

ATTACHMENT B – DETAILED DISCUSSION

Background

Restrictive covenants are legal agreements that prohibit a particular group of people from selling or renting to anybody of that specific race or ethnic background. Restrictive covenants were a method used to segregate neighborhoods by race or ethnic background and were particularly prominent from the 1920s to 1948. In 1934 the Federal Housing Authority recommended including restrictive covenants in the deeds of homes it insured.

In 1948 the Supreme Court, in *Shelley v. Kraemer* 334 U.S. 1 (and companion case *Hurd v. Hodge* 334 US 24) deemed all racial covenants unenforceable. Despite the decision in *Shelley* racial covenants were common throughout the United States until the 1968 Fair Housing Act, which made them explicitly illegal. The 1968 Fair Housing Act prohibited discrimination in the sale, rental, and financing of housing-related transactions based on race, color, national origin, religion, sex, disability, marital status, and familial status.

California Fair Housing Law

The California Fair Employment and Housing Act prohibits discrimination in housing based on age, race, color, religion sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, veteran or military status, national origin, ancestry, or source of income. Existing law provides that a provision in any deed or real property in California that restricts the right of any person to sell, lease, rent, use, or occupy the property to persons having the characteristics above in unlawful.

In California, there is currently a process via Government Code 12956.2 that allows any person to modify restrictive covenants via the Restrictive Covenant Modification Process (Process). This Process allows for the recordation of a document to redact blatant racial, religious, or other restrictive covenants from a previously recorded document after County Counsel or Designee determines such language violates fair housing laws and is void. County Counsel must return the RCM (Restrictive Covenant Modification) document to the Recorder within 90 with their determination. The RCM document is then recorded or rejected based on County Counsel's determination.

On September 28, 2021, the Governor of California signed into law Assembly Bill (AB) 1466, McCarty (Real Property: discrimination restrictions). AB 1466 amended Government Code Sections 12596 to require that the county recorder for each county establish a program to identify and redact so it is not visible unlawfully restrictive language from California real property records. For additional background see Attachment A.

AB 1466 also tasks county recorders with creating an implementation plan by July 1, 2022, that outlines the methods by which they will carry out the unlawful restrictive covenants' identification and redaction. Pursuant to Government Code Section 12596.2, the County of Monterey Assessor-County Clerk/Recorder's Office (Recorder's Office) developed a Restrictive Covenant Modification Program – Implementation Plan dated July 1, 2022 (Plan – see Attachment A).

The Recorder's Office's real property documents are housed in two separate systems. Years 1977 – 1850 are housed in BMI's DigitalReel system. This system contains 127 years of

ATTACHMENT B – DETAILED DISCUSSION

recorded records, housing approximately 6,975,593 images. Years 1978 – present date are housed in Tyler Technologies, Inc.’s Eagle Recorder system. This system contains 44 years of recorded records, housing approximately 3,999,289 documents.

The Recorder’s Office will start the process of identifying unlawful restrictive language within its recorded records in BMI’s DigitalReel system, years 1977 – 1850 commencing with years 1909 – 1977.

The identification of unlawful restrictive language in recorded real property documents will be performed by BMI’s Optical Character Recognition (OCR) system.

The Recorder’s Office is currently reviewing BMI’s initial proposal in hopes of finalizing the scope, cost, and timeline before the end of August 2022.

The Recorder’s Office will update its Plan to reflect the vendor’s timeline when the County enters into agreement. Once the DigitalReel system records review is complete, the Recorder’s Office will commence the identification of unlawful restrictive language in its records from 1978 to present, housed in Tyler Technologies, Inc.’s, Eagle Recording system. The process to research and identify restrictive covenant language in the County is expected to take approximately four to five years.

Marin County Restrictive Covenant Project

The purpose of the Marin County Restrictive Covenant Project (Project) is to help the community connect, learn, and affirm that discriminatory housing practices are not consistent with Marin County’s values. Marin County’s webpage in conjunction with its educational campaign is intended to inform residents of the impact that restrictive covenants had and solicit resident stories to understand the impact of racial covenants in their lives.

The Project was created before the legal requirements of AB 1466 and was designed to inform and educate Marin County residents on the existence of restrictive covenants and the impact they had on the community. The project is a collaboration between the Marin County Community Development Agency, its Office of Equity, and the Assessor-Recorder’s Office. The educational and community outreach portion of the Project is housed on a webpage that is managed by the Marin County Free Library and educational materials are housed on the library webpage or at its branches. You can access the Marin County Restrictive Covenant Project webpage for more information at <https://www.marincounty.org/main/restrictive-covenants-project>.

Staff from the Housing and Community Development Department (HCD), the Health Department (HD), and the Recorder’s Office met with staff from Marin County on July 7, 2022, to understand their efforts in creating the Project. Marin County staff were able to share many lessons learned to inform Monterey County’s AB 1466 compliance efforts. In addition, staff gained an understand of the lessons learned and effort involved to develop the educational elements of the Marin Project. Marin County staff and interns spent an estimate 50-60 hours total to research and develop the history and library resources related to restrictive covenants in Marin County.

ATTACHMENT B – DETAILED DISCUSSION

Building on Monterey County's Equity Timeline

The HD's Planning, Evaluation and Policy Unit's Health Equity and Health in All Policies group developed an online equity timeline for Monterey County – The Experience of Racial Groups in Monterey County: A Brief Historical Timeline. The timeline is designed to inform residents about the impact local, State, and Federal laws and policies have had on Native Americans, Asian Americans, Latinos, and African Americans in the county. The timeline can be accessed at https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1wR5BWJe6y11WndcWuDIc_6aBU6CEhY4AlBcjp2inmtk&font=Default&lang=en&initial_zoom=2. Currently, the timeline project only mentions the impact that restrictive covenants had on exacerbating racial inequity in Monterey County.

Staff is seeking direction from the Board of Supervisors if it would like staff to further research and develop a proposed restrictive covenant project for Monterey County similar the Marin Project with local adaptations.