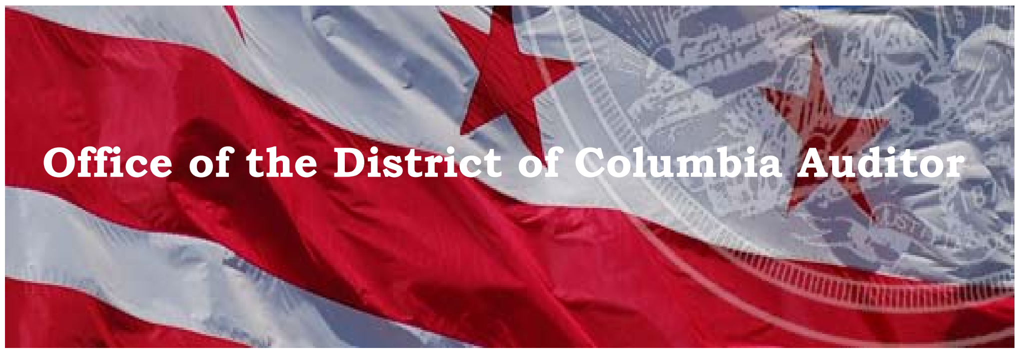

Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation

March 21, 2013

Audit Team:
Yolanda Branche, District of Columbia Auditor
Lawrence Perry, Audit Supervisor
Joshua Stearns, Auditor-in-Charge

A Report by the Office of the District of Columbia Auditor

Table of Contents

Acknowledgements

For their time, information, insight, and cooperation during the audit process, we want to thank the staff of the Department of Housing and Community Development, including Michelle Christopher, Housing Compliance Officer; Ken Taylor, Quality Assurance Manager; and Gilles Stucker, Housing Resource Administrator. We also wish to thank Ida Williams, Deputy Recorder of Deeds, Office of Tax and Revenue and, from MANNA, Inc., George Rothman, President and CEO and Frank Demarais, Vice President and General Manager.

Summary

The Office of the District of Columbia Auditor (Auditor) has completed its audit of affordable housing mandates for development projects formerly managed by the dissolved National Capital Revitalization Corporation (NCRC) and Anacostia Waterfront Corporation (AWC). The Compliance Unit Establishment Act of 2008 requires the Auditor to audit "[r]equirements related to affordable housing mandates…."[1] related to those NCRC and AWC projects.

The audit objectives were to determine whether:

- The Deputy Mayor for Planning and Economic Development (DMPED) implemented the appropriate operational infrastructure and controls to monitor, detect and report whether the developers were in compliance with relevant agreements when DMPED had responsibility for monitoring the National Capital Revitalization Corporation (NCRC) projects;
- The Department of Housing and Community Development (DHCD) implemented the appropriate operational infrastructure and controls to monitor, detect and report whether the developers were in compliance with relevant laws and agreements; and
- Developers complied with relevant affordable housing laws, regulations and agreements.

The Auditor identified five findings and directed 11 recommendations to the Director of DHCD that addressed the deficiencies we observed during our audit.

The Auditor identified the following five findings:

1. DMPED and DHCD did not conduct compliance and monitoring activities to determine whether NCRC property developers complied with Affordable Dwelling Unit requirements

[1] D.C. Code § 1-301.181 (d) (7) (2012)

2. Developers lacked documentation to support the income eligibility and the area median income level of Affordable Dwelling Unit purchasers and renters
3. One developer did not properly consider household size when determining income eligibility
4. Developers did not comply with filing requirements for affordable dwelling unit restrictive covenants
5. Restrictive covenants at the Tivoli could result in the District losing eight Affordable Dwelling Units

To correct the deficiencies identified during the audit, the Auditor directed the nine recommendations listed below to the Director of the DHCD.

1. Develop and implement appropriate policies and procedures to ensure that DHCD can accomplish its mandate to oversee and monitor NCRC and AWC development projects.
2. Develop an action plan for periodically reviewing all NCRC projects to determine compliance with the developer's Land Development Agreements, Affordable Dwelling Unit requirements, covenants, and relevant laws.
3. Develop policies and procedures for performing: (a) income verification, (b) Area Median Income (AMI) classification, (c) income documentation retention, and (d) audit and reporting requirements for developers of land formerly owned by NCRC and AWC.
4. Provide routine and periodic training to DHCD staff and developers on: (a) income verification, (b) AMI classification, (c) income documentation retention, and (d) audit and reporting requirements.
5. Perform follow-up reviews on all NCRC properties to determine whether developers complied with income eligibility requirements, AMI category placement requirements, and income documentation requirements as outlined in each development agreement and promptly take all feasible actions to resolve incidences of non-compliance.
6. Perform a review of ADUs at Highland Park Apartments, the Kenyon Square Condominiums and all other NCRC projects to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The DHCD Director must take actions as

appropriate to resolve and prevent future occurrences of non-compliance with the District's Income Limit Standards.

7. Develop and implement policies and procedures that require DHCD to review ADU restrictive covenants for appropriateness, completeness and legal sufficiency and approve all ADU restrictive covenants prior to the covenants being filed with the Recorder of Deeds.

8. In consultation with DHCD's legal advisor, develop and file restrictive covenants for the five ADUs identified in this finding whose restrictive covenants were not filed or filed without provisions for AMI category as provided in the corresponding LDAs.

In consultation with DHCD's legal advisor and with the Deputy Mayor for Planning and Economic Development, develop and file with the Recorder of Deeds documentation necessary to ensure the Tivoli Affordable Dwelling Unit (ADUs) survive for the remaining ADU affordability period.

Introduction

The Compliance Unit Establishment Act of 2008, D.C. Code § 1-301.181 (2012) (the Act), provides that the Auditor will conduct compliance audits on real estate development projects receiving government assistance, formerly managed by the dissolved National Capital Revitalization Corporation (NCRC) and Anacostia Waterfront Corporation (AWC). Specifically, D.C. Code § 1-301.181 (d) (7) (2012) requires the Auditor to audit the "[r]equirements related to affordable housing mandates..."

Objectives

The audit objectives were to determine whether:

- The Deputy Mayor for Planning and Economic Development (DMPED), implemented the appropriate operational infrastructure and controls to monitor, detect and report whether the developers were in compliance with relevant agreements when DMPED had responsibility for monitoring the National Capital Revitalization Corporation (NCRC) projects;

- The Department of Housing and Community Development (DHCD) implemented the appropriate operational infrastructure and controls to monitor, detect, and report whether the developers were in compliance with relevant laws and agreements; and
- Developers complied with relevant affordable housing laws, regulations and agreements.

Scope and Methodology

Pursuant to D.C. Code § 2-1225.01, the NCRC, the Redevelopment Land Agency Revitalization Corporation (RLARC) (a subsidiary of the NCRC), and AWC were dissolved November 24, 2007. Prior to their dissolution, the NCRC and RLARC negotiated eight residential projects that had Affordable Dwelling Unit (ADU) components. The AWC did not develop any residential projects that had ADU components. The scope of the audit included the following eight NCRC or RLARC projects:

1. Barcelona
2. City Vista[2]
3. Highland Park
4. Kenyon Square
5. Lofts of Columbia Heights
6. Solea
7. Tivoli Square
8. Verona Parc

We conducted our audit from October 2010 through January 2011. All of our findings and other conclusions are based on conditions that were in place at these eight projects, DHCD and DMPED at that time.

To accomplish our audit objectives, we performed the following tasks:

1. Interviewed responsible management and staff members of the DHCD, DMPED, and the District of Columbia Recorder of Deeds;

[2] The City Vista has three buildings: City Vista L, City Vista K (both buildings are condominiums), and the City Vista Apartments. These three projects were completed under one LDA.

2. Interviewed the developers of the affordable dwelling units;
3. Interviewed officials at local affordable housing non-profit organizations;
4. Reviewed relevant laws, regulations, policies and procedures, Land Disposition Agreements (LDA) and tenant and owner lease and purchase documentation;
5. Reviewed ADU tenant and purchaser documentation at each of the eight projects; and
6. Performed other tests as necessary to meet our audit objectives.

Our review of policies and procedures at DHCD did not include a review of their other affordable housing programs that also use the term "ADU" to refer to individual housing units reserved as affordable. For the purposes of this audit, the term "ADU" should only be interpreted to mean those affordable units built as part of NCRC projects.

This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The Auditor believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Background

The National Capital Revitalization Corporation (NCRC), Redevelopment Land Agency Revitalization Corporation (RLARC) and Anacostia Waterfront Corporation (AWC) Legislative and Program History

The District government created the NCRC and the AWC to foster economic development throughout the District. On September 11, 1998, D.C. law established the NCRC and provided that the overall purpose of the NCRC was to attract and expand business and economic development and provide job creation and training throughout the District. The NCRC established the subsidiary RLARC to implement the development plan and manage a portfolio of the District's real property. While they existed, NCRC and RLARC negotiated with developers who wished to purchase and develop property owned by NCRC. Several of these negotiations included projects with affordable housing components. These projects are the focus of our audit.

On December 7, 2004, the AWC was established as a corporate and independent instrumentality of the District. The purpose of the AWC was to provide for the development, redevelopment and revitalization of the Anacostia Waterfront and to improve the integrity of the Anacostia Waterfront's waterways. During its short existence, AWC did not complete negotiations for any of the property in its portfolio.

As mentioned above, the NCRC, RLARC and the AWC were all dissolved in 2007. By order of the Mayor, the Office of the Deputy Mayor for Planning and Economic Development, thereafter assumed "[a]ll authorities, duties, and functions previously delegated by the Mayor to the Anacostia Waterfront Corporation and National Capital Revitalization Corporation…"

Deputy Mayor for Planning and Economic Development (DMPED)

DMPED's mission is to implement the Mayor's economic development strategy and promote growth and investments across the District. The strategy DMPED employs to accomplish its mission is through: (1) attracting businesses, (2) revitalizing neighborhoods, and (3) creating jobs. DMPED does not have an oversight and enforcement function.

In 2009, the Mayor issued another Mayor's Order, this time transferring from DMPED to DHCD "…the authority to monitor and enforce compliance with requirements to provide or maintain affordable dwelling units in the District of Columbia ..."

Department of Housing and Community Development (DHCD)

DHCD's mission is "to create and preserve opportunities for affordable housing, promote economic development, and revitalize underserved communities in the District of Columbia." According to DHCD, the agency accomplishes its mission by focusing on the following three strategic objectives: (1) preserving and increasing the supply of quality affordable housing, (2) increasing home ownership opportunities, and (3) revitalizing neighborhoods, promoting community development, and providing economic opportunities.

The Mayor's Order transferring responsibility for enforcing the affordable housing requirements at former NCRC properties says that DHCD is responsible for monitoring and enforcing compliance with requirements to provide or maintain affordable dwelling units in the District of Columbia where such requirements are imposed by:

"(1) projects that received financial assistance from the District government, (2) agreements entered into by agencies subordinate to the Mayor or by the former NCRC, RLARC, and AWC, and (3) covenants to which the Mayor or delegate of the Mayor is party."

NCRC Development Projects

Prior to the dissolution of the NCRC, RLARC and the AWC, the NCRC and the RLARC solicited, evaluated and negotiated eight development projects that had affordable housing components. The AWC did not have any projects that had affordable housing components. The terms of the agreements between NCRC and developers were memorialized in Land Disposition and Development Agreements (LDAs). The LDAs contained provisions for renting, selling and preserving the Affordable Dwelling Unit (ADUs). The specific number of

ADUs and the percentage to be reserved for various income categories varied from project to project.

The LDAs provided that ADUs must be reserved for tenants who met specified income restrictions. Further, the developer had to reserve either a specified percentage or number of the ADUs for tenants at various Area Median Income (AMI) levels.[3]

Developers were responsible for verifying income and determining the AMI level for each potential ADU purchaser or lessee. The ADU purchase or lease prices were based on the purchaser's or renter's income and AMI classification. The units sold as ADUs also had a covenant placed on the deed. The covenants we reviewed required an ADU purchaser to preserve the ADU as an affordable unit for a specified term (usually either 20 or 30 years). The covenants were meant to preserve the availability of ADUs by preventing ADU purchasers from re-selling their ADU at market rates, except in certain circumstances.

[3] Area Median Income (AMI) is a calculation performed by the U.S. Department of Housing and Urban Development (HUD) that shows the median family income for a given area. DHCD utilizes the Washington, D.C. area median income requirements as determined by HUD. HUD and many state and local government agencies commonly use AMI to determine eligibility for housing programs.

1. DMPED and DHCD Did Not Conduct Compliance and Monitoring Activities to Determine Whether NCRC Property Developers Complied With Affordable Dwelling Unit Requirements

The Deputy Mayor for Planning and Economic Development (DMPED) officials could not provide us with evidence that DMPED conducted any Affordable Dwelling Unit (ADU) monitoring or compliance reviews during the period DMPED was responsible for monitoring developer compliance. Additionally, as of the time of our audit, the Department of Housing and Community Development (DHCD) had not conducted compliance reviews to determine whether the National Capital Revitalization Corporation (NCRC) project developers complied with ADU requirements.

We found that DHCD had not established the organizational infrastructure to monitor and review NCRC property developer's compliance with ADU requirements. DHCD representatives stated that they were aware of DHCD's responsibility to monitor NCRC project developers for compliance with ADU requirements and that DHCD was in the process of developing the requisite framework to monitor, manage, and review NCRC projects.

Partly due to the failure of DMPED and DHCD to implement the necessary processes for monitoring NCRC projects, developer non-compliance with several ADU requirements went undetected. Specifically, we found the following:

- A developer did not consider household size when making income eligibility determinations for purchasers and renters,
- Developers incorrectly determined Area Median Income levels,
- Developers inconsistently obtained and retained income verification documentation, and
- Developers and closing agents either had not filed or filed incomplete restrictive covenants.

If DMPED or DHCD had adequately performed their oversight responsibilities for the NCRC projects many of the deficiencies detailed in this finding could have been detected earlier and the District and developers could have implemented the appropriate corrective measures. However, because these actions were not taken, some ADUs were rented or sold to families who were not eligible. Other ADUs were incorrectly sold or rented at prices that were not appropriate for the household size.

Recommendations:

The Director of the Department of Housing and Community Development (DHCD) should:

1. Develop and implement appropriate policies and procedures to ensure that DHCD can accomplish its mandate to oversee and monitor NCRC and AWC development projects.
2. Develop an action plan for periodically reviewing all NCRC projects to determine compliance with the developer's Land Development Agreements, Affordable Dwelling Unit requirements, covenants and relevant laws.

2. Developers Lacked Documentation to Support the Income Eligibility and the Area Median Income Level of Affordable Dwelling Unit Purchasers and Renters

The Land and Disposition and Development Agreements (LDAs) provide that either a specified number or a percentage of all residential units for sale or lease at a development would be reserved for qualified purchasers or renters whose income fell within various Area Median Income (AMI) levels. For example, one LDA we reviewed provided that the developer shall:

> [r]eserve as ADUs at least five (5%) of the Residential square footage for sale to Qualified Purchasers whose income is at or below thirty percent (30%) of AMI at the time of sale, and not less than additional five percent (5%) of the Residential units for sale to Qualified Purchasers whose income is at or below fifty percent (50%) of AMI at the time of sale, and not less than an additional ten percent (10%) of the Residential square footage for sale to Qualified Purchasers whose income is at or below eighty percent (80%) of the AMI at the time of sale; these ADUs shall be and remain in the locations shown on the Permitted Uses Plan…[4]

We reviewed eight NCRC development projects that had ADUs for lease or sale. To determine whether the ADU recipients were "qualified purchasers" and were properly classified in the appropriate area median income level, we requested that the developers provide documentation to verify the income of ADU recipients. In many cases, we were unable to determine whether ADU recipients were "qualified purchasers" and were properly classified within the correct AMI level because the developers did not maintain appropriate supporting income documentation.

Income Records

Many of the developer's files we reviewed contained: (1) affordable housing program applications, (2) sales forms, (3) loan and mortgage documents, and (4) other ancillary documents. However, these documents were unreliable because they were not the final documents that were executed or the source of the documents was questionable. In

[4] Land Disposition and Development Agreement by and between the RLA Revitalization Corporation and Parcel 34, LLC for the Development of Parcel 34. March 23, 2006. Page 48.

many cases, the developer did not have any income documentation, such as wage earning statements or tax returns.

Since none of the eight NCRC development projects received funding under existing federal or District affordable housing programs, only the LDAs provided the requirements developers had to follow when selling or renting ADUs. However, the LDAs did not contain specific instructions about how to qualify ADU buyers or renters. For example, there is nothing in the LDAs about what income documentation should be required, nothing about whether or how household size is to be considered, and very little about what the income limits should be for each AMI category. Nor did NCRC or any other District agency provide instructions to the developers about this process. However, there are industry standards for qualifying affordable housing applicants and determining to which AMI category they belong.

The U.S. Department of Housing and Urban Development (HUD) has provided rules for this process that are followed by every jurisdiction in the country that receives federal dollars. These standard procedures have become commonly used by non-profit organizations administering affordable housing programs. During our audit, we noted that most developers used procedures that were identical to those contained in the HUD rules. It is because of the pervasiveness of HUD rules that we referred to these rules and compared what we found when examining the developers' records to the requirements of these rules.

Specifically, we referred to HUD's regulations for evidencing income qualifications in the context of affordable housing programs. For example, HUD's HOME[5] program requirements at 24 CFR § 92.203(a) (1)(i) provide that to initially determine annual income for a home purchaser or renter the jurisdiction providing affordable housing services will "[e]xamine the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family."

Income documentation requirements can vary depending on the applicant's employment type. Generally, applicants who are not self-employed can provide evidence of their annual income such as pay stubs, tax returns, and/or W-2s.

[5] HOME is the largest Federal block grant to State and local governments designed exclusively to create affordable housing for low-income households.

Depending on whether the applicant is salaried, hourly, or a contractor, the type and scope of the income documentation varies. Salaried employees may provide current pay stubs. However, hourly employees may have to provide an entire year's worth of documentation because hourly employees can experience substantial variations in income throughout the year. Further, other types of income require different documentation. For example, 1099s are required for interest income or unemployment compensation statements. In all cases, the income supporting documentation must be current and accurate.

ADU Income Eligibility and AMI Classification

In many instances, the documentation that developers provided to support the ADU purchaser's income and AMI level was incomplete. In other instances, developers did not have any supporting documentation for the ADU purchaser's income. Figure 1 presents the results of our review of the income documentation provided by developers. Our review of 267 ADU renter or purchaser files showed that: (1) 116 files contained documentation that could be used to verify income and AMI placement; (2) 48 files contained documentation that could not be relied on to verify income and AMI placement, and (3) 103 files were missing documentation to verify income and AMI placement for that particular renter or purchaser.

Figure 1

Income Documentation Provided by Developers[6]

No.	Project	Type Unit[7]	Total ADUs	Reliable Records	Missing Records	Unreliable Records
1.	City Vista The L	C	30	9 *(30%)*	17 *(57%)*	4 *(13%)*
2.	City Vista The K	C	59	9 *(15%)*	44 *(75%)*	6 *(10%)*
3.	City Vista Apartments	A	43	31 *(72%)*	10 *(23%)*	2 *(5%)*
4.	Lofts of Columbia Heights	C	26	8 *(31%)*	17 *(65%)*	1 *(4%)*
5.	Verona Parc	C	7	0	6 *(86%)*	1 *(14%)*
6.	Kenyon Square	C	30	13 *(43%)*	0	17 *(57%)*
7.	Solea	C	14	1 *(7%)*	1 *(7%)*	12 *(86%)*
8.	Highland Park	A	44	36 *(82%)*	6 *(14%)*	2 *(5%)*
9.	Barcelona	C	6	2 *(33%)*	1 *(17%)*	3 *(50%)*
10.	Tivoli	A	8	7 *(88%)*	1 *(13%)*	0
TOTALS			**267**	**116 *(43%)***	**103 *(39%)***	**48 *(18%)***

[6] Percentages in Table One are rounded to nearest whole number.
[7] C is for Condominium "for sale" and A is for Apartment "for lease/rental".

Policies and Procedures

The Land Disposition Agreements required the developer to offer ADUs to income eligible purchasers or tenants. However, the District did not provide guidelines for developers to follow when completing this task. Specifically, the District did not have guidelines and policies regarding:

1. The documentation necessary to determine income eligibility,
2. Income documentation retention requirements, or
3. A methodology to request documentation from ADU purchasers and third parties and verify ADU purchaser supplied documentation.

Without written guidelines and policies, developers used different methods to identify qualified buyers and renters. Some developers contracted with third parties to perform the ADU applicant selection and income eligibility and verification determination. However, the third parties did not always maintain adequate documentation.

Even though the District did not provide adequate guidelines, it was incumbent upon developers to ensure that adequate purchaser income documentation was readily available for the District to review in order to determine the developer's compliance with the LDAs.

Additionally, since the District provided the developers with "government assistance" (discounted lease or sales price for District-owned land), the District should have established procedures to properly protect the resources of the District.

Recommendations:

We recommend that the Director of the Department of Housing and Community Development (DHCD) should:

3. Develop policies and procedures for performing: (a) income verification, (b) Area Median Income classification, (c) income documentation retention, and (d) audit, communication, and reporting requirements for developers of land formerly owned by NCRC and AWC.
4. Provide routine and periodic training to DHCD staff and developers on: (a) income verification, (b) AMI

classification, (c) income documentation retention, and (d) audit and reporting requirements.

5. Perform follow-up reviews on all NCRC properties to determine whether developers complied with income eligibility requirements, AMI category placement requirements, and income documentation requirements as outlined in each development agreement and promptly take all feasible actions to resolve incidences of non-compliance.

3. One Developer Did Not Properly Consider Household Size When Determining Income Eligibility

DHCD publishes annually the current District income and rent limits for affordable housing applicants as determined by the U.S. Department of Housing and Urban Development (HUD). An example of the Fiscal Year (FY) 2009 District income limits is presented in Figure 2.

Figure 2

FY 2009 District of Columbia Income Limits

	Household Size							
Income Category	**1 Person**	**2 Person**	**3 Person**	**4 Person**	**5 Person**	**6 Person**	**7 Person**	**8 Person**
Extremely Low (30% of Median)	21,550	24,650	27,700	30,800	33,250	35,750	38,200	40,650
60% of AMI	43,134	49,296	55,458	61,620	66,550	71,479	76,409	81,338
80% of AMI	57,512	65,728	73,944	82,160	88,733	95,306	101,878	108,451

Source: United States Department of Housing and Urban Development (30% of Median) and ODCA calculation (60% and 80% of Median)

Income limits vary by household size since larger households require higher incomes to maintain the same standard of living. HUD guidance provides that the "income limit statute requires adjustment for family size." According to a local non-profit devoted to affordable housing issues, household size is always taken into account when determining eligibility for federal and District affordable housing programs. Additionally, we observed that the other developers of the ADUs we reviewed considered household size when qualifying applicants for ADUs.

We found that the developer of the Highland Park Apartments (HPA) and the Kenyon Square Condominiums (KSC) did not comply with HUD guidelines when determining ADU income eligibility. According to the developer of these two properties, household size was not used to determine income eligibility or AMI level. Instead, the developer established income eligibility ranges for each AMI category. The developer considered the HUD guidelines, but used the maximum income for a four-person household as the maximum for each AMI category. The minimum income for a given AMI category was determined by adding one dollar to the maximum allowed in the next lowest category. In the case of the lowest category (30% of AMI), the lowest income allowed was set as the maximum income for a household of two.

Figure 3 presents the HPA and KSC developer's income qualification standards, as they would have appeared in 2009.

Figure 3

The HPA and KSC Developer's Income Qualification Standards

Income Category	Minimum Income to Qualify	Maximum Income to Qualify
30%	$24,650	$30,800
60%	$30,801	$61,620
80%	$61,621	$82,160

Source: ODCA calculations based on methodology as described by developers.

For example, based on the developer's methodology, an applicant could earn up to $30,800 and qualify for a 30 % AMI ADU regardless of their household size. However, according to the FY 2009 HUD Income Limit Standards for the District of Columbia, $30,800 was the limit for a household of four to qualify for a 30% unit. A single applicant was limited to an annual income of $21,550 to qualify for a 30% unit. The developer's methodology allowed applicants to exceed income limits for their respective AMI categories. Consequently, we found that almost half of the tenants in the ADUs at HPA were earning too much (at the time of our review) to qualify for an ADU rental. Additionally, we found that incomes for at least 10 KSC purchasers were too high to purchase an ADU at the time of sale.

The developer did not consider household size when qualifying ADU applicants. Rather, the developer used their own income limit standards to qualify ADU purchasers. The District contributed to the failure of the developer to properly consider household size because the District did not provide guidance for the developers to follow when qualifying applicants. Finally, the District did not adequately monitor the former NCRC projects. These deficiencies resulted in lost housing opportunities for families who needed affordable housing.

Recommendation:

The Director of the Department of Housing and Community Development (DHCD) should:

6. Perform a review of ADUs at Highland Park Apartments, the Kenyon Square Condominiums, and other NCRC projects to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The DHCD Director should take appropriate action to resolve and prevent future occurrences of non-compliance with the District's Income Limit Standards.

4. Developers Did Not Comply With Filing Requirements for Affordable Dwelling Unit Restrictive Covenants

A restrictive covenant is an enforceable limitation on the use of real property. All of the LDAs signed by the developers of NCRC properties required them to prepare deeds that contained covenants reflecting provisions for the reservation, conveyance, and preservation of ADUs.

We determined that deeds did not contain covenants reflecting the ADU restrictions for 20 ADUs at the Lofts of Columbia Heights (Lofts), Kenyon Square (Kenyon), and Solea condominiums. Figure 4 presents the 20 ADUs that did not have restrictive covenants filed with the District of Columbia's Recorder of Deeds.

Figure 4

ADUs without Restrictive Covenants

Development Project	Number of ADUs With No Restrictive Covenants
Lofts of Columbia Heights	4
Kenyon Square	2
Solea	14

Source: D.C. Office of Tax and Revenue

Additionally, in five separate cases, developers filed covenants that did not contain provisions for reserving ADUs at specific AMI levels. The LDAs for these developments require that during the ADU period the ADUs must remain affordable within the same AMI level. Figure 5 presents the five ADUs with covenants that did not restrict ADU re-sales to specific AMI levels.

Figure 5

ADUs with Restrictive Covenants That Did Not Restrict Sale to Specific AMI Levels

Development Project	Number of Units[8]
Lofts of Columbia Heights	3
Kenyon Square	2
Total	**5**

The purpose of the restrictive covenants was to ensure that ADUs remained affordable for a specified period and to ensure that ADUs remained reserved for qualified purchasers at various AMI levels. Without the restrictive covenant, an

[8] The specific units without covenants for Lofts of Columbia Heights were 307, 506, 606, and for Kenyon Square the units were 307 and 328.

ADU could possibly be sold as a market rate unit or transferred to a qualified purchaser within any AMI level, violating the terms of the LDA.

Two of the three developers we notified indicated that they would file the missing restrictive covenants.

Recommendations:

The Director of the Department of Housing and Community Development (DHCD) should:

7. Develop and implement policies and procedures that require DHCD to review ADU restrictive covenants for appropriateness, completeness and legal sufficiency and approve all ADU restrictive covenants prior to the covenants being filed with the Recorder of Deeds.
8. In consultation with DHCD's legal advisor, develop and file restrictive covenants for the five ADUs identified in this finding whose restrictive covenants were not filed or filed without provisions for AMI category as provided in the corresponding LDAs.

5. Restrictive Covenants at the Tivoli Could Result In the District Losing Eight Affordable Dwelling Units

The Tivoli LDA provides that the developer shall "… reserve as ADUs at least ten percent of the Residential Units for sale to Qualified Purchasers" and these ADUs "… shall be sold, held and occupied as [ADUs] for a period of not less than thirty (30) years."

Restrictive covenants filed with each deed for an ADU sold at the Tivoli contained a provision that could result in the early termination of the ADU affordability period. According to Paragraph Five of the covenants filed with each ADU sold at the Tivoli:

> This Covenant may be terminated by an instrument to that effect recorded by RLARC[9], its successors, assigns and / or transferees, recorded among the Land Records of the District of Columbia. RLARC (sic) successor, assign and/or transferee shall record an amendment to this Covenant stating the name and address of such successor, assign and/or transferee. **In the absence of recording of such amendment, Purchaser (or any heir, executor, successor, assign and/or transferee) may record an Affidavit accompanied by a certified statement from the D.C. Superintendent of Corporations (or other public official with like responsibilities) that RLARC is no longer a corporation in good standing in the District of Columbia. The effect of such Affidavit, properly recorded, shall be terminate [sic] this Covenant** [Auditor's emphasis].

As a result of this language, ADUs could potentially not survive the absence of an administrative filing by the Redevelopment Land Agency Revitalization Corporation's (RLARC) successors, assigns, and/or transferees. At the time of our review, we did not find that the filings had been made. Either DMPED or DHCD, as the designated successors of RLARC, should have filed the required documentation to ensure that ADUs remain affordable for the entire ADU period. Absent this filing, the language in the covenants opens the way for the loss of these affordable units.

[9] NCRC established the subsidiary Redevelopment Land Agency Revitalization Corporation (RLARC) to implement the development plan and manage a portfolio of the District's real property. The RLARC utilized NCRC's Board, had a separate accounting system, and a separate staff.

Recommendation:

The Director of the Department of Housing and Community Development (DHCD) should:

9. In consultation with DHCD's legal advisor and with the Deputy Mayor for Planning and Economic Development, develop and file with the Recorder of Deeds documentation necessary to ensure the Tivoli ADUs survive for the remaining ADU affordability period.

Conclusion

The National Capital Revitalization Corporation (NCRC) was created to encourage economic growth in the District of Columbia by selling off District-owned land to developers who would agree to provide community benefits in exchange for receiving the land at a reduced price.

This audit was conducted, in part, to review developer compliance with agreements to provide affordable housing made by some developers who purchased District-owned land.

Our audit found the processes used by developers to identify and qualify potential buyers and renters resulted in some affordable housing units being made available to individuals who did not qualify for housing based on their income and household size. The audit deficiencies resulted in lost housing opportunities for families in need of affordable housing.

The audit also sought to determine whether the Deputy Mayor for Planning and Economic Development (DMPED) effectively monitored developer compliance with agreements to provide affordable housing. We found that DMPED conducted limited oversight from 2007 to 2009, the years during which DMPED had responsibility for monitoring developer compliance. In addition, as of late 2010, the Department of Housing and Community Development (DHCD) had not yet developed a process for monitoring the compliance of developers with agreements to provide affordable housing units. This lack of oversight by the District government contributed to the shortcomings in developer compliance with agreements to provide affordable housing.

We are pleased to note that DHCD has strengthened their oversight activity. Many of the problems identified in our audit have been addressed.

Should the District continue to negotiate similar agreements with developers, it is critical that DHCD maintains a rigorous oversight function. To do so will prevent the District from losing housing opportunities for families in need of affordable housing.

Sincerely,

Yolanda Branche
District of Columbia Auditor

Agency Comments

On October 16, 2012, the Auditor submitted a draft of the report titled, "Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation" to the Director of the Department of Housing and Community Development (DHCD) for comments on the findings and recommendations contained therein.

The Auditor received written comments from DHCD on December 13, 2012.

As a result of DHCD's comments, the Auditor revised the draft report. DHCD requested an opportunity to review the revised draft report. As a result, on January 18, 2013, the Auditor submitted the revised draft report to DHCD for review. We received comments from DHCD on the revised draft report on February 15, 2013.

The comments of DHCD to the draft reports are attached. The Auditor's responses to the comments of DHCD are also attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Office of the Director

DEC 1 7 2012

VIA FIRST CLASS MAIL
Yolanda Branche
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Re: Responses to the Draft Report entitled "Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation"

Ms. Branche:

The Department of Housing and Community Development (DHCD) is in receipt of the above mentioned draft report dated October 16, 2012.

We are pleased to state that DHCD and/or the Office of the Deputy Mayor for Planning and Economic Development have instituted many of the recommendations in the draft audit report. Specific responses to the recommendations are in the form proscribed by your office, and attached as Attachment 1.

DHCD also has specific responses to the proposed findings within the draft audit report, which are attached as Attachment 2. The Agency requests that most, if not all, of the findings be excluded from the final report, as no longer applicable as addressed in Attachment 2. To the extent your office will be revising the draft audit report prior to its publication, DHCD requests the opportunity to provide a revised response that directly correlates to the final audit report.

If you require additional information or clarification, please contact me directly.

Sincerely,

Michael P. Kelly
Director

Attachment 1

Responses to Recommendations in the Draft Audit Report of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation

	Recommendation	Agency Agrees; Date Agency Will Implement Recommendation	Agency Disagrees; Alternative Recommendation
1	*Develop and implement an appropriate organizational infrastructure to ensure that DHCD can accomplish its mandate to oversee and monitor NCRC and AWC development projects.*	The Agency developed and implemented an appropriate organizational infrastructure to ensure that DHCD can accomplish its mandate to oversee and monitor NCRC and AWC development projects following the issuance of Mayoral Order 112-2009. The Agency currently has 1.2 FTEs allocated to assist with this activity.	
2	*Develop an action plan for periodically reviewing all NCRC projects to determine compliance with the developer's Land Development Agreements, Affordable Dwelling Unit requirements, covenants and relevant laws.*	While the Agency has not developed an action plan per se, the Agency coordinates with the Office of the Deputy Mayor for Planning and Economic Development (ODMPED) to ensure that former NCRC projects that are being conveyed to third parties are in compliance with Land Development Agreements, Affordable Dwelling Unit requirements, covenants and relevant laws. The Agency is also reviewing NCRC projects that have been conveyed to third parties on an annual basis, notwithstanding the fact that the formalized reporting requirements may not be part of the controlling documents. The Agency's review of these transferred projects includes proposing adjustments to the ADU administration, as appropriate.	

	Recommendation	Agency Agrees; Date Agency Will Implement Recommendation	Agency Disagrees; Alternative Recommendation
3	*Develop policies and procedures for performing: (a) income verification, (b) Area Median Income classification, (c) income documentation retention, and (d) audit and reporting requirements for developers of land formerly owned by NCRC and AWC.*	Shortly after the Agency began its monitoring and enforcement of ADUs, the Agency implemented the use of a standardized ADU Covenant, which includes the requirement to use HUD Part 5 for income verification, Area Median Income classification, income documentation retention and audit and reporting requirements. HUD Part 5 is also utilized for most federally funded projects in the District. In certain instances, existing developments already include policies and procedures that pre-date the Agency's monitoring and enforcement authority. In these instances, the Agency monitors and enforces the existing administration and recommends or implements adjustments as appropriate.	
4	*Provide routine and periodic training to DHCD staff and developers on performing: (a) income verification, (b) AMI classification, (c) income documentation retention, and (d) audit and reporting requirements.*	Agency staff are routinely trained on performing income verifications, AMI classifications, income documentation retention, and audit and reporting requirements. For example Agency staff received Certified Occupancy Specialist training in FY11 and Blended Occupancy Specialist training in FY12. The Agency also contracts with skilled Community Based Organizations to perform income verifications and AMI classifications. The Agency also 'trains the trainer' and educates developers and management companies on the above, which promotes compliance with the affordability covenants in place, and the standardized ADU Covenant for projects that have not yet been conveyed.	

	Recommendation	Agency Agrees; Date Agency Will Implement Recommendation	Agency Disagrees; Alternative Recommendation
5	*Perform follow-up reviews on all NCRC properties to determine whether developers complied with income eligibility requirements, AMI category placements, and income documentation requirements as outlined in each development agreement and promptly take all feasible actions to resolve incidences of non-compliance.*	The Agency has performed follow-up reviews on NCRC properties to determine whether developers complied with income eligibility requirements, AMI category placements, and income documentation requirements as outlined in the applicable ADU restrictions or covenants and promptly takes all feasible actions to resolve incidences of non-compliance.	
6	*Establish policies and procedures for monitoring and approving ADU.*	Shortly after the Agency began its monitoring and enforcement of ADUs, the Agency implemented the use of a standardized ADU Covenant, which has been in use for projects that have yet to be conveyed to third parties. Existing developments may already include policies and procedures that pre-date the Agency's monitoring and enforcement authority. In these instances, the Agency monitors and enforces the existing administration and recommends or implements adjustments as appropriate. The Agency coordinates with the ODMPED to ensure that ADU projects that are being transferred to third parties include ADU Covenants. The Agency is also reviewing projects that have been conveyed to third parties on an annual basis and proposes adjustments to the ADU administration, as appropriate. The Agency also has a published ADU policy on its website (dhcd.dc.gov).	

	Recommendation	Agency Agrees; Date Agency Will Implement Recommendation	Agency Disagrees; Alternative Recommendation
7	*Establish policies and procedures that outline the required processes developers shall use to qualify prospective ADU buyers.*	The standardized ADU Covenant is utilized For projects that are being conveyed to third parties, which provides procedures that outline the required processes developers shall use to qualify prospective ADU buyers. The Agency also reviews projects that have been conveyed to third parties and proposes adjustments to the ADU administration, including the process developers shall use to qualify prospective ADU buyers. The Agency also has a published ADU policy on its website (dhcd.dc.gov).	
8	*Perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments. DHCD should then take actions as appropriate and feasible to resolve any occurrences of non-compliance.*		The Agency has evaluated the developer's compliance with the approved sales prices and has determined that the sales prices are appropriate under the terms of the LDDA.

	Recommendation	Agency Agrees; Date Agency Will Implement Recommendation	Agency Disagrees; Alternative Recommendation
9	*Perform a review of the City Vista apartments and all NCRC development properties to determine whether developers rented ADUs in accordance with ADU requirements, their respective land disposition agreements, and plans and take actions as appropriate to resolve any occurrences of non-compliance.*		The Agency has evaluated the developer's compliance with the approved rents and has determined that the rents are appropriate under the terms of the LDDA.
10	*Perform a review of ADUs at Highland Park Apartments and the Kenyon Square Condominiums and all other NCRC projects to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The DHCD Director must take actions as appropriate to resolve and prevent future occurrences of non-compliance with the District's Income Limit Standards.*		The Agency has reviewed the ADUs at Highland Park Apartments and the Kenyon Square Condominiums to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The Agency has determined that the sale rents and sale prices, respectively, are appropriate under the terms of the corresponding ADU restrictions/covenants.

	Recommendation	Agency Agrees; Date Agency Will Implement Recommendation	Agency Disagrees; Alternative Recommendation
11	*Develop and implement policies and procedures that require DHCD to review ADU restrictive covenants for appropriateness, completeness and legal sufficiency and approve all ADU restrictive covenants prior to the covenants being filed with the Recorder of Deeds.*	For projects that have yet to be conveyed to third parties, the Agency is reviewing the standardized ADU Covenants as adjusted for each project, prior to the covenants being filed with the Recorder of Deeds.	
12	*In consultation with DHCD's legal advisor, develop and file restrictive covenants for the five ADUs identified in this finding whose restrictive covenants were not filed or filed without provisions for AMI category as provided in the corresponding LDAs.*		Agency disagrees with the analysis that the ADU affordability is at risk, because the ADU is also subject to ADU restrictions/covenants, which define the affordability. Further, the Agency will provide the resale price, so the affordability will be determined at that time, in these limited circumstances.
13	*In consultation with DHCD's legal advisor, amend the restrictive covenant terms to correct the ADU residential and affordability period discrepancy between the City Vista LDA and restrictive covenants currently placed on the deeds of City Vista ADUs.*		The LDDA, as it related to the affordability term, was amended pursuant to the recorded amendment #2007018990. Accordingly, there is no discrepancy between the LDDA and the unit deeds.

	Recommendation	Agency Agrees; Date Agency Will Implement Recommendation	Agency Disagrees; Alternative Recommendation
14	*Develop and implement policies and procedures that require DHCD to review ADU restrictive covenants for appropriateness, completeness and legal sufficiency and approve all ADU restrictive covenants prior to filing the deeds and accompanying restrictive covenants with the Recorder of Deeds.*	The Agency is reviewing deeds including ADU restrictive covenants to assist ODMPED with new projects developments on land formerly owned by NCRC and AWC. The standardized ADU Covenant requires that certain language be included on the ADU deeds.	
15	*In consultation with DHCD's legal advisor and with the Deputy Mayor for Planning and Economic Development, develop and file with the Recorder of Deeds documentation necessary to ensure the Tivoli ADUs survive for the remaining ADU affordability period.*	Updates to the restrictive covenants at the Tivoli will be completed in FY13.	

Attachment 2

Responses to Findings in the Draft Audit Report of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation

	Finding	Agency Comments
1	*ODMPED and DHCD did not conduct compliance and monitoring activities to determine whether NCRC property developers complied with affordable dwelling unit requirements.*	The Agency has a compliance and monitoring regime that includes a standardized ADU Covenant that has enhanced the District's monitoring and enforcement responsibilities for projects that have yet to be conveyed to third parties. The Agency also has contracts with community based organizations to conduct household income verification reviews for current and future ADU resales. Due to the agencies current activities and implementation of the standardized ADU Covenant, the Agency recommends removing this finding.
2	*Developers lacked documentation to support the income eligibility and the area median income level of affordable dwelling unit purchasers and renters*	The Agency has implemented the use of a standardized ADU Covenant that establish policies and procedures that outline the required processes developers shall use to qualify prospective ADU buyers on new developments formerly owned by NCRC and AWC. As such, standardized documentation and structure is now in place to support income eligibility and area median income level determinations. Therefore, the Agency recommends removing this finding.
3	*Affordable Dwelling Units at City Vista Condominiums were sold for more than the sale price approved by the District*	The Agency has reviewed the deeds for the sales of ADUs at City Vista. The District disagrees with the numbers used in Table 2 in the draft report. The LDDA for City Vista states that "[o]n the first year anniversary of LDA Closing and annually thereafter, initial sales prices may increase by no more than the greater of (i) annual CPI for the proceeding 12-months or (ii) three percent (3.0%)." Therefore, all of the stated sale prices in Table 2 are below the maximum allowable sale prices according to the LDDA. The Agency recommends removing this finding from the final report.

	Finding	Agency Comments
4	*Eight City Vista Apartment ADU tenants were overcharged for rent*	The Agency has reviewed the rents in the ADUs at City Vista. The District disagrees with the numbers used in Table 3 in the draft report. The LDDA for City Vista states that "[o]n the first year anniversary of LDA Closing and annually thereafter, initial sales prices may increase by no more than the greater of (i) annual CPI for the proceeding 12-months or (ii) three percent (3.0%)." Therefore, the stated rents in Table 3 are below the maximum allowable sale prices according to the LDDA, except for #438, which received a rent refund. The monthly rent was also corrected for this unit. Therefore, the Agency recommends removing this finding.
5	*One developer did not properly consider household size when determining income eligibility*	The ADU Covenant for Highland Park Apartments was amended in December of 2010 (#2010114509) and explicitly does not require adjustment by household size when determining income eligibility. Further, the Kenyon Square affordability requirements do not state that adjustment by household size is required when determining income eligibility. While the Agency's standardized ADU Covenant would have required adjustment by household size, the Agency is acting through its monitoring and enforcement authority to ensure that the above projects are in compliance with their stated affordability requirements. Therefore, the Agency recommends removing this finding.

	Finding	Agency Comments
6	*Developers did not comply with filing requirements for affordable dwelling unit restrictive covenants*	The deeds on the ADUs identified in Table 6 of the draft report (as adjusted by the email communication for Joshua Stearns on 12/5/12 stating that the Lofts at Columbia Heights only included 3 ADUs with not restrictive covenants) have been re-recorded to correct the stated deficiencies, except one. This remaining ADU was recently sold and the new owner was certified by the Agency prior to purchasing and took title subject to the prior deed, which included the resale requirements. The Agency recommends that this finding be removed because corrective actions have already been completed.
7	*The City Vista restrictive covenant is inconsistent with the City Vista land disposition agreement*	DHCD requests that this finding be removed because there is no inconsistency between the affordability periods due to the filing of the recorded amendment #2007018990.
8	*Restrictive covenants at the Tivoli could result in the District losing eight affordable dwelling units*	Updates to the restrictive covenants at the Tivoli are underway. The Agency recommends that this finding be removed because corrective actions will be taken in the coming days.

Office of the District of Columbia Auditor

13:178:JS:cm

January 18, 2013

Mr. Michael P. Kelly
Director
Department of Housing and Community Development
1800 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20020

Dear Director Kelly,

Thank you for your detailed and informative December 17, 2012 response to our draft report entitled "Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation." We commend the Department of Housing and Community Development (DHCD) for initiating and implementing the majority of the recommendations related to specific issues we found during the course of the audit.

Regarding your request "that most, if not all, of the findings be excluded from the final report" because DHCD took steps to address specific issues found during the course of the audit. As you are aware, an audit details events and conditions that existed at a particular point in time. Based on our objectives and generally accepted government auditing standards we are required to report findings that were found at the time of the audit. While DHCD may have taken steps to address our findings after the completion of the audit, at the time of the audit the deficiencies existed. As a result, the findings that were identified during the audit will be presented in the final report. However, the report will note that DHCD advised the Office of the D.C. Auditor that DHCD has implemented many of the audit recommendations.

In response to your request, the revised draft report is enclosed for review. In general we require agencies to provide comments on draft reports in three weeks. Since this is the second review by DHCD of the report, we would appreciate it if DHCD would provide any additional comments no later than **Wednesday, January 30, 2013**.

We appreciate the assistance provided by you and your staff during the course of this audit. We look forward to continuing to work with DHCD.

Sincerely,

Yolanda Branche

Yolanda Branche
District of Columbia Auditor

AUDITOR'S RESPONSE TO DHCD'S COMMENTS

We appreciate the comments from the Department of Housing and Community Development (DHCD) on the draft report entitled, Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation. DHCD's comments are presented in their entirety. Where appropriate, we revised the final report to address the comments of DHCD.

The Auditor's responses to DHCD's comments are provided here, organized by findings and recommendations, to mirror the format of DHCD's comments. In addition, ODCA responded to the December 17, 2012, cover letter from DHCD. The ODCA letter to DHCD is also included.

Table 1. Auditor's Response to Agency Comments on the Recommendations Appearing in the Report

	ODCA Recommendation	**DHCD Comment**	**Auditor's Response**
1	**Develop and implement an appropriate organizational infrastructure to ensure that DHCD can accomplish its mandate to oversee and monitor NCRC and AWC development projects.**	DHCD indicated that it agrees with our recommendation and has implemented the infrastructure needed to oversee NCRC and AWC development projects.	We are pleased to note that DHCD has taken steps since the time of our audit to implement an appropriate oversight and monitoring infrastructure.
2	**Develop an action plan for periodically reviewing all NCRC projects to determine compliance with the developer's Land Disposition and Development Agreements, Affordable Dwelling Unit requirements, covenants and other relevant laws.**	DHCD indicated that it agrees with our recommendation and that it has taken steps to implement an annual review of NCRC projects.	We are pleased to note that DHCD included an annual review in DHCD policies and procedures since the period of our audit.

	ODCA Recommendation	DHCD Comment	Auditor's Response
3	**Develop policies and procedures for performing: (a) income verification; (b) Area Median Income classification; (c) income documentation retention; and (d) audit and reporting requirements for developers of land formerly owned by NCRC and AWC.**	DHCD indicated that it agrees with this recommendation and that it has implemented the use of a standardized ADU covenant that incorporates the use of HUD guidelines for conducting income verification, Area Median Income classification, income documentation retention, and audit and reporting requirements.	We are pleased that DHCD implemented the use of a standardized ADU covenant that incorporates the use of HUD guidelines for conducting income verification, Area Median Income classification, income documentation retention, and audit and reporting requirements since the time of our audit.
4	**Provide routine and periodic training to DHCD staff and developers on performing: (a) income verification; (b) AMI classification; (c) income documentation retention, and (d) audit and reporting requirements.**	DHCD concurred with the recommendation and listed various staff training programs including training on income verifications, AMI classifications, and income documentation.	We are pleased to note this concurrence and commend DHCD for implementing staff training programs.
5	**Perform follow-up reviews at all NCRC properties to determine whether developers complied with income eligibility requirements, AMI category placements, and income documentation requirements as outlined in each development agreement and promptly take all feasible actions to resolve incidences of non-compliance.**	DHCD concurred with this recommendation and indicated that it has performed reviews at the NCRC properties.	We are pleased to note that DHCD performed reviews at the NCRC properties.

	ODCA Recommendation	DHCD Comment	Auditor's Response
6	**Establish policies and procedures for monitoring and approving ADU sales.**	DHCD concurred with the recommendation.	We are pleased that DHCD concurs with the recommendation.
7	**Establish policies and procedures that outline the required processes developers shall use to qualify prospective ADU buyers.**	DHCD concurred with the recommendation and noted that their standardized ADU Covenant now in use provides procedures that cover how ADU buyers are to be qualified.	We are pleased that DHCD concurs and that they have taken steps since the time of our audit to standardize the processes used by developers to qualify prospective ADU buyers.
8	**Perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments. DHCD should then take actions as appropriate and feasible to resolve any occurrences of non-compliance.**	DHCD did not concur with this recommendation. However, DHCD indicated that they conducted a review of sales at the City Vista condominium. DHCD claims that all sales prices were appropriate.	DHCD, in their comments, indicates that they have evaluated the developer's compliance since the time of our audit. Therefore, we see no conflict between our recommendation to perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments and actions taken by DHCD.
9	**Perform a review of the City Vista apartments and all NCRC development properties to determine whether developers rented ADUs in accordance with ADU requirements, the land disposition and development agreements, and approved plans and take actions as appropriate to resolve any occurrences of non-compliance.**	DHCD did not concur with this recommendation. However, they also indicated that a review had taken place and that they have determined that the rents are appropriate.	DHCD did not indicate when their review took place nor have they presented any documentary evidence to support their assertion that the rents were appropriate. In addition, DHCD does not directly contradict our finding. We are pleased that they have conducted the review. We stand by our finding.

	ODCA Recommendation	DHCD Comment	Auditor's Response
10	**Perform a review of ADUs at Highland Park Apartments and the Kenyon Square Condominium and all other NCRC projects to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The DHCD Director must take actions as appropriate to resolve and prevent future occurrences of non-compliance with the District's Income Limit Standards.**	DHCD indicated that it did not agree with this recommendation. However, their comments also indicate that the recommended review was conducted and that they concluded that sales and rental prices at the Highland Park and Kenyon Square developments were appropriate.	DHCD did not provide evidence to support their conclusion that sales prices and rents at Kenyon Square and Highland Park were appropriate. Nor does DHCD provide evidence to directly contradict our finding. We are pleased that they have conducted the review. We stand by our finding.
11	**Develop and implement policies and procedures that require DHCD to review ADU restrictive covenants for appropriateness, completeness and legal sufficiency and approve all ADU restrictive covenants prior to the covenants being filed with the Recorder of Deeds.**	DHCD concurs with this recommendation.	We are pleased that DHCD concurs with our recommendation.

	ODCA Recommendation	DHCD Comment	Auditor's Response
12	**In consultation with DHCD's legal advisor, develop and file restrictive covenants for the five ADUs identified in this finding whose restrictive covenants were not filed or filed without provisions for AMI category as provided in the corresponding LDAs.**	In response to our recommendation that DHCD should file restrictive covenants for five specified ADUs whose covenants did not mention which AMI category the ADU was reserved for, the agency notes that it "disagrees with the analysis that the ADU affordability is at risk, because the ADU is also subject to ADU restrictions/covenants, which define the affordability." The agency goes on to indicate that it "will provide the resale price, so the affordability will be determined at that time."	The LDA itself required developers to file restrictive covenants on each ADU sold. Our finding identified five instances where ADUs lacked the required covenant. DHCD's response does not dispute the fact that these ADUs lacked the required covenant. Instead, DHCD makes an argument that the affordability of the ADU is not at risk because it is "subject to ADU restrictions/covenants." It is not clear to which "restrictions / covenants" DHCD is referring. Assuming the agency is referring to the ADU restrictions enumerated in the LDAs signed by the developers, we note that these restrictions are irrelevant. Since the condominium units have been sold, the individual owners of the condominium units cannot be held accountable for the agreements between the developer and the District. It is for this reason that the covenants placed on each unit are so important – they are the only way to ensure that the ADUs remain affordable throughout any subsequent re-sales. Finally, we are concerned that DHCD asserts that since it will provide the resale price for any future re-sales of ADUs at these properties, then "the affordability will be determined at that time."

	ODCA Recommendation	DHCD Comment	Auditor's Response
13	**In consultation with DHCD's legal advisor, amend the restrictive covenant terms to correct the ADU residential and affordability period discrepancy between the City Vista LDA and restrictive covenants currently placed on the deeds of City Vista ADUs.**	In response to our recommendation that the agency amend the ADU covenants at the City Vista condominiums to be in agreement with the City Vista LDA, DHCD points out that the City Vista LDA was amended in 2007, changing the affordability period from 30 to 20 years. Therefore, there is no need to amend the covenants since they are, in fact, in keeping with the LDA.	The report was revised to address this fact. The recommendation and corresponding finding were removed.
14	**Develop and implement policies and procedures that require DHCD to review ADU restrictive covenants for appropriateness, completeness and legal sufficiency and approve all ADU restrictive covenants prior to filing the deeds and accompanying restrictive covenants with the Recorder of Deeds.**	DHCD concurred with this recommendation and indicated they have developed a standardized ADU Covenant that addresses this issue.	We are pleased that DHCD has taken these steps since the period of our audit.
15	**In consultation with DHCD's legal advisor and with the Deputy Mayor for Planning and Economic Development, develop and file with the Recorder of Deeds the documentation necessary to ensure that the Tivoli ADUs survive for the remaining ADU affordability period.**	DHCD concurred with this recommendation and indicates that the covenants will be updated in FY13.	We are pleased that DHCD is taking steps to address this issue.

Findings

	Finding	Agency Comment	Auditor's Response
1	**DMPED and DHCD did not conduct compliance and monitoring activities to determine whether NCRC property developers complied with affordable dwelling unit requirements.**	DHCD recommends that "due to the agencies (sic) current activities and implementation of the standardized ADU covenant" we remove our finding that neither DMPED nor DHCD conducted compliance monitoring activities at the properties that were part of our scope.	DHCD does not dispute our finding that, at the time of our audit, they had not conducted complete compliance monitoring. We stand by our finding and it remains in the final report.
2	**Developers lacked documentation to support the income eligibility and the area median income level of affordable dwelling unit purchasers and renters.**	DHCD explains that they have "implemented the use of a standardized covenant that establish (sic) policies and procedures that outline the required processes developers shall use to qualify prospective ADU buyers on new developments." Because of this, they recommend that we remove our second finding, having to do with a failure on the part of developers to collect and maintain documentation to support the income eligibility and AMI category determination for ADU purchasers.	We are pleased to learn that DHCD has taken steps that will improve the process of selling ADUs at new developments. However, we stand by our finding that recordkeeping on the part of developers, at the time of our audit, was poor at the developments we reviewed.
3	**Affordable Dwelling Units at the City Vista condominium were sold for more than the sales price approved by the District.**	DHCD recommends that we remove this finding. They disagree with "the numbers" used in Table 2 of the draft report, and quote the City Vista LDA, which allows for approved sales prices to increase by "the greater of (i) annual CPI for the proceeding 12-months or (ii) three percent (3.0%)." Without citing any analysis, DHCD concludes after quoting from the LDA that "[t]herefore, all of the stated sales prices in Table 2 are below the maximum allowable sale prices according to the LDDA." (Note: Land Disposition	The Auditor stands by this finding. In conducting our audit, we noted the provision in the LDA allowing for sales prices to increase from year to year. We were also able to obtain documentation from the developer detailing their own calculations of allowable higher sales prices starting with approved sales prices in place in 2005 when the LDA was signed and increasing by 3% a year through 2010 when the last unit was sold. We then confirmed that the CPI for the years 2005-2010 never exceeded

	Finding	Agency Comment	Auditor's Response
		and Development Agreements are sometimes abbreviated LDDA.)	3% and conducted calculations (starting with the approved sales prices contained in the LDA and adding 3% a year) ourselves in order to arrive at the maximum allowable prices shown in Table 2 of the report. Finally, we shared our results with the developer, who did not dispute our calculations. Initially, our list of units that had sold for more than the approved amount was longer, but the developer was able to inform us that some buyers had also purchased parking spaces at the same time and the additional cost of the parking space accounted for the discrepancy. However, the developer was unable to explain the remainder. This finding remains in the final report, as DHCD provided no evidence or analysis to support their assertion that the prices were allowable.
4	**Eight City Vista apartment ADU tenants were overcharged for rent.**	DHCD objects to this finding and recommends that we remove it. Using a similar approach as that taken in their comment about City Vista condo prices, DHCD argues that the LDA allows for an annual increase in rents and concludes that every unit, except for #438, was actually not overcharged.	The Auditor stands by this finding. DHCD provides no documentary evidence to support their conclusion that the rents were within the allowable range. Nor do they explain whether their calculations covered the same time period as ours. DHCD does not provide a credible explanation as to why they believe the rents were appropriate. As mentioned above in item (3), we were aware of the provisions in the City Vista LDA allowing for an increase in rent from year to year. Moreover, in the same way we calculated the maximum sales prices for ADU

	Finding	Agency Comment	Auditor's Response
			condominiums at City Vista, we were able to calculate the maximum allowable rents for the ADU apartments. (We simply followed the formula contained in the LDA – starting with the rents contained in the LDA and adding 3% each year to arrive at approved rents for 2010.) Our calculations resulted in the finding contained in the report – certain units were being overcharged. DHCD has provided no evidence to support any other conclusion.
5	**One developer did not properly consider household size when determining income eligibility.**	DHCD recommends removing this finding. They note that the LDA for one of the two properties constructed by this developer (Highland Park) was changed in December 2010 to specifically "not require adjustment by household size when determining income eligibility."	The Auditor stands by this finding. The December 2010 amendment to the LDA does, in fact, absolve the developer of having to consider household size when determining eligibility and AMI category. However, the December 2010 amendment was filed after our review of records at Highland Park and thus does not conflict with our finding. Highland Park had been renting ADUs for at least two years prior to the 2010 amendment being signed. In addition, the amendment has no bearing on Kenyon Square, the condominium building built by the same developer.
6	**Developers did not comply with filing requirements for affordable dwelling unit restrictive covenants.**	DHCD recommends that we remove this finding. They explain that the deeds identified in the draft report have been "re-recorded to correct the stated deficiencies, except one." DHCD goes on to explain that the last unit has recently been sold and that they approved the new owner and that	DHCD's response refers to actions taken after the period of our audit. It does not dispute that the conditions were as we found them when conducting our audit. While we are pleased to learn that corrective action has been taken, we stand by our finding and it will remain in the report.

	Finding	Agency Comment	Auditor's Response
		the new owner took title "subject to the prior deed, which included the resale requirements."	In their comments, DHCD also claims that an email sent from a member of ODCA's staff "adjusted" the number of ADUs at the Lofts of Columbia Heights without covenants from four to three. This email was in response to a request from DHCD for the specific units that did not have covenants on their deed. In the email in question, only three unit numbers from Lofts of Columbia Heights were provided. The fourth unit number was provided in a later communication. We stand by the finding – at the time of our audit, four ADUs at the Lofts of Columbia Heights lacked the proper covenants.
7	**The City Vista restrictive covenant is inconsistent with the City Vista land disposition agreement.**	DHCD requests that this finding be removed because "there is no inconsistency between the affordability periods due to the filing of the recorded amendment #2007018990." DHCD had explained elsewhere in their comments that this amendment to the City Vista LDA shortened the affordability period for ADUs at the City Vista condominium from 30 years to 20 years.	Based on a review of the amendment to the City Vista LDA, which reduced the affordability period from 30 years to 20 years, the finding that City Vista's covenants were inconsistent was removed.
8	**Restrictive covenants at the Tivoli could result in the District losing eight affordable dwelling units.**	The agency notes "updates to the restrictive covenants at the Tivoli are underway" and recommends that the finding be removed.	We are pleased to learn that these corrective actions are being taken. We stand by the finding detailing the conditions at the time of our audit.

Agency Comments Received February 15, 2013

We received comments from the Department of Housing and Community Development (DHCD) on the revised draft report on February 15, 2013. The comments of DHCD to the draft report are attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Office of the Director

February 15, 2013

<u>VIA FIRST CLASS MAIL</u>
Yolanda Branche
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Re: Responses to the 2nd and 3rd Draft Reports entitled "Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation"

Ms. Branche:

The Department of Housing and Community Development (DHCD) is in receipt of the above mentioned 2nd draft audit report dated January 18, 2013 and 3rd draft audit report dated January 31, 2013.

DHCD provided responses to the 1st draft audit report on December 12, 2012. In response to the 2nd and 3rd draft audit reports, DHCD is providing additional responses in Attachments 1 and 2 that clarify the facts related to the subject Affordable Dwelling Units (ADUs) as well as DHCD's monitoring and compliance activities. Further, Attachment 3 further clarifies the sale prices and rents at the City Vista development.

On June 18, 2009, DHCD was delegated authority by the Mayor pursuant to Mayor's Order 2009-112 to monitor and enforce compliance with ADU requirements. As you know, on May 25, 2010 the DC Auditor's Office began an ADU audit engagement with DHCD. During the eighteen months between the audit close out conference on March 30, 2011 and receipt of the 1st draft audit report on October 16, 2012, DHCD continued and continues to monitor and enforce compliance with ADU requirements. These activities continue to date.

The 3rd Draft audit report states that the scope of the audit is from October 2010 through January 2011. This is the first instance that this audit timeline has been provided to DHCD. This timeline does not provide our collective stakeholders with the most current and accurate understanding of the state of monitoring and compliance of ADUs, which is DHCD's perceived intent of performing the ADU audit through the Compliance Unit Establishment Act of 2008. Over the last two years, DHCD has enhanced and broadened its monitoring and compliance capabilities. As such, DHCD requests that activities preceding the publication of the final audit report be included in it. To provide otherwise limits the value of the audit report and does not provide a current and holistic representation of the activities surrounding ADUs to date.

The audit report utilized the federal HOME funding guidelines in defining household income even though ADUs are a local affordability program and are not subject to these federal funding requirements. The manner in which 'household income' is defined is based upon the requirements of the particular affordable housing program. For example, household income is defined differently in the federal Community Development Block Grant Program and the Housing Choice Voucher Program.

For the District's local affordability program requirements, the LDDAs, covenants and other affordability documents state how household income is to be defined. If the specific ADU program documents did not define household income at the time, DHCD's administration of the ADU program now clearly defines household income. DHCD objects to any findings and recommendations based upon the assumed and erroneous 'District Income Limit Standard' based upon the federal HOME funding program, since these requirements are not applicable.

DHCD also objects to the conclusions drawn in the audit report that any incomplete file reviewed by your office meant that occupants were in the incorrect ADUs. As your office notes in Recommendation #4, document retention was not historically clearly mandated. This is a concern that DHCD has worked to correct through its monitoring and compliance activities, as well as requiring third party verification of household income. DHCD requests that the audit report be revised to state only that the files are not complete, rather than also stating that the ADU occupants are in the incorrect AMI categorized units. DHCD has not reviewed the income determinations made by your office and is therefore unable to respond to these specific determinations. We are pleased that developers and Manna were interviewed as part of this audit as they were involved as their respective developments were being initially occupied. They would be able to provide the best information related to the standards that were in place regarding specific developments as these events largely preceded DHCD's monitoring and compliance activities and NCRC is no longer in existence.

Finally, DHCD's monitoring and compliance activities were in effect prior to January 2011, including the activities outlined in Recommendations 1, 2, 3, 7 and 14. As such, DHCD requests that the final audit report reflect that DHCD was conducting these activities during the audit period, which continues to date.

If you require additional information or clarification regarding this letter or the attachments herein, please contact me directly.

Sincerely,

Michael P. Kelly
Director

Attachment 1

Additional Responses to Recommendations in the Draft Audit Report of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
8	*Perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments. DHCD should then take actions as appropriate and feasible to resolve any occurrences of non-compliance.*	The Agency has evaluated the developer's compliance with the approved sales prices and has determined that the sales prices are appropriate under the terms of the LDDA.	DHCD, in their comments, indicates that they have evaluated the developer's compliance since the time of our audit. Therefore, we see no conflict between our recommendation to perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments and actions taken by DHCD.	The sales prices are based upon the terms of the LDDA. The covenants on the deeds designate the area median income (AMI) category and also are the legally binding restriction for re-sales of the ADUs. Attachment 3 provides an analysis of the sales prices on a per unit basis. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
9	*Perform a review of the City Vista apartments and all NCRC development properties to determine whether developers rented ADUs in accordance with ADU requirements, their respective land disposition agreements, and plans and take actions as appropriate to resolve any occurrences of non-compliance.*	The Agency has evaluated the developer's compliance with the approved rents and has determined that the rents are appropriate under the terms of the LDDA.	DHCD did not indicate when their review took place nor have they presented any documentary evidence to support their assertion that the rents were appropriate. In addition, they do not directly contradict or finding. We are pleased that they have conducted the review and stand by our finding.	The Agency reviews the ADU rents at City Vista annually. Through the Agency's monitoring and compliance activities, tenants received refunds in 2010 if they were overcharged rent. See Attachment 3 for an analysis of the rents in 2010. It is unclear which CPI ODCA used in its analysis. The rents were calculated using the Consumer Price Index for Urban Wage Earners and Clerical Workers, November 1996 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics, as required under the LDA and Ground Lease between the District and developer. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
10	*Perform a review of ADUs at Highland Park Apartments and the Kenyon Square Condominiums and all other NCRC projects to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The DHCD Director must take actions as appropriate to resolve and prevent future occurrences of non-compliance with the District's Income Limit Standards.*	The Agency has reviewed the ADUs at Highland Park Apartments and the Kenyon Square Condominiums to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The Agency has determined that the sale rents and sale prices, respectively, are appropriate under the terms of the corresponding ADU restrictions/covenants.	DHCD did not provide evidence to support their conclusion that sales prices and rents at Kenyon Square and Highland Park were appropriate. Nor does DHCD provide evidence to directly contradict our finding, which took place prior to their review. We are pleased that they have conducted the review. We stand by our finding.	ODCA's finding is based upon rents and sale prices that are adjusted by household size, which are not required by the Affordable Housing Covenant for Highland Park or the LDA and deed covenants for Kenyon Square. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
12	*In consultation with DHCD's legal advisor, develop and file restrictive covenants for the five ADUs identified in this finding whose restrictive covenants were not filed or filed without provisions for AMI category as provided in the corresponding LDAs.*	Agency disagrees with the analysis that the ADU affordability is at risk, because the ADU is also subject to ADU restrictions/covenants, which define the affordability. Further, the Agency will provide the resale price, so the affordability will be determined at that time, in these limited circumstances.	The LDA itself required developers to file restrictive covenants on each ADU sold. Our finding identified five instances where ADUs lacked the required covenant. DHCD's response does not dispute the fact that these ADUs lacked the required covenant. Instead, DHCD makes an argument that the affordability of the ADU is not at risk because it is "subject to ADU restrictions/covenants." It is not clear to which "restrictions/covenants" DHCD is referring. Assuming the agency is referring to the ADU restrictions enumerated in the LDAs signed by the developers, we note that these restrictions are irrelevant. Since the condominium units have been sold, the individual owners cannot be held accountable for the agreements between the developer and the District. It is for this reason that the covenants placed on each unit are so important – they are the only way to ensure that the ADUs remain affordable throughout any subsequent re-sales. Finally, we are concerned that DHCD asserts that since it will provide the resale price for any future re-sales of ADUs at these properties, then "the affordability will be determined at that time."	The ADUs at Solea and Kenyon Square currently have restrictive covenants with AMI categories. The AMI%'s in 'Exhibit B - Resale Obligations' in the ADU deeds at the Lofts at Columbia Heights were not uniformly completed. These ADU deeds also state that "[t]his conveyance is made expressly subject to … that certain [LDDA] dated October 15, 2003." The unit is therefore expressly called out as an ADU in the deed. The LDDA also expressly states that the ADU restrictions run with the land. The Agency will work with the owners of these ADUs to re-record the deeds to include the AMI categories in FY13. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
15	In consultation with DHCD's legal advisor and with the Deputy Mayor for Planning and Economic Development, develop and file with the Recorder of Deeds documentation necessary to ensure the Tivoli ADUs survive for the remaining ADU affordability period.	Updates to the restrictive covenants at the Tivoli will be completed in FY13.	We are pleased that DHCD is taking steps to address this issue.	Updates to the restrictive covenants at the Tivoli have been completed. The Agency requests the removal of this recommendation of the final audit report.

Attachment 2

Additional Responses to Findings in the Draft Audit Report of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation

	ODCA Finding 10/16/12	DHCD Comments 12/12/12	ODCA Response 1/18/13	DHCD Response
1	*ODMPED and DHCD did not conduct compliance and monitoring activities to determine whether NCRC property developers complied with affordable dwelling unit requirements.*	The Agency has a compliance and monitoring regime that includes a standardized ADU Covenant that has enhanced the District's monitoring and enforcement responsibilities for projects that have yet to be conveyed to third parties. The Agency also has contracts with community based organizations to conduct household income verification reviews for current and future ADU resales. Due to the agencies current activities and implementation of the standardized ADU Covenant, the Agency recommends removing this finding.	DHCD does not dispute our finding that, at the time of our audit, they had not conducted complete compliance monitoring. We stand by our finding and it remains in the final report.	ODCA has not provided the Agency with an audit time period. The Agency started its monitoring and compliance activities prior to and during the audit. The Agency recommends that the audit time period reflect to-date actions taken by the Agency. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Finding 10/16/12	DHCD Comments 12/12/12	ODCA Response 1/18/13	DHCD Response
3	*Affordable Dwelling Units at City Vista Condominiums were sold for more than the sale price approved by the District*	The Agency has reviewed the deeds for the sales of ADUs at City Vista. The District disagrees with the numbers used in Table 2 in the draft report. The LDDA for City Vista states that "[o]n the first year anniversary of LDA Closing and annually thereafter, initial sales prices may increase by no more than the greater of (i) annual CPI for the proceeding 12- months or (ii) three percent (3.0%)." Therefore, all of the stated sale prices in Table 2 are below the maximum allowable sale prices according to the LDDA. The Agency recommends removing this finding from the final report.	The Auditor stands by this finding. In conducting our audit, we noted the provision in the LDA allowing for sales prices to increase from year to year. We were also able to obtain documentation from the developer detailing their own calculations of allowable higher sales prices in place in 2005 when the LDA was signed and increasing by 3% a year through 2010 when the last unit was sold. We then confirmed that the CPI for the years 2005-2010 never exceeded 3% and conducted calculations (starting with the approved sales prices contained in the LDA and adding 3% a year) ourselves in order to arrive at the maximum allowable prices shown in Table 2 of the report. Finally, we shared our results with the developer, who did not dispute our calculations. Initially, our list of units that had sold for more than the approved amount was longer, but the developer was able to inform us that some buyers had also purchased parking spaces at the same time and the additional cost of the parking space accounted for the discrepancy. However, the developer was unable to explain the remainder. This finding remains in the final report, as DHCD provided no evidence or analysis to support their assertion that the prices were allowable.	See response to Recommendation 8.

	ODCA Finding 10/16/12	DHCD Comments 12/12/12	ODCA Response 1/18/13	DHCD Response
4	*Eight City Vista Apartment ADU tenants were overcharged for rent*	The Agency has reviewed the rents in the ADUs at City Vista. The District disagrees with the numbers used in Table 3 in the draft report. The LDDA for City Vista states that "[o]n the first year anniversary of LDA Closing and annually thereafter, initial sales prices may increase by no more than the greater of (i) annual CPI for the proceeding 12- months or (ii) three percent (3.0%)." Therefore, the stated rents in Table 3 are below the maximum allowable sale prices according to the LDDA, except for #438, which received a rent refund. The monthly rent was also corrected for this unit. Therefore, the Agency recommends removing this finding.	The Auditor stands by this finding. DHCD provides no documentary evidence to support their conclusion that the rents were within the allowable range. Nor do they explain whether their calculations covered the same time period as ours. In short, DHCD does not provide a credible explanation as to why they believe the rents were appropriate. As mentioned in item (3), we were aware of the provisions in the City Vista LDA allowing for an increase in rent from year to year. Moreover, in the same way we calculated the maximum sales prices for ADU condominiums at City Vista, we were able to calculate the maximum rents for the ADU apartments. (We simply followed the formula contained in the LDA – starting with the rents contained in the LDA and adding 3% each year to arrive at the approved rents in 2010.) Our calculations resulted in the finding contained in the report – certain units were being overcharged. DHCD has provided no evidence to support any other conclusion.	See response to Recommendation 9.

Attachment 3
Analysis of City Vista Condominium Sales Prices and Rents

City Vista Approved Sale Prices and Actual Sale Prices Comparison						
Unit Type	AMI per Deed	2005 LDA Sale Price	Sale Date	Updated to Sales date	Actual Sale Price	Difference
2BR	80%	$ 201,661	1/30/2009	$ 220,360	$ 210,131	$ (10,229)
2BR	80%	$ 201,661	11/26/2008	$ 220,360	$ 210,131	$ (10,229)
1BR	80%	$ 185,114	5/22/2009	$ 202,279	$ 192,889	$ (9,390)
2BR	80%	$ 201,661	10/28/2009	$ 226,971	$ 210,131	$ (16,840)
1BR	80%	$ 185,114	8/7/2009	$ 208,347	$ 192,889	$ (15,458)
2BR	80%	$ 201,661	2/13/2009	$ 220,360	$ 210,131	$ (10,229)
1BR	80%	$ 185,114	12/30/2009	$ 208,347	$ 198,675	$ (9,672)
1BR	80%	$ 185,114	12/29/2009	$ 208,347	$ 183,889	$ (24,458)
1BR	80%	$ 185,114	8/27/2009	$ 208,347	$ 183,889	$ (24,458)
1BR	50%	$ 133,508	12/22/2009	$ 150,888	$ 165,171	$ 14,283*
2BR	80%	$ 201,661	3/3/2008	$ 213,942	$ 201,661	$ (12,281)

*Unit was sold with parking

City Vista Approved Rents and Actual Rents Comparison				
Unit Type	AMI	2010 Rents per LDDA	Table 4 Rent Charged*	Overcharge (Undercharge)
2br/2ba	80%	$1,575	$1,541	($34)
Studio	80%	$1,192	$1,058	($134)
1Br/1BA	80%	$1,400	$1,348	($52)
1Br/1BA	50%	$1,078	$1,086	$8^
1Br/1BA	50%	$1,078	$1,054	($24)
Studio	80%	$1,192	$1,184	($8)
1Br/1BA	80%	$1,400	$1,220	($180)
Studio	80%	$1,192	$1,184	($8)

*Assuming ODCA utilized 2010 rents
^ Rent refunded provided to tenant

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Office of the Director

February 15, 2013

<u>VIA FIRST CLASS MAIL</u>
Yolanda Branche
District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Re: Responses to the 2nd and 3rd Draft Reports entitled "Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation"

Ms. Branche:

The Department of Housing and Community Development (DHCD) is in receipt of the above mentioned 2nd draft audit report dated January 18, 2013 and 3rd draft audit report dated January 31, 2013.

DHCD provided responses to the 1st draft audit report on December 12, 2012. In response to the 2nd and 3rd draft audit reports, DHCD is providing additional responses in Attachments 1 and 2 that clarify the facts related to the subject Affordable Dwelling Units (ADUs) as well as DHCD's monitoring and compliance activities. Further, Attachment 3 further clarifies the sale prices and rents at the City Vista development.

On June 18, 2009, DHCD was delegated authority by the Mayor pursuant to Mayor's Order 2009-112 to monitor and enforce compliance with ADU requirements. As you know, on May 25, 2010 the DC Auditor's Office began an ADU audit engagement with DHCD. During the eighteen months between the audit close out conference on March 30, 2011 and receipt of the 1st draft audit report on October 16, 2012, DHCD continued and continues to monitor and enforce compliance with ADU requirements. These activities continue to date.

The 3rd Draft audit report states that the scope of the audit is from October 2010 through January 2011. This is the first instance that this audit timeline has been provided to DHCD. This timeline does not provide our collective stakeholders with the most current and accurate understanding of the state of monitoring and compliance of ADUs, which is DHCD's perceived intent of performing the ADU audit through the Compliance Unit Establishment Act of 2008. Over the last two years, DHCD has enhanced and broadened its monitoring and compliance capabilities. As such, DHCD requests that activities preceding the publication of the final audit report be included in it. To provide otherwise limits the value of the audit report and does not provide a current and holistic representation of the activities surrounding ADUs to date.

The audit report utilized the federal HOME funding guidelines in defining household income even though ADUs are a local affordability program and are not subject to these federal funding requirements. The manner in which 'household income' is defined is based upon the requirements of the particular affordable housing program. For example, household income is defined differently in the federal Community Development Block Grant Program and the Housing Choice Voucher Program.

For the District's local affordability program requirements, the LDDAs, covenants and other affordability documents state how household income is to be defined. If the specific ADU program documents did not define household income at the time, DHCD's administration of the ADU program now clearly defines household income. DHCD objects to any findings and recommendations based upon the assumed and erroneous 'District Income Limit Standard' based upon the federal HOME funding program, since these requirements are not applicable.

DHCD also objects to the conclusions drawn in the audit report that any incomplete file reviewed by your office meant that occupants were in the incorrect ADUs. As your office notes in Recommendation #4, document retention was not historically clearly mandated. This is a concern that DHCD has worked to correct through its monitoring and compliance activities, as well as requiring third party verification of household income. DHCD requests that the audit report be revised to state only that the files are not complete, rather than also stating that the ADU occupants are in the incorrect AMI categorized units. DHCD has not reviewed the income determinations made by your office and is therefore unable to respond to these specific determinations. We are pleased that developers and Manna were interviewed as part of this audit as they were involved as their respective developments were being initially occupied. They would be able to provide the best information related to the standards that were in place regarding specific developments as these events largely preceded DHCD's monitoring and compliance activities and NCRC is no longer in existence.

Finally, DHCD's monitoring and compliance activities were in effect prior to January 2011, including the activities outlined in Recommendations 1, 2, 3, 7 and 14. As such, DHCD requests that the final audit report reflect that DHCD was conducting these activities during the audit period, which continues to date.

If you require additional information or clarification regarding this letter or the attachments herein, please contact me directly.

Sincerely,

Michael P. Kelly
Director

Attachment 1

Additional Responses to Recommendations in the Draft Audit Report of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
8	*Perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments. DHCD should then take actions as appropriate and feasible to resolve any occurrences of non-compliance.*	The Agency has evaluated the developer's compliance with the approved sales prices and has determined that the sales prices are appropriate under the terms of the LDDA.	DHCD, in their comments, indicates that they have evaluated the developer's compliance since the time of our audit. Therefore, we see no conflict between our recommendation to perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments and actions taken by DHCD.	The sales prices are based upon the terms of the LDDA. The covenants on the deeds designate the area median income (AMI) category and also are the legally binding restriction for re-sales of the ADUs. Attachment 3 provides an analysis of the sales prices on a per unit basis. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
9	*Perform a review of the City Vista apartments and all NCRC development properties to determine whether developers rented ADUs in accordance with ADU requirements, their respective land disposition agreements, and plans and take actions as appropriate to resolve any occurrences of non-compliance.*	The Agency has evaluated the developer's compliance with the approved rents and has determined that the rents are appropriate under the terms of the LDDA.	DHCD did not indicate when their review took place nor have they presented any documentary evidence to support their assertion that the rents were appropriate. In addition, they do not directly contradict or finding. We are pleased that they have conducted the review and stand by our finding.	The Agency reviews the ADU rents at City Vista annually. Through the Agency's monitoring and compliance activities, tenants received refunds in 2010 if they were overcharged rent. See Attachment 3 for an analysis of the rents in 2010. It is unclear which CPI ODCA used in its analysis. The rents were calculated using the Consumer Price Index for Urban Wage Earners and Clerical Workers, November 1996 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics, as required under the LDA and Ground Lease between the District and developer. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
10	*Perform a review of ADUs at Highland Park Apartments and the Kenyon Square Condominiums and all other NCRC projects to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The DHCD Director must take actions as appropriate to resolve and prevent future occurrences of non-compliance with the District's Income Limit Standards.*	The Agency has reviewed the ADUs at Highland Park Apartments and the Kenyon Square Condominiums to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The Agency has determined that the sale rents and sale prices, respectively, are appropriate under the terms of the corresponding ADU restrictions/covenants.	DHCD did not provide evidence to support their conclusion that sales prices and rents at Kenyon Square and Highland Park were appropriate. Nor does DHCD provide evidence to directly contradict our finding, which took place prior to their review. We are pleased that they have conducted the review. We stand by our finding.	ODCA's finding is based upon rents and sale prices that are adjusted by household size, which are not required by the Affordable Housing Covenant for Highland Park or the LDA and deed covenants for Kenyon Square. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
12	*In consultation with DHCD's legal advisor, develop and file restrictive covenants for the five ADUs identified in this finding whose restrictive covenants were not filed or filed without provisions for AMI category as provided in the corresponding LDAs.*	Agency disagrees with the analysis that the ADU affordability is at risk, because the ADU is also subject to ADU restrictions/covenants, which define the affordability. Further, the Agency will provide the resale price, so the affordability will be determined at that time, in these limited circumstances.	The LDA itself required developers to file restrictive covenants on each ADU sold. Our finding identified five instances where ADUs lacked the required covenant. DHCD's response does not dispute the fact that these ADUs lacked the required covenant. Instead, DHCD makes an argument that the affordability of the ADU is not at risk because it is "subject to ADU restrictions/covenants." It is not clear to which "restrictions/covenants" DHCD is referring. Assuming the agency is referring to the ADU restrictions enumerated in the LDAs signed by the developers, we note that these restrictions are irrelevant. Since the condominium units have been sold, the individual owners cannot be held accountable for the agreements between the developer and the District. It is for this reason that the covenants placed on each unit are so important – they are the only way to ensure that the ADUs remain affordable throughout any subsequent re-sales. Finally, we are concerned that DHCD asserts that since it will provide the resale price for any future re-sales of ADUs at these properties, then "the affordability will be determined at that time."	The ADUs at Solea and Kenyon Square currently have restrictive covenants with AMI categories. The AMI%'s in 'Exhibit B - Resale Obligations' in the ADU deeds at the Lofts at Columbia Heights were not uniformly completed. These ADU deeds also state that "[t]his conveyance is made expressly subject to … that certain [LDDA] dated October 15, 2003." The unit is therefore expressly called out as an ADU in the deed. The LDDA also expressly states that the ADU restrictions run with the land. The Agency will work with the owners of these ADUs to re-record the deeds to include the AMI categories in FY13. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Recommendation 10/16/12	DHCD Comment 12/12/12	ODCA Response 1/18/13	DHCD Response
15	In consultation with DHCD's legal advisor and with the Deputy Mayor for Planning and Economic Development, develop and file with the Recorder of Deeds documentation necessary to ensure the Tivoli ADUs survive for the remaining ADU affordability period.	Updates to the restrictive covenants at the Tivoli will be completed in FY13.	We are pleased that DHCD is taking steps to address this issue.	Updates to the restrictive covenants at the Tivoli have been completed. The Agency requests the removal of this recommendation of the final audit report.

Attachment 2

Additional Responses to Findings in the Draft Audit Report of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation

	ODCA Finding 10/16/12	DHCD Comments 12/12/12	ODCA Response 1/18/13	DHCD Response
1	*ODMPED and DHCD did not conduct compliance and monitoring activities to determine whether NCRC property developers complied with affordable dwelling unit requirements.*	The Agency has a compliance and monitoring regime that includes a standardized ADU Covenant that has enhanced the District's monitoring and enforcement responsibilities for projects that have yet to be conveyed to third parties. The Agency also has contracts with community based organizations to conduct household income verification reviews for current and future ADU resales. Due to the agencies current activities and implementation of the standardized ADU Covenant, the Agency recommends removing this finding.	DHCD does not dispute our finding that, at the time of our audit, they had not conducted complete compliance monitoring. We stand by our finding and it remains in the final report.	ODCA has not provided the Agency with an audit time period. The Agency started its monitoring and compliance activities prior to and during the audit. The Agency recommends that the audit time period reflect to-date actions taken by the Agency. The Agency requests the removal of this recommendation of the final audit report.

	ODCA Finding 10/16/12	DHCD Comments 12/12/12	ODCA Response 1/18/13	DHCD Response
3	*Affordable Dwelling Units at City Vista Condominiums were sold for more than the sale price approved by the District*	The Agency has reviewed the deeds for the sales of ADUs at City Vista. The District disagrees with the numbers used in Table 2 in the draft report. The LDDA for City Vista states that "[o]n the first year anniversary of LDA Closing and annually thereafter, initial sales prices may increase by no more than the greater of (i) annual CPI for the proceeding 12- months or (ii) three percent (3.0%)." Therefore, all of the stated sale prices in Table 2 are below the maximum allowable sale prices according to the LDDA. The Agency recommends removing this finding from the final report.	The Auditor stands by this finding. In conducting our audit, we noted the provision in the LDA allowing for sales prices to increase from year to year. We were also able to obtain documentation from the developer detailing their own calculations of allowable higher sales prices in place in 2005 when the LDA was signed and increasing by 3% a year through 2010 when the last unit was sold. We then confirmed that the CPI for the years 2005-2010 never exceeded 3% and conducted calculations (starting with the approved sales prices contained in the LDA and adding 3% a year) ourselves in order to arrive at the maximum allowable prices shown in Table 2 of the report. Finally, we shared our results with the developer, who did not dispute our calculations. Initially, our list of units that had sold for more than the approved amount was longer, but the developer was able to inform us that some buyers had also purchased parking spaces at the same time and the additional cost of the parking space accounted for the discrepancy. However, the developer was unable to explain the remainder. This finding remains in the final report, as DHCD provided no evidence or analysis to support their assertion that the prices were allowable.	See response to Recommendation 8.

	ODCA Finding 10/16/12	DHCD Comments 12/12/12	ODCA Response 1/18/13	DHCD Response
4	*Eight City Vista Apartment ADU tenants were overcharged for rent*	The Agency has reviewed the rents in the ADUs at City Vista. The District disagrees with the numbers used in Table 3 in the draft report. The LDDA for City Vista states that "[o]n the first year anniversary of LDA Closing and annually thereafter, initial sales prices may increase by no more than the greater of (i) annual CPI for the proceeding 12- months or (ii) three percent (3.0%)." Therefore, the stated rents in Table 3 are below the maximum allowable sale prices according to the LDDA, except for #438, which received a rent refund. The monthly rent was also corrected for this unit. Therefore, the Agency recommends removing this finding.	The Auditor stands by this finding. DHCD provides no documentary evidence to support their conclusion that the rents were within the allowable range. Nor do they explain whether their calculations covered the same time period as ours. In short, DHCD does not provide a credible explanation as to why they believe the rents were appropriate. As mentioned in item (3), we were aware of the provisions in the City Vista LDA allowing for an increase in rent from year to year. Moreover, in the same way we calculated the maximum sales prices for ADU condominiums at City Vista, we were able to calculate the maximum rents for the ADU apartments. (We simply followed the formula contained in the LDA – starting with the rents contained in the LDA and adding 3% each year to arrive at the approved rents in 2010.) Our calculations resulted in the finding contained in the report – certain units were being overcharged. DHCD has provided no evidence to support any other conclusion.	See response to Recommendation 9.

Attachment 3
Analysis of City Vista Condominium Sales Prices and Rents

City Vista Approved Sale Prices and Actual Sale Prices Comparison						
Unit Type	AMI per Deed	2005 LDA Sale Price	Sale Date	Updated to Sales date	Actual Sale Price	Difference
2BR	80%	$ 201,661	1/30/2009	$ 220,360	$ 210,131	$ (10,229)
2BR	80%	$ 201,661	11/26/2008	$ 220,360	$ 210,131	$ (10,229)
1BR	80%	$ 185,114	5/22/2009	$ 202,279	$ 192,889	$ (9,390)
2BR	80%	$ 201,661	10/28/2009	$ 226,971	$ 210,131	$ (16,840)
1BR	80%	$ 185,114	8/7/2009	$ 208,347	$ 192,889	$ (15,458)
2BR	80%	$ 201,661	2/13/2009	$ 220,360	$ 210,131	$ (10,229)
1BR	80%	$ 185,114	12/30/2009	$ 208,347	$ 198,675	$ (9,672)
1BR	80%	$ 185,114	12/29/2009	$ 208,347	$ 183,889	$ (24,458)
1BR	80%	$ 185,114	8/27/2009	$ 208,347	$ 183,889	$ (24,458)
1BR	50%	$ 133,508	12/22/2009	$ 150,888	$ 165,171	$ 14,283*
2BR	80%	$ 201,661	3/3/2008	$ 213,942	$ 201,661	$ (12,281)

*Unit was sold with parking

City Vista Approved Rents and Actual Rents Comparison				
Unit Type	AMI	2010 Rents per LDDA	Table 4 Rent Charged*	Overcharge (Undercharge)
2br/2ba	80%	$1,575	$1,541	($34)
Studio	80%	$1,192	$1,058	($134)
1Br/1BA	80%	$1,400	$1,348	($52)
1Br/1BA	50%	$1,078	$1,086	$8^
1Br/1BA	50%	$1,078	$1,054	($24)
Studio	80%	$1,192	$1,184	($8)
1Br/1BA	80%	$1,400	$1,220	($180)
Studio	80%	$1,192	$1,184	($8)

*Assuming ODCA utilized 2010 rents
^ Rent refunded provided to tenant

Auditor's Response to February 15, 2013 Comments

On February 15, 2013, the Department of Housing and Community Development (DHCD) provided responses to the revised draft report. Their responses were in the form of a letter to the Auditor from Michael Kelly, the Director of DHCD, and three attachments to that letter. We respond here to the comments made in the letter. Responses to the attachments appear below.

DHCD asserts that the mention in the revised draft report that our audit was conducted from October 2010 to January 2011 is "the first instance that this audit timeline has been provided to DHCD." As Director Kelly notes in his letter, we first notified DHCD of the audit in an engagement letter dated May 25, 2010. We met with DHCD officials shortly thereafter and then proceeded with what is known as the "survey" phase of our audit. During the survey phase, we gain basic knowledge about the programs and procedures that will be the focus of the audit. In October 2010, after the survey phase was complete, we began the "fieldwork" phase of the audit. It is during the fieldwork phase that we actually conduct our testing and other work upon which we base our findings and conclusions. The fieldwork phase is sometimes referred to as "conducting the audit." Fieldwork continued through January 2011.

DHCD asserts that "this timeline does not provide our collective stakeholders with the most current and accurate understanding of the state of monitoring and compliance of ADUs." It is important to note that an audit is, by necessity, a snapshot of conditions at a certain point in time. Our audit fairly reflects conditions that were in place at the time we conducted our fieldwork. We believe that there is value in understanding what happened with these particular projects. The District continues to work with developers to provide public benefits in exchange for public assistance. The intent of the audits we have conducted under the Compliance Unit Establishment Act of 2008 is to examine how District agencies worked to ensure that developers lived up to their promises. By examining past District efforts in this area, we can hopefully identify areas of weakness that can be improved.

Regarding the federal "HOME funding guidelines," DHCD claims that in the audit the guidelines are used to "defin[e] household income." In our finding we acknowledge that the developers did not receive federal funding so therefore were not legally bound to follow the federal HOME regulations. However, the income verification processes described by the federal regulations are widely used in affordable housing programs. The fact that most of the developers followed most of the procedures described by these regulations underscores their widespread acceptance and use. We have changed the language in the report in order to clarify this point.

DHCD goes on to object "to the conclusions drawn in the audit report that any incomplete file reviewed by your office meant that occupants were in the incorrect ADUs." This is not what our conclusion states. Instead, we note that many files were incomplete. This made it nearly impossible for us to complete a compliance review in order to confirm that applicants had been properly qualified to purchase or lease ADUs. We recommended that DHCD provide clear, detailed instructions to developers to ensure that records are complete and accurate.

Auditor's Response to the February 15, 2013 Comments of DHCD

We appreciate the comments from the Department of Housing and Community Development (DHCD) on the revised draft report entitled "Audit of the Affordable Housing Mandates for Development Projects Formerly Managed by the Dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation." DHCD's comments were received by the Auditor on February 15, 2013. Where appropriate, we revised the final report to address the comments of DHCD.

DHCD's comments were sent in the form of a letter with three attachments. The comments made in the letter have been addressed on the previous page. The Auditor's responses to the comments contained in Attachments 1 & 2 are provided here. Note that in this set of comments, DHCD did not provide a comment on every recommendation or finding made in the draft report. So, for example, in Table 1, the first comment is made in response to our Recommendation #8.

Figure 1 **Auditor's Response to Agency Comments on the Recommendations Appearing in the Report**

	ODCA Recommendation	DHCD Comment Dated February 15, 2013 (edited for space)	Auditor's Response
8	**Perform a follow-up review at City Vista condominiums and all NCRC development properties to determine whether developers sold ADUs in accordance with the District approved sales prices for the respective developments. DHCD should then take actions as appropriate and feasible to resolve any occurrences of non-compliance.**	"The sales prices are based upon the terms of the LDDA." "Attachment 3 provides an analysis of the sales prices on a per unit basis."	Based on comments and additional information from DHCD, the recommendation was removed from the report.
9	**Perform a review of the City Vista apartments and all NCRC development properties to determine whether developers rented ADUs in accordance with**	"See Attachment 3 for an analysis of the rents in 2010. […]The rents were calculated using the Consumer Price Index for Urban Wage Earners and	Based on comments and additional information from DHCD, the recommendation was removed from the report.

	ODCA Recommendation	DHCD Comment Dated February 15, 2013 (edited for space)	Auditor's Response
	ADU requirements, the land disposition and development agreements, and approved plans and take actions as appropriate to resolve any occurrences of non-compliance.	Clerical Workers, November 1996 Base Period, All Items, Washington-Baltimore, DC-MD-VA-WV published by the United States Department of Labor, Bureau of Labor Statistics, as required under the LDA and Ground Lease between the District and developer.	
10	**Perform a review of ADUs at Highland Park Apartments and the Kenyon Square Condominium and all other NCRC projects to determine whether developers used the appropriate methodology to determine income eligibility and AMI category placements. The DHCD Director must take actions as appropriate to resolve and prevent future occurrences of non-compliance with the District's Income Limit Standards.**	"ODCA's finding is based upon rents and sales prices that are adjusted by household size, which are not required by the Affordable Housing Covenant for Highland Park or the LDA and deed covenants for Kenyon Square."	DHCD starts their comment by mischaracterizing our finding. They say that it "is based upon rents and sales prices that are adjusted by household size." Our finding is that the developer did not take household size into account when qualifying either purchasers of ADUs at Kenyon Square or renters of ADUs at Highland Park. The rents or sales prices have nothing to do with our finding, except to the extent that not taking household size into account resulted in certain households being placed into the wrong AMI category, which, in turn, was used to determine the price charged. In reference to DHCD's mentioning that household size is not to be considered at Kenyon Square, we note that the amendment to the LDA that added this

	ODCA Recommendation	DHCD Comment Dated February 15, 2013 (edited for space)	Auditor's Response
			language was signed after we had conducted our fieldwork and well after the last ADU had been sold at Kenyon Square. As a result, the amendment had no bearing on the accuracy of our finding. Similarly, while ADUs at Highland Park may now be rented without taking household size into account, this only took effect after the period of our examination. We have changed the language of our finding to more clearly indicate that it is not our assertion that developers were required by law or by the LDA to follow industry standard income qualification procedures taking household size into account. Instead, we note that their failure to do so resulted in fewer households obtaining affordable housing.
12	**In consultation with DHCD's legal advisor, develop and file restrictive covenants for the five ADUs identified in this finding whose restrictive covenants were not filed or filed without provisions for AMI category as provided in the corresponding LDAs.**	"The AMI%'s (sic) in 'Exhibit B – Resale Obligations' in the ADU deeds at the Lofts of Columbia Heights were not uniformly completed. These ADU deeds also state that "[t]his conveyance is made expressly subject to …that certain [LDDA] dated October 15, 2003." The unit is therefore expressly called	DHCD's comment suggests a misunderstanding of our finding. The finding simply notes that, at the time of our review, certain ADUs lacked restrictive covenants and that other ADUs lacked complete restrictive covenants. With regards to the Lofts of Columbia Heights, we are

	ODCA Recommendation	DHCD Comment Dated February 15, 2013 (edited for space)	Auditor's Response
		out as an ADU in the deed. The LDDA also expressly states that the ADU restrictions run with the land. The Agency will work with the owners of these ADUs to re-record the deeds to include the AMI categories in FY13."	not asserting that these ADUs without complete covenants are in danger of losing their ADU status. Instead, we note that these ADUs could potentially be resold at a higher AMI category in the future, which would be contrary to the LDA. DHCD's quoting from the Lofts of Columbia Heights covenants does not contradict our finding that these covenants were not completely filled out. We are pleased to note the efforts made by the developers and DHCD as a result of our audit to ensure that complete restrictive covenants are on file for each ADU sold. We stand by our finding.
15	**In consultation with DHCD's legal advisor and with the Deputy Mayor for Planning and Economic Development, develop and file with the Recorder of Deeds the documentation necessary to ensure that the Tivoli ADUs survive for the remaining ADU affordability period.**	DHCD notes that updates have been made to the restrictive covenants filed with the deeds for ADUs sold at Tivoli Square.	We are pleased that DHCD has taken steps to address this issue.

Figure 2 — Auditor's Response to Agency Comments on the Findings Appearing in the Report

	Finding	DHCD Comment Dated February 15, 2013	Auditor's Response
1	**DMPED and DHCD did not conduct compliance and monitoring activities to determine whether NCRC property developers complied with affordable dwelling unit requirements.**	"The agency started its monitoring and compliance activities prior to and during the audit. The Agency recommends that the audit time period reflect to-date actions taken by the Agency."	While DHCD is currently conducting regular compliance and monitoring activities, at the time of our audit DHCD had not begun any significant oversight activities of ADUs at the properties that were the focus of this audit. DHCD has not provided any documentary evidence to contradict this finding. We stand by our finding.
3	**Affordable Dwelling Units at the City Vista condominium were sold for more than the sales price approved by the District.**	DHCD references their comment made in reference to Recommendation #8.	Based on comments and additional information from DHCD, the recommendation was removed from the report.
4	**Eight City Vista apartment ADU tenants were overcharged for rent.**	DHCD references their comment made in reference to Recommendation #9.	Based on comments and additional information from DHCD, the recommendation was removed from the report.