Greater Minnesota Housing Fund NOAH Impact Fund
  - John Errigo, Fund Manager
- Housing Justice Center Minneapolis
  - Jack Cann, Senior Staff Attorney
- Housing Partnership Equity Trust
  - Trevor Allen, Director of Real Estate
  - Matt Glatting, Executive Vice President, Finance & Investor Relations
- Housing Preservation Network
  - Shannon Ross, Vice President, Policy
- InquilinXs UnidXs Por Justicia (United Renters for Justice)
  - Roberto de la Riva, Co-Director
- Land Bank Twin Cities
  - Eddie Landenberger, Vice President
- Low Income Investment Fund
  - Lucy Arellano Baglieri, Chief Strategy Officer & Senior Vice President
- Maryland Department of Housing and Community Development
  - Gregory Hare, Director, Multifamily Housing
  - Edward Barnett, Team Leader, Multifamily Housing
- Massachusetts Department of Housing and Community Development
  - Margaux LeClair, Counsel/Fair Housing Specialist
- Mission Economic Development Agency
  - Johnny Oliver, Associate Director
  - Vanessa Amaya, Project Assistant

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- Mercy Housing
    - Dee Walsh, Executive Vice President & Chief Operating Officer
  - National Housing Law Project
    - Kate Walz, Senior Attorney
  - National Immigrant Law Center
    - Eddie Carmona, Campaigns Director
  - National Low Income Housing Coalition
    - Xavier Arriaga, Policy Analyst
  - NHP Foundation
    - Veronica Gonzalez, Development Director, Midwest
  - Prince George's County Department of Housing and Community Development
    - Aspasia Xypolia, Director

# **M E M O R A N D U M**

TO: Purple Line Corridor Coalition Housing Accelerator Action Team

FROM: Alishia F. Tidwell  
McNamee Hosea, P.A.

RE: Prince George's County, Maryland Housing Code & Enforcement

DATE: October 22, 2021

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## **ISSUE**

Whether Prince George's County has established enforcement tools and procedures to compel compliance with its operative minimum standards for interior and exterior property areas.

## **CONCLUSION**

The Department of Permitting, Inspections and Enforcement ("DPIE" or the "Department") has established a code of ordinances to govern minimum housing standards within Prince George's County. The code permits inspections to be completed, which may result in fines or jail time if a violation is found. DPIE may also file a petition for receivership, in which a neutral third-party stands in the place of the property owner and works to abate housing violations. DPIE has wide discretion to determine how the Code is enforced and applied. It determines procedures such as: whether inspections will be made on a systematic basis, and to what scope; whether a violation of the Code exists; whether a fine should be issued; whether a violation warrants the suspension of a rental license; whether an application for the appointment of a receiver should be filed; whether an appeal deadline should be shortened; and whether temporary measures are required to be taken by the County to abate emergency situations. Accordingly, enforcement is highly subject to its discretion and will vary with each such new director of the agency.

## **RULE**

The Prince George's County, Maryland (the "County") Code of Ordinances sets forth minimum housing and property requirements through the establishment of Subtitle 13, Housing and Property Standards (the "Code"). Independent municipalities within the County are permitted to enact their own set of rules and regulations governing housing standards, provided that they do not fall below the minimum requirements set forth in the Code. Within the County, Berwyn Heights, Bladensburg, Brentwood, Bowie, Cheverly, College Park, Colmar Manor, District Heights, Edmondston, Glenarden, Greenbelt, Hyattsville, Laurel, Landover Hills, Mount Rainer, New Carrollton and Riverdale Park are all governed by their own housing ordinances, which general follow the Code. The Code provides guidelines for interior and exterior property areas, including building identification signage, locking devices, insect screens, exterior storage, sidewalk maintenance, lighting, heating facilities, water systems, restroom access, minimum square footage, maximum occupancy rules, ventilation and pest elimination. No person may lease to a tenant to occupy a dwelling unit that does not meet the requirements of these rules. The Director of DPIE, or his/her designee (collectively, the "Code Official") is tasked with the enforcement and administration of the Code. Prince George's Cty. Code of Ordinances ("Code") § 13-102 (2021).

## **ANALYSIS**

### ***I. Inspection***

The Code requires inspections of dwelling units to be conducted on a systematic basis so long as the Code Official determines that doing so is necessary to properly apply and enforce the

provisions of the Code.<sup>1</sup> *Id.* § 13-110. However, in instances where a citizen<sup>2</sup> or official complaint is made, inspections are required to be conducted. *Id.* Following the inspection, the Code Official confirms the owner through a real property database on the website for the State Department of Assessments and Taxation and provides notice to the owner that DPIE has grounds to believe a violation has occurred. *Id.* §§ 13-110; 13-112. If the Code Official is refused entry on the day of the inspection, it may pursue any recourse permissible to it by law. *Id.* § 13-110. In most cases, this means obtaining an administrative search warrant to gain entry. However, in the event of an emergency situation constituting an immediate threat to individual life, property or public safety, the Code Official is authorized to make an emergency entrance into the dwelling for the sole purpose of abating the emergency, or eliminating the dangerous condition. Distinguishably, if the inspection is being made pursuant to a license or permit, no permission or judicial warrant is required for entry, and if entry is denied, sufficient reason exists to deny or revoke the subject license or permit without offending the owner's constitutional rights. *Id.*

Upon completion of an inspection, the Code Official (i) determines whether a violation has been made, and (ii) provides notice of the decision to the property owner containing a deadline to correct such violation. *Id.* § 13-112. If a report is made pursuant to an inspection, it must be made in writing and shall be certified by the Code Official. *Id.* Such report shall be maintained in accordance with the county retention schedule.

In cases where the property condition is so severe that the dwelling is “unfit for human occupancy” different procedures apply. A structure is “unfit for human occupancy” whenever the Code Official finds that such structure is unsafe, unlawful, or, because of the degree to which the

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<sup>1</sup> Proactive routine inspections are not currently being conducted. Instead, inspections are only made in response to complaints to DPIE.

<sup>2</sup> The term “citizen” is undefined by the Code and ambiguous as to whether the term refers to a citizen of the County, a citizen of the State of Maryland or a citizen of the United States of America.

structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities, utilities, or other essential equipment required by the Code. *Id.* § 13-113. In these cases, the Code Official shall post an order to vacate the dwelling and notify the property owner of such declaration. *Id.* If the violation concerns a structure in danger of failure, toxic fumes, or dangerous equipment, the Code Official may immediately take action to correct the emergency condition. *Id.* § 13-114(c). For all other emergency conditions, the Code Official may not step in until the deadline to correct the violation has expired. *See Id.* § 13-114. Further, no one may occupy the building until the violation has been corrected. *Id.* §§ 13-113 and 13-114. A tax lien will then be created on the property for costs expended by the County for the elimination of infestations, repair and the removal of garbage, debris, hazardous materials or other unsafe conditions. *Id.*

Although remedying emergency violations promotes public health and safety, the building must be vacated for the repairs to be completed, which leaves tenants without housing or recourse. The Court of Special Appeals has held that unless the plain language or legislative history of a county ordinance supports the position that the city or county council intended to benefit tenants, no right or entitlement of a private action is created. *See Aleti v. Metro. Baltimore, LLC*, No. 459, SEPT. TERM, 2020, 2021 WL 2802812, at \*9 (Md. Ct. Spec. App. July 6, 2021) (denying tenants a refund of rent and related fees already paid to landlord who was unlicensed during the rental term because the plain language and legislative history of the ordinance did not contain an implied or express purpose of financial relief). Accordingly, it seems to follow that if tenants are required to vacate their homes due to a violation deeming the dwelling unfit for human habitation, the landlord would not have an obligation to rehouse the tenants unless the legislative history and plain language of the ordinance contemplates such relief.

## **II. *Appeal***

If the property owner, or occupant of a dwelling, disagrees with the outcome of a complaint, it may file an appeal in writing with the Administrative Hearing Unit (“AHU”) within ten (10) calendar days of the decision being rendered by the Code Official. *Id.* § 13-116. In the case of a structure or dwelling unit which, in the opinion of the Code Official, is unsafe or dangerous, the Code Official may shorten the appeal deadline, provided that the proper order and notice are issued. *Id.* Once an appeal is filed, the AHU holds a hearing before independent hearing officers where the County has the initial burden to present facts sufficient to establish that a violation occurred. *Id.* AHU’s review is solely limited to whether there was substantial evidence for the Code Official to take the enforcement action from which the appeal was taken. *Id.* Every decision of the AHU shall be produced in writing within thirty (30) days of the hearing date, and a copy of such decision shall be provided to the Code Official and appellant. *Id.* If the appellant is unsatisfied with the decision of the AHU, it may request reconsideration of the matter by the Hearing Board Administrator. *Id.* No hearing shall be held for a reconsideration. Instead, the appellant will be notified of the decision in writing within thirty (30) calendar days. If the appellant is still aggrieved, it may petition for judicial review by the Circuit Court for Prince George’s County, Maryland. *Id.*

## **II. *Fines and Penalties***

DPIE has the authority to impose fines for violations of the Code in an amount equal to five hundred dollars (\$500.00) for the first violation and one thousand dollars (\$1,000.00) for any subsequent violation. *Id.* § 13-142. Any penalties collected are distributed to the general fund of DPIE. *Id.* In the same regard, violators of the Code shall also be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of five hundred dollars (\$500.00), or by imprisonment not to exceed ninety (90) days, or both. Each day that the violation continues shall



constitute a separate offense. *Id.* § 13-111. For example, possession of a gas-burning water heater in a bathroom without adequate combustion air for five (5) days can carry a fine of twenty five hundred dollars (\$2,500.00), imprisonment not to exceed 450 days, or both. A property owner may be fined one thousand dollars (\$1,000.00) for emergency violations requiring restoration of the building envelope. *Id.* § 13-114(c)(3). The Code Official has the ability to immediately suspend the rental license of a landlord upon (i) the discovery of a Code violation that constitutes a serious threat to the health and safety of occupants, or (ii) the unreasonable failure of the property owner to comply with a notice of violation. *Id.* § 13-187. Thereafter, it is considered unlawful for the landlord to rent any dwelling until its license has been reissued or revalidated.

### ***III. Receivership***

The County implemented a Housing Receivership Program in 1998. The Code Official may file an application for the appointment of a receiver so long as (i) the property owner has received notice of a Code violation and thirty (30) days have passed without such violation being corrected, and (ii) the Code Official determines whether (a) the violation threatens public health, safety or welfare; (b) the owner has not acted in a timely manner to correct the violations; and (c) abatement of the violations will further the County's housing policies and priorities, which warrant applying for the appointment of a receiver. Code § 13-304.

The Code Official may suggestively identify or nominate any one (1) or more qualified receivers to the court. Although the owner will still maintain title of the property, the receiver stands in the owner's shoes and may be given power to set aside and undo transactions entered into by the property owner, collect rent from tenants, and enter into new transactions. The Maryland Commercial Receivership Act governs the qualification requirements to be appointed as a receiver. Essentially, the receiver must not have an interest in the outcome of the proceedings,

or a conflict of interest with any party involved. Md. Code Ann., Com. Law § 24-203. Further, a receiver will be disqualified if it has been found guilty or liable of any unethical misconduct or crime of moral turpitude. *Id.*

The receiver has thirty (30) days from its appointment to submit a written plan for the abatement of the violation(s), which must be approved by the court. All fees, costs and monies expended on abating the violation shall be the responsibility of the property owner. Receivers have the following authority, which may be limited by the court on a case-by-case basis:

- (1) Take possession and control of the property, including the right to enter, modify and terminate tenancies, and to charge and collect rents and apply rents collected to the costs incurred due to the receivership;
- (2) Negotiate contracts and pay all expenses associated with the operation and conservation of the property, including, but not limited to, all utility, fuel, custodial, repair, and insurance costs;
- (3) Pay all accrued property taxes, penalties, assessments, and other charges imposed on the property by a unit of government, as well as any charge of like nature accruing during the period of the receivership;
- (4) Dispose of all abandoned personal property found on the property;
- (5) Enter into contracts and pay for the performance of any work necessary to complete the abatement;
- (6) Enter into financing agreements with public or private lenders and encumber the property so as to have monies available to correct the conditions at the property giving rise to the abatement; and
- (7) Charge an administrative fee at an hourly rate approved by the court not to exceed fifteen percent (15%) of the total cost of abatement, as the court deems appropriate.

*Id.* § 13-307(a).

The duration of receiverships is dependent upon several different factors, including the condition of the property, rental amount, whether the building is vacant, the cooperation of the

property owner and monies owed to an association or other debtors. A receivership is terminated by court order upon a showing that (i) the abatement has been completed; (ii) the costs and obligations incurred due to the abatement have been paid by the property owner, or a lien has been filed; and (iii) the property will be managed in compliance with the Code. *Id.* § 13-313.

#### ***IV. Warranty of Inhabitability***

Section 8-211 of the Real Property Code governs the warranty of habitability. It provides a remedy and imposes an obligation upon landlords to repair and eliminate conditions and defects which constitute, or if not promptly corrected will constitute, a threat to tenants' health and/or safety. A non-exhaustive list of defects that would trigger a breach of this warranty include: lack of heat, light, electricity or hot water caused by the landlord; and an infestation of rodents; any structural defect which presents a serious harm or threat to safety. Md. Code Ann., Real Prop. § 8-211. So long as the landlord has knowledge of the defect and a reasonable time has passed with the landlord making repair, the tenant has the following relief available to him/her: an injunction; paying rent into an escrow account held by the court until the landlord completes the required repairs; or a tenant may use the defects/conditions as a defense not to pay rent at all. *Id.*

In sum, the County has many tools at its disposal to abate slumlords and poor living conditions. Private, independent remedies, such as a breach of the warranty of habitability, are also available to tenants who have not seen results from DPIE.