IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PACIFIC PALISADES BOWL MOBILE ESTATES, LLC,

Plaintiff and Respondent,

v.

CITY OF LOS ANGELES,

Defendant and Appellant.

Case no. S187243

Second Appellate District
Case no. B216515

Los Angeles County Superior
Court case no. BS112956

Honorable James C. Chalfant,
Judge of the Superior Court

OPENING BRIEF ON THE MERITS

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QUESTIONS PRESENTED

Plaintiff and respondent, Pacific Palisades Bowl Mobile Estates, LLC ("Palisades"), respectfully submits this opening brief on the merits. Its petition for review stated the following questions:

1.

Did the Legislature intend to subject a much-litigated type of mobilehome park subdivision to the exclusive control of Government Code § 66427.5, as held in *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270 (*review denied*) and other published opinions; or, as held below, did the Legislature intend to permit deviations from § 66427.5 whenever a local agency can cite some other state statute as *sub silentio* authority for the deviation?

2.

Did the Court of Appeal correctly hold that the California Coastal Act of 1976 (Pub. Resources Code § 30000 *et seq.*) and the Mello Act (Gov.Code § 65590 *et seq.*) even *apply* to the type of subdivision covered by § 66427.5 — which changes nothing but the legal structure of an existing park to permit resident ownership of existing spaces — when by definition this does not "change . . . the density or intensity of use of land" (Coastal Act § 30106) and does not displace low-income residents within the meaning of the Mello Act?

PRELIMINARY STATEMENT

Mobilehome parks are an important source of affordable housing for many thousands of Californians. In 1984, the Legislature found that many parks "provide low-cost housing for their residents that would be difficult to replace if the parks were converted to other uses. . . ." (Health & Saf. Code § 50780(a)(1)) But the Legislature also found a significant risk of losing parks to other uses due to their aging infrastructure and increasing costs. (*Id.*) And the State would thereby lose another value of these parks. The Legislature found that they can "provide a significant source of homeownership for California residents. . . ." (*Id.*)

In 1984, accordingly, the Legislature adopted a strategy for conserving mobilehome parks as a unique affordable-housing resource. It adopted a policy "to encourage and facilitate the conversion of mobilehome parks to resident ownership" (*id.*, subd.(b)), or "ownership by qualified nonprofit housing sponsors or by local public entities. . . ." (*Id.*)

Government Code § 66427.5 requires a formal subdivision map to convert a park to resident ownership. And there is no dispute that this statute sets forth primary statewide rules for approving such a map.

The question presented here is whether any *other* rules apply if a park lies within the coastal zone — more particularly, when the map changes nothing except the formal title structure of the park.

On it face, § 66427.5 answers that question "no." Its plain intent is to streamline the approval process in *all* cases when a map is required. (The full text is attached as Appendix A to this brief.)

To begin with, the statute sets forth three requirements for the map applicant, requirements explained as means to "avoid the economic displacement of all nonpurchasing residents. . . ." (*Id.*) The applicant must (1) file a tenant impact report and a resident survey, (2) make the tenant impact report available to residents at least 15 days before the required hearing, and (3) offer all residents the right to purchase their space. (*Id.*, subds. (a)-(d))

After stating those requirements, § 66427.5 specifies that the hearing must be before the legislative or advisory body that reviews subdivision maps in general. (*Id.*, subd. (e)) But then the Legislature made its streamlining intent apparent, and emphatic. It provided that

"the scope of the hearing shall be limited to the issue of compliance with this section." (*Id.*)[1]

Nonetheless, when Palisades sought approval of this type of map from defendant and respondent City of Los Angeles ("the city"), the city imposed conditions well beyond those set forth in § 66427.5. As relevant here, it refused even to consider the map unless Palisades expanded its application to request city review and approval under the Coastal Act and Mello Act.

The city exceeded its authority for two reasons. First, the text and history of § 66427.5 demonstrate that the Legislature intended this statute *alone* to govern map approvals of this kind. Indeed, the demonstrable purpose of the 1995 amendments to § 66427.5, which the hearing provision, was to avoid the very situation that occurred below: a local government erecting a "virtual roadblock" to this type of conversion. (*Post*, p. 21) As well illustrated here, it would strengthen and multiply such roadblocks if localities could pile on conditions purportedly justified by other laws.

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[1] The statute also looks beyond the map approval process, and further protects non-purchasing residents by limiting rents according to the residents' income. (§ 66427.5, subd. (f))

Second, the Coastal Act and Mello Act themselves were not intended to apply. The Coastal Act, for example, applies only to a "development" in the coastal zone as defined in Pub. Res. Code § 30106. (The full text is attached as Appendix B.) And the clause in the definition that mentions a "subdivision" cannot reasonably be read to apply to the special type of subdivision at issue here.[2] Its plain meaning, consistent with settled rules of construction, is that a subdivision is covered only if it entails a "change in the density or intensity of use" of the land. And here, undisputedly, there is no such change. (*Post*, pp. 6-8)

Nor does the Mello Act apply. (The text is attached as Appendix C.) First, it expressly preserves limitations on local power of the kind imposed by § 66427.5. Second, the Legislature adopted § 66427.5 in its present form long after the Mello Act. Accordingly, because the Mello Act *can* be given a narrowing construction to avoid its implied repeal by § 66427.5, it *must* be given that construction, leaving its operation intact in other ways.

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[2] This clause reads, in pertinent part: "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits. . . ."

For all the reasons set forth in this brief, the Court should reverse the appellate judgment below and remand with directions to the city to process Palisades's application only in accordance with § 66427.5. That is, it must conduct a prompt hearing "limited to the issue of compliance with this section." (Govt. Code § 66427.5, subd.(e))

STATEMENT OF THE CASE

A.

THE PROPOSED MAP CHANGED ONLY FORMAL TITLE STRUCTURE, NOT INTENSITY OR DENSITY OF USE OR ANYTHING ELSE

It was undisputed in both courts below that Palisades's map application involved no change in the density or intensity of the use of the park in question, and no other physical or environmental change either. The application involved nothing but a formal change in the park's title structure within the meaning of Govt. Code § 66427.5.

The application itself (Volume 2 of the Appellant's Appendix [hereafter, "2 AA —"] at 242-357) makes this clear:

- The transmittal letter from the engineer for Palisades stated: "No change in use or new improvements are proposed as part of this project. In addition, no tenant will be displaced or evicted as a result of this project." (*Id.* 240)

- On the first page of the application, Palisades stated: "This application is a request to convert an existing mobile home park from a tenant occupied park to an ownership park in accordance with California Government Code 66427.5. *No changes to land use or new improvements are proposed as part of this project. No tenant will be evicted or asked to terminate their tenancy.*" (*Id.* 242; italics added)

- On the "Environmental Assessment Form" (2 AA 319 *et seq.*) Palisades repeated: "No additional improvements or development is proposed." (*Id.* 320)

- To a question about any grading, Palisades answered "N/A." (2 AA 320)

- To a question about "the amount of dirt being imported or exported," again the answer was "N/A." (*Id.*)

- To a question about the "Residential project," Palisades answered: "All facilities exist. No additional development is proposed." (*Id.* 321)

- To a question about "Mitigating Measures," Palisades repeated: "N/A — all existing facilities exist. No additional development is proposed." (*Id.* 322)

Although the application speaks for itself, we note that the city adduced no contrary evidence about Palisades's proposal. No witness intimated that Palisades was concealing or overlooking a prospective

change of density or intensity of the park's use or any physical or environmental change. The city fully accepted Palisades's statements in the application.

Nor did the city ever suggest otherwise in either court below. At a key superior court hearing, for example, Palisades's counsel, Craig Collins, Esq., stated: "there is not one shovel of dirt that is being moved. Not one nail is going to be driven. We are just converting an existing park into a different type of ownership." (RT E-30,[3] lns. 12-15) The city's counsel, Amy Brothers, Esq., voiced no objection to that statement.

Similar statements in Palisades's appellate briefs likewise went unchallenged. The opening brief stated: "the proposed conversion would not change anything in the physical world. It is merely a change in the form of ownership of the existing property." (Combined RB/XAOB 9) And a reply brief stated: the map "involves no single shovel of dirt being turned, or wall being moved, or any physical manifestation visible to the outside world. No oak trees will be touched. No sewage altered. No changes in solar shading will result." (X-Reply 9)

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[3] The transcript assigns new capital letters with new sequential numbers to the separate hearings bound together in a single volume.

Finally, and not surprisingly, neither court below suggested that Palisades's application actually involved a change in the density or intensity of the use of the park, or any other physical or environmental change either. Both courts fully accepted Palisades's characterization of its application.

B.

THE STONE WALL IN LOS ANGELES

Also undisputed were the basic proceedings at the city, and we therefore cite the superior court's relevant findings. It was April 23, 2007, when Palisades first contacted the city to determine what information to include in its map application. (9 AA 1952) But when Palisades first attempted to submit the application, on June 21, 2007, city officials claimed they were not "ready" for it because the city had no checklist of required items. (*Id.*) As a result, Palisades spent the next five months trying to work with the city to develop such a checklist. (*Id.*)

Ultimately, on November 13, 2007, Palisades submitted the 115-page application summarized previously in this brief. (2 AA 242-357) But this attempt, too, was in vain. As confirmed by a city employee's e-mail on November 20, 2007, he did not even accept the application for filing when Palisades presented it at the counter. (*Id.* 1953)

The e-mail also listed five items that "you need to file [with] your application. . ." (2 AA 235, 9 AA 1953) As summarized by the superior court, those items were: "(1) apply for a general plan amendment and zoning change, (2) apply for Mello Act clearance, (3) apply for a coastal development permit, (4) submit a parcel map application, and (5) submit a new tenant impact report." (9 AA 1957)

Facing the certainty of further stonewalling, Palisades sought judicial relief in the Superior Court of Los Angeles County on January 17, 2008. (1 AA 8-30)

C.

THE RELEVANT PROCEEDINGS

The issues before this Court require only a brief summary of the contentions below. To begin with, Palisades consistently argued that § 66427.5 was the only statute that applies to the map applications it covers. For example, Palisades's original petition for a writ of mandate, coupled with a complaint for injunctive and declaratory relief (1 AA 8-30), alleged:

> The Legislature has mandated that the City must review an application of the type that is the subject of this action in a very limited way. The City is restricted to evaluating whether the application for conversion comports with the requirements of Govt. Code § 66427.5. (1 AA 19, ¶ 33)

Thus, Palisades sought a writ commanding the city to "process the Petitioner's application under the limited review process allowed pursuant to Government Code § 66427.5; and . . . approve Petitioner's application." (1 AA 30, lns. 1-4; *see also,* (1 AA 30, ¶ 2 [prayer for declaratory relief].) Similarly, its principal brief in the superior court argued: "[t]he Legislature intended § 66427.5 to preclude *all* other regulation. . . ." (5 AA 1096:16-17; italics added)

The city's primary response was not that § 66427.5 did not apply, but that the Coastal Act and Mello Act *also* applied. Regarding the former, for example, the city pointed to the "development" definition in Public Resources Code § 30106, as construed in *California Coastal Comm. v. Quanta Inv. Corp.* (1980) 113 Cal.App.3d 579 ("*Quanta*"). The city insisted that *any* subdivision is included in the definition, even where, as here, it entails no change in density or intensity of use. (*E.g.*, 6 AA 1382; AOB 16-17)

Palisades replied to that contention in two ways. Primarily, it argued that the development definition need not even be reached. It explained that the case involves only the *city's* demand for a coastal

permit, not a demand by the state Coastal Commission,[4] and that a local government's demand for anything other than compliance with § 66427.5 was preempted. (*E.g.*, 5 AA 1090-1096)

But Palisades also disputed the city's reading of the Coastal Act. In the superior court, Palisades's principal brief argued: "[t]he Legislature never said or did anything [in the Coastal Act] to suggest that it intended to allow the City to adopt some different or more difficult process [than mandated by § 66427.5] when considering mobilehome park conversions that occur in the coastal zone." (5 AA 1099:12-14) And Palisades renewed that contention in the Court of Appeal, the first time parenthetically but clearly. Its principal brief as respondent and cross-appellant questioned whether there were any "coastal considerations" at all in this case — justifying even Coastal Commission jurisdiction — "when no physical change to the property will occur. . . ." (RB/XAOB 44) Palisades also elaborated on that point in its cross-appellant's reply brief (pp. 27-31), though the court upheld the city's claim that it exceeded the proper scope of that brief.

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[4] *E.g.*: "Palisades Bowl may be required to apply for a permit from the state Coastal Commission (which is an issue not before the Court), but not from the City pursuant to the City's local program." (RB/XAOB 43; emphasis added) "

As for the Mello Act, Palisades argued that § 66427.5 was later enacted and more specific on the subject of this case, and that the Mello Act thus deferred to § 66427.5. (5 AA 1096-1097) In the Superior Court, for example, Palisades argued that the affordable-housing policy of the Mello Act had to be read in harmony with the similar policy underlying § 66427.5. (*Id.* 1097, lns. 6-8) Explaining later: "the Legislature, which was aware of its previous adoption of the Mello Act, intended to exclude its application from this narrow category of conversions governed by § 66427.5, which has its own affordable-housing protection provisions. . . . (9 AA 1923:13-16)

Palisades also explained in the Court of Appeal that the Mello Act was not "repealed" or "preempted" in this manner, as the city characterized its argument. Rather, Palisades said the Mello Act required only a reasonable and narrow construction of the earlier enactment. Its principal brief stated: "the Mello Act may even apply to other types of mobilehome conversions, such as [Govt. Code] section 66427.4 (conversion to a different use) or section 66428.1 (conversion with resident support), which do not similarly limit the City's review and thus might be subject to any properly adopted local affordable-housing requirements." (RB/ XAOB 50)

Thus were the issues presented in the Court of Appeal. The city's primary argument was that the construction of all three statutes in dispute was necessary and dispositive, and the Court of Appeal agreed. Never suggesting any issue was conceded, the court construed every statute in question as an adjudication on the merits. We now demonstrate, with respect, that its adjudications were erroneous.

ARGUMENT

I.

INTRODUCTION

The essential error below, successfully advocated by the city, was substituting the Court of Appeal's judgment for the Legislature's. When statutes allegedly overlap or conflict, any court's job is to determine how the *Legislature* intended them to co-exist, as evidenced by their text or history. Only if those sources prove unavailing may the court rely on its own assessment of the competing policies, as is necessary in rare cases like *Mejia v. Reed* (2003) 31 Cal. 4th 657.

The Court of Appeal below cited *Mejia,* but did not follow its teaching. *Mejia* resorted to policy assessment reluctantly, only after exhaustively analyzing the text and history of conflicting statutes for clues to harmonize them. (31 Cal.4th 664-668) Here, by contrast, the Court

of Appeal too quickly embraced the city's expansive reading of the Coastal Act and Mello Act, too quickly declared them in conflict with Govt. Code § 66427.5, and too quickly resolved the perceived conflict by applying the court's own assessments of "importance":

> To be sure, the policy behind section 66427.5 is an important one . . . .[¶] But the policy considerations behind the Coastal Act — as well as the Mello Act, inasmuch as its genesis was the Coastal Act . . . — are far more extensive. . . . (114 Cal.Rptr.3d 838, 854-855)

This brief will demonstrate that the text and history of the relevant statutes provide ample guidance for resolving the "conflict of mandates" perceived below. (114 Cal.Rptr.3d 854) Read alone, and even more so together, the three statutes reveal a legislative intent to make § 66427.5 the exclusive authority over its subject matter. Otherwise, the other two statutes would invite sabotage of a longstanding policy as well illustrated here.

II.

THE TEXT AND HISTORY OF GOVT. CODE § 66427.5 ESTABLISH THE LEGISLATURE'S INTENT TO MAKE IT THE ONLY STATUTE APPLYING TO ITS SUBJECT

There is unequivocal evidence that the Legislature intended to make § 66427.5 the exclusive authority over its subject matter. We examine the text first, and then the history.

A.

THE TEXT AS AMENDED IN 1995

The text as amended in 1995 (Stats.1995, Chap. 256, § 5) contains three forms of evidence that it, alone, applies to this subject: two express provisions, and the absence of any caveat that *other* statutes might apply.

We begin with the new introductory language. When originally enacted in 1991, the introductory language made § 66427.5 applicable only to the "filing [of] a tentative or parcel map for a subdivision to be created using financing or funds provided pursuant to Chapter 11 (commencing with Section 50780) of Part 2 of Division 31 of the Health and Safety Code. . . ." (Stats. 1991, c. 745 (A.B.1863), § 2) But for reasons summarized below, the 1995 Legislature substituted a new first sentence giving the statute exclusive application.

The new language, which prevails to this date, made § 66427.5 applicable to the "filing [of] a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall . . . ." Especially in comparison to the deleted language, the new language made § 66427.5 exclusive throughout the State — to *any* filing of a proposed map meeting the ensuing description. That is the ordinary and plain meaning of a sentence lacking any restriction analogous to the language deleted.

The second key provision of the 1995 amendment was a new subdivision, then labeled (d), which likewise prevails unchanged to this date but as subdivision (e). It provided:

> The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. *The scope of the hearing shall be limited to the issue of compliance with this section.* (Italics added)

The plain meaning of the new subdivision makes two related points. First, it commands local agencies to limit their review to the criteria of § 66427.5, preempting any other *local* criteria. And that was one holding of two key cases on this subject, *Sequoia Park Associates, supra,* 176 Cal.App.4th 1270, and *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153 (*review denied*).

In addition to the preemptive force of the new subdivision, it also makes the point that § 66427.5 is the only state statute applicable to the review of these maps. The plain import of the phrase "compliance with *this* section" (italics added) excludes the applicability of any other statutory provision — and wherever it might appear in the body of legislation.

Finally, the same intent is evidenced by the Legislature's failure to *preserve* the applicability of other statutes. Several common ways to accomplish that purpose appear in the Coastal Act and Mello Act, as this brief will note later. And other legislation contains the phrase, "except as otherwise provided by statute." (*E.g.,* Code Civ. Proc. § 1263.210, subd. (a)) But no such caveat appears in § 66427.5. The Legislature left intact, and emphatic, the two provisions affirmatively signaling exclusivity.

Indeed, the absence of one caveat is especially notable here. Because the 1995 Legislature focused so heavily on the desired scope of § 66427.5, any intent to limit its exclusivity in the coastal zone would surely have found its way into the new text. Instead, the Legislature's wording made the statute exclusive throughout the State.

B.

THE RELEVANT HISTORY

1.

The 1984 Policy Generating this Statute

The policy generating § 66427.5 is much broader than the Court of Appeal below acknowledged. The potent streamlining mandated by § 66427.5 was intended to preserve mobilehome parks themselves — considered a unique source of affordable housing — and not just to protect current low-income tenants from displacement as the Court of Appeal suggested.

As noted previously, the original version of § 66427.5 (Stats.1991, c. 745) focused on state-funded park conversions under the Mobilehome Park Resident Ownership Program or "MPROP" (Health & Saf. Code § 50780 *et seq.*), first adopted in 1984. (Stats.1984, c. 1692, § 2) Because the policy adopted at that time plays a central role in this case, we quote the entirety of the Legislature's findings and declaration of intent concerning MPROP:

> . . . [M]anufactured housing and mobilehome parks provide a significant source of homeownership for California residents, but increasing costs of mobilehome park development and construction, combined with the costs of manufactured housing, the costs of financing and operating these parks, the low vacancy rates, and the pressures to convert mobilehome parks to other uses

increasingly render mobilehome park living unaffordable, particularly to those residents most in need of affordable housing.

[S]tate government can play an important role in addressing the problems confronted by mobilehome park residents by providing supplemental financing that makes it possible for mobilehome park residents to acquire the mobilehome parks in which they reside and convert them to resident ownership.

[A] significant number of older mobilehome parks exist in California, the residents of which may collectively lack the experience or other qualifications necessary to successfully own and operate their parks; that these parks provide low-cost housing for their residents that would be difficult to replace if the parks were converted to other uses; that these parks are more likely than other parks to be threatened by physical deterioration or conversion to other uses; and that it is, therefore, appropriate to use the resources of the fund pursuant to this chapter to transfer these parks to ownership by qualified nonprofit housing sponsors or by local public entities for the purpose of preserving them as affordable housing.

[I]t is the intent of the Legislature, in enacting this chapter, to encourage and facilitate the conversion of mobilehome parks to resident ownership or ownership by qualified nonprofit housing sponsors or by local public entities, to protect low-income mobilehome park residents from both physical and economic displacement, to obtain a high level of private and other public financing for mobilehome park conversions, and to help establish acceptance for resident- owned, nonprofit-owned, and government-owned mobilehome parks in the private market. (Health & Saf. Code § 50780(a))

2.

The 1995 Intent To Protect that Policy

By 1995, the sponsor of the original version of § 66427.5, Senator William A. Craven, became convinced that the foregoing policy required stronger protection at the map approval stage. Thus, for example, when the Assembly Housing and Community Development Committee was preparing to hear his bill (SB 310; see accompanying motion for judicial notice, Tab 1 [hereafter, "RJN —"), Senator Craven wrote to the committee chair, Assemblyman Dan Hauser, that "[s]ome local governments have imposed a virtual roadblock to park conversion . . . ." (RJN 1)

The history confirms that the Legislature endorsed Senator Craven's concern and fashioned a responsive remedy. For the Court's convenience, we cite several of the documents quoted in *El Dorado, supra,* 96 Cal.App.4th 1153:

- an Assembly Committee Report stating that SB 310 made § 66427.5 "applicable to *all* mobilehome park conversions" (96 Cal. App.4th 1169; italics added);

- "an analysis prepared by the Office of Senate Floor Analyses, prepared for the Senate Rules Committee," likewise stating that SB 310 made § 66427.5 "'applicable to *all* subdivided mobilehome park conversions'" (96 Cal.App.4th 1170; italics added);

- "[a] report for the Senate Housing and Land Use Committee" stating that SB 310 "'requires *all* subdividers to mitigate the economic displacement of all nonpurchasing residents'" in the manner prescribed by § 66427.5 (96 Cal.App.4th 1170; italics added); and

- "[a] bill analysis prepared by the Senate Select Committee on Mobilehomes" stating: "'SB 310 would establish [§ 66427.5] . . . as the *sole* means for local government to determine mitigation requirements for *all* conversions of parks to resident-owned subdivided interests, not just those financed by MPROP.'" (96 Cal.App.4th 1170; italics added)

3.

The 2002 Confirmation of that Intent

The 2002 chapter of the history of § 66427.5 begins and ends with *El Dorado, supra.* The opinion in that case stands before this Court as powerful evidence of legislative intent, not just a holding and rationale subject to this Court's review in the usual manner. The Legislature itself exhaustively reviewed *El Dorado* in 2002, when amending § 66427.5 again, and emphatically embraced its holdings pertinent to the present case.

Based on the text and history reviewed in this brief, *El Dorado* "conclude[d] that the term 'resident ownership' as used in section 66427.5 means just what it says: the statute applies to *all* conversions

of mobilehome parks to resident ownership." (96 Cal.App.4th 1173; italics added) While *El Dorado* addressed contentions about resident-initiated and/or state-funded park conversions, the court rejected those contentions by holding that § 66427.5 applied *universally.* Accordingly, *El Dorado* plainly ruled out any geographic or other exception.

El Dorado was published on March 14, 2002. And the very day this Court denied review, on June 26, 2002, Assemblyman Fred Keeley introduced an amended bill (AB 930) specifically designed to overrule the heart of *El Dorado.* The bill would authorize local governments to supplement § 66427.5 with "any additional conditions of approval that the local legislative body or advisory agency determines are necessary to preserve affordability or to protect nonpurchasing residents from economic displacement." (RJN 2 at p. 3, proposed subd. (d))

The legislative record proves beyond doubt that Assemblyman Keeley and his supporters were expressly attacking *El Dorado,* and that the attack precipitated a searching debate about the wisdom and accuracy of that decision. Assemblyman Keeley, for example, released a "Fact Sheet" citing *El Dorado* as the reason for his bill (RJN 3, pp. 1-2) and attaching the entire opinion. (*Id.*, p. 3 [first page]) Supporters of the bill likewise cited *El Dorado* as their rallying cry. (*E.g.*, RJN 4) A neutral evaluation of the bill, prepared for the Senate Housing & Community

Development Committee, explored the consequences of *El Dorado* and the intended or unintended effects of the attack on its holding. (RJN 5)

And at the end of the day, the Legislature adopted not only a codified amendment to § 66427.5, which we address in a moment, but also an uncodified statement (Stats.2002, c. 1143, § 2) discussing *El Dorado* by name:

> It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent nonbona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions.

In sum, it is incontrovertible that the Legislature closely examined the wisdom of *El Dorado*, the accuracy of its reading of legislative intent, and the desirability and form of any legislative response to it. And what

emerged was a ringing endorsement of its holdings and rationale across the board.

First, the Legislature flatly rejected Assemblyman Keeley's original proposal, adopting not even a watered down version. And its demise speaks loudly. "The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision." (*Rich v. State Board of Optometry* (1965) 235 Cal.App.2d 591, 607; *accord, State Building and Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 319)

Second, the Legislature left completely intact the language and inferences in § 66427.5 on which *El Dorado* had relied. Nor did it intimate in any way that *El Dorado* had misperceived its intent or its underlying purposes as described in this brief.

Finally, the Legislature amended § 66427.5 in a far different way than Assemblyman Keeley had originally proposed. Far from reducing the statewide force of § 66427.5, the Legislature added a new *statewide* requirement of a resident survey (subd. (d)), in response to the argument that § 66427.5 was being exploited to evade local rent controls. Indeed,

El Dorado itself had suggested legislative attention to that issue. (96 Cal.App.4th 1165)

The amendment of § 66427.5 in only one respect, requiring a resident survey, is powerful evidence of the Legislature's thorough embrace of *El Dorado*'s holding and rationale. As this Court held in *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734:

> It is a well-established principle of statutory construction that when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment.

Accord, Reidy v. City and County of San Francisco (2004) 123 Cal.App. 4th 580, 592 (*review denied*) ("when the Legislature does not change a statute in a particular respect but does change it in other respects, we infer an intent to leave the statute as it stands in the aspects of the statute that were not amended.").

Marina is especially instructive because there, as here, it was certain that the Legislature was well aware of the judicial construction of the relevant statute:

> the legislative documents establish beyond question that the Legislature was well aware of *Cox*'s construction of [Civil Code] section 51. Had the Legislature disagreed with the *Cox* interpretation, or had it desired to constrict the reach of section 51 in a manner incompatible with *Cox*, it presumably would have altered the preexisting language of the statute so to indicate. (*Id.* at 735)

* * *

In sum, the history of § 66427.5 emphatically evidences the Legislature's approval of *El Dorado*'s construction of its intent and underlying purposes as amended in 1995. If there was any doubt about the Legislature's intent in 1995 to make this statute exclusive statewide, the Legislature eliminated that doubt in 2002.

IV.

THE COASTAL ACT DOES NOT APPLY TO A SUBDIVISION UNLESS IT CHANGES THE DENSITY OR INTENSITY OF USE OF THE RELEVANT LAND

A.

INTRODUCTION

With exceptions inapplicable here, the Coastal Act requires anyone "wishing to perform or undertake any development in the coastal zone" to obtain a coastal development permit. (Pub. Res. Code § 30600(a)) But the mere legal conversion of a mobilehome park to

resident ownership, without more, is not a "development" as the Legislature defined it. (*Id.*, § 30106; hereafter, "§ 30106")

To be sure, the Coastal Act must be construed liberally "to accomplish its purposes and objectives." (Pub. Res. Code § 30009) But the Legislature limited the application of those purposes and objectives to a proposed "development" within the meaning of § 30106. And the plain meaning of that definition, buttressed by settled rules of statutory construction, is that a purely formal subdivision, without more, is not a "development" because it entails no "change in the density or intensity of the use of land. . . ." (§ 30106)

This type of subdivision does not effectuate any "change in the density or intensity of use of land." Unlike most activities found to satisfy this portion of the definition, it involves nothing but a change in legal title to land *already* developed.[5] It involves no change in the use of the land or the extent of its use. Occupancy capacity will remain exactly the same. The sole purpose of the subdivision is to accomplish a change in title structure of already occupied by housing. The

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[5] The mobilehomes themselves are developments, because they are "solid material or structure[s]" that have been "place[d]" on coastal land. (Pub. Res. Code §30106; *see, e.g., Delucchi v. Santa Cruz County* (1986) 179 Cal.App.3d 814, 824-25.)

subdivision is an end unto itself; it is not intended to encourage or facilitate any future development.

B.

THE PLAIN MEANING OF THE DEVELOPMENT DEFINITION

The development definition reads exactly as follows, with no change of wording or punctuation. But for clarity's sake we separate out and number each independent clause and emphasize the one at issue here:

> "Development" means, on land, in or under water,
>
> [1] the placement or erection of any solid material or structure;
>
> [2] discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste;
>
> [3] grading, removing, dredging, mining, or extraction of any materials;
>
> **[4] change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits,** except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use;
>
> [5] change in the intensity of use of water, or of access thereto;

[6] construction, reconstruction, demolition, or alteration of the size of any structure,[6] including any facility of any private, public, or municipal utility; and

[7] the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

The plain meaning of Clause 4 is that the Coastal Act applies only to a "change in the density or intensity of use of land," and that the ensuing language simply illustrates ways that kind of change might occur. Both grammatically and logically, the illustrations do not expand or otherwise alter the subject that clearly dominates the entire clause.

The plain meaning of Clause 4 is also buttressed by its immediate context. The city's construction would stand out jarringly from every other clause in the definition. It would be the only one applying the Coastal Act *regardless* of any change in the natural environment of the coastal zone. Every other clause focuses on a changes of that kind — placing solid structures on land or in water; engaging there in mining, dredging, extracting, grading or discharging waste of any kind;

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[6] A subsequent definition of "structure" has no bearing here.

constructing, demolishing or altering a structure; or removing or harvesting vegetation. But none of those activities is involved here.[7]

Similarly, the plain meaning of Clause 4 is further buttressed by the primary purpose of the Coastal Act so plainly evidenced by the development definition. That primary purpose is to protect the natural environment of the coastal zone — not regulate legal transactions that make no change whatsoever in the natural coastal environment such as a change in density of intensity of use. Accordingly, the city's construction of Clause 4 would stand out jarringly from the Act's primary purpose as well.

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[7] *Compare, Gualala Festivals Committee v. California Coastal Comm'n* (2010) 183 Cal.App.4th 60, 68 (fireworks display that discharges solid and chemical waste); *Stanson v. San Diego Coast Reg'l Comm'n* (1980) 101 Cal.App.3d 38, 47-48 (remodeling storage space into a restaurant might increase car and foot traffic); *LT-WR, L.L.C. v. California Coastal Comm'n* (2007) 152 Cal.App.4th 770, 804-05 (installation of gates and signs); *Monterey Sand Co., Inc. v. California Coastal Comm'n* (1987) 191 Cal.App.3d 169, 176 (mining sand from sea floor); *Delucchi v. Santa Cruz County* (1986) 179 Cal.App.3d 814, 824-25 (erection of a greenhouse); *Whaler's Village Club v. California Coastal Comm'n* (1985) 173 Cal.App.3d 240, 254 (construction of rock wall to protect beach homes from storm damage); *Georgia-Pacific Corp. v. California Coastal Comm'n* (1982) 132 Cal.App.3d 678, 407 (construction of security fence and helicopter facility).

C.

THE PLAIN MEANING IS SUPPORTED BY A FAMILIAR CANON OF STATUTORY CONSTRUCTION

The plain meaning of a statute controls in almost all cases, except where a patently unintended or unacceptable consequence would follow. But the importance of this issue warrants further analysis. To begin with, the plain meaning of Clause 4 of § 30106 is supported by a familiar canon of statutory construction.

Grafton Partners L.P. v. Superior Court (2005) 36 Cal.4th 944, 960, summarized the "canon of statutory construction, known as *noscitur a sociis,*" as follows: "the meaning of a word may be ascertained by reference to the meaning of other terms which the Legislature has associated with it in the statute, and . . . its scope may be enlarged or restricted to accord with those terms."

This rule applies in two ways to the Coastal Act's development definition. First, focusing on Clause 4 itself, the rule compels a restricted scope of the word "subdivision" because of its association with the initial specification of a change in density or intensity of use. And the very grammar of the sentence, if nothing else, compels the conclusion that the initial specification controls the illustrations, not *vice versa.*

Secondly, this rule increases the significance of the other clauses in the same definition. As shown previously, every one of them insists on an actual change in the natural environment. Accordingly, any remaining doubt about Clause 4 should be resolved in favor of restricting its application in the same manner, to a "change in density or intensity of use" as stipulated by its initial phrase.

D.

QUANTA, THE ONLY CONTRARY AUTHORITY, WAS WRONGLY DECIDED

In holding that a mobilehome park conversion is a "development" under the Coastal Act, a divided Court of Appeal relied heavily on *Quanta, supra,* 113 Cal.App.3d 579. As noted previously, it is the only reported case applying Clause 4 of the "development" definition — requiring a "change of density or intensity of use" — to a transaction that did *not* entail such a change.

At issue in *Quanta* was the conversion of an apartment complex into a stock cooperative. The court held it was a "development" subject to the Coastal Act, and thus within the Coastal Commission's jurisdiction, because was is a "division of land" under Clause 4, not a subdivision. (*Id.* at 596-609) But the essence of *Quanta*'s holding was

that the illustrations in Clause 4 must be construed in isolation, and given the broadest scope possible when viewed through that lens.

Notably, the Coastal Commission itself did not argue in *Quanta* that the stock cooperative conversion would result in a change of density or intensity of use. (113 Cal.App.3d at 595, n.14; and 615-616 (Hanson, J., dissenting)) But the majority opinion did not even consider that question.

Commentators have expressed doubts about *Quanta,*[8] and we respectfully submit it was wrongly decided. Its key premise was that anything that qualifies as either a subdivision under the Subdivision Map Act, or "any other division of land," *ipso facto* constitutes a development. (*Id.* at 590, 606) But as shown previously, that assumption cannot be reconciled with § 30106's plain language focusing on a "change in density or intensity of use." And leading commentators view that language as the focus of Clause 4. (*See*, 9 Miller & Starr, *California Real Estate, supra*, § 25:10 ("'[d]evelopment' within the meaning of the Coastal Act is broadly defined to include essentially any

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[8] *See*, Hanna & Van Atta, *California Common Interest Development: Law and Practice,* § 12:252 (2010 ed.) (under *Quanta*, a permit is "apparently" required for the conversion of existing apartment units into a stock cooperative or condominium "even though the conversion does not involve renovations, repairs or improvements").

action *resulting in a change in the density or intensity of use* of jurisdictional land or waters") (italics added).)

Also notable is that the only exception to this language the Legislature specified is a transaction that *does* entail a "change in the density or intensity of use. . . ." Specifically, the Legislature exempted from this species of "development" a "land division . . . . brought about in connection with the purchase of such land by a public agency for public recreational use." Converting privately held land to "public recreational use" entails a "change in the density or intensity of use. . . ," because public recreational use is different in both respects from any kind of private use.

Some later cases have perpetuated *Quanta's* flawed reasoning. Dictum in *La Fe, Inc. v. Los Angeles County* (1999) 73 Cal.App.4th 231, for example, correctly recognized that "Section 30106 by its terms recognizes that a subdivision of land or a lot split *can* result in changes in the density or intensity of use of property." (*Id.* at 240; italics added) But the dictum then strayed into *Quanta*'s analysis by stating: "section 30106 explicitly *applies* to a 'subdivision . . . and any other division of land . . . .'" (*Id*; *see also, Ojavan Investors, Inc. v. Cal. Coastal Comm.* (1997) 54 Cal.App.4th 373, 387; *Dunn v. County of Santa Barbara* (2008) 135 Cal. App.4th 1281, 1300 n.11 (dictum, citing *Ojavan*).

Nonetheless, *La Fe* and the other cases reached the right result. The activities they determined to be a "development" *did* impact "intensity or density of use of land."[9] (*See also,* 7 Williams & Taylor, *American Land Planning Law* (2010), §171:52 (criticizing *La Fe* for "somewhat convoluted reasoning").)

This statutory limitation makes perfect sense. Certainly, a legal subdivision *can* increase density or intensity of use — such as when raw, unoccupied land is subdivided in order to develop it for use or occupancy by new owners or tenants. But a subdivision that merely facilitates a *change in the form of legal ownership of existing housing* does not change the density or intensity of the land's use at all. The Legislature manifested no interest in applying the Coastal Act to that

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[9] In *Ojavan Investors*, real estate developers bought and then re-sold individual, development-restricted parcels of raw land in violation of deed restrictions, marketing them as desirable for development. (*See,* 54 Cal.App.4th at 379-30; *see also,* 4 *Miller and Starr California Real Estate Digest,* §10.5 (3d ed. ("Although the investors did not develop on the property, by acquiring individual lots for the purpose of selling them to third parties with the enticement of prospective development, the investors engaged in activity contrary to the Coastal Act's goal of limiting development").) *Dunn* was a takings case, involving a proposed subdivision that would have enabled a greater number of homes to be built on the property. (*See,* 135 Cal.App.4th at 1300-1301.) And *La Fe* involved a lot line reconfiguration that would have resulted in increased use of an access road because more parcels would have shared it, raising public safety concerns for local fire officials. (*See,* 73 Cal.App.4th at 240 n.4.)

kind of activity: it involves no physical change to the environment, has no physical impact on the environment whatsoever, and is not intended in any way, shape or form to facilitate the construction of any new housing.

E.

THE LEGISLATIVE HISTORY OF THE "DEVELOPMENT" DEFINITION, THOUGH SPARSE, POINTS THE SAME WAY

The legislative history of the development definition further supports the plain meaning demonstrated in this brief. At the outset, the Coastal Act largely carried over that definition, without substantive change, from the definition adopted by initiative under the California Coastal Zone Conservation Act of 1972. (*See*, RJN 6, "Proposed Amendments to Constitution," adding, *inter alia*, former Pub. Res. Code § 27103.) In particular, the subsequent Coastal Act's language concerning changes in the density or intensity of use of land was virtually unchanged from the 1972 definition, other than in one minor respect immaterial for purposes here (concerning an exemption for land purchases for public recreational use).

The Coastal Act responded to findings and recommendations in a comprehensive plan prepared by the California Coastal Zone Conservation Commission, entitled, the "California Coastal Plan." (*See*

RJN 7 [cover and tables]; RJN 8; and Pub. Res. Code § 30002.) Many but not all the recommendations figured prominently in the ensuing legislation. As relevant here, however, the Coastal Plan did not recommend changing the definition of development; on the contrary, its retention was assumed without discussion. (*See*, RJN 11, pp. 424-425, defining "development").)

Although the Coastal Plan did not directly address the meaning of the term "development," it does shed some light on it. Specifically, the Plan mentioned the following attributes as reflecting "intensity of use": "lot size, unit size, residential composition, height, [and] bulk."[10] (RJN 8, p. 78) A mobilehome conversion that results in no change to the overall size of the mobilehome park, the number of mobilehome spaces within it, nor the park's residential composition would not change "intensity of use" as suggested by this discussion.

In addition, the Coastal Plan's discussion of subdivisions and lot splits reflects a concern with the impact of *developing the land after*

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[10] This discussion, under section (c), appears in a recommendation to restrict "inappropriate development" in certain "special" areas. In those areas, "consideration shall be given to *intensity of use (e.g., lot size, unit size, residential composition, height, bulk),* pedestrian accessibility, open space, economic and social factors, and the cumulative impact that potential development would have on an area's resources. (*Id.*; italics added)

subdividing it and/or changes in the land's use. For example, in discussing the need for further planning, the Coastal Plan expressed concern with subdivisions and lot splits that were eventually "built up":

> In some coastal areas, development has been so rapid and extensive that its cumulative effects could not be fully understood until it was substantially completed. For example, *many small subdivisions and lot splits may be approved and gradually built up before it is discovered that road capacity has been exceeded, thereby impairing coastal access or forcing the construction of an environmentally damaging and costly road expansion.* (RJN 9, p. 175; italics added)

Likewise, the Coastal Plan noted the need for special studies in some coastal areas "to evaluate the impact of lot splits and subdivisions," but in order to prevent a change in use from timberlands to residential uses, and to "limit[] new development to existing community boundaries." (RJN 10, p. 304 [Supplemental Notes), 308 [similar], 310 [similar]) And it proposed criteria governing the division of rural land that implicitly presume a division that facilitates *new* development. [11]

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[11] That proposal states: "**60. Criteria for Divisions of Rural Land.** The division of land outside areas designated for concentrating development (see Policy 59) shall be permitted either if it is in accordance with an adopted subregional or local coastal plan or, in the absence of such an approved plan, if all of the following conditions are met: (1) more than 80 per cent of the usable lots in a nonurbanized area

(continued...)

In short, the major study that preceded the Coastal Act did not reflect a concern with subdivision or land division *per se*, but only to the extent they could impact coastal resources. And the mere conversion of a mobilehome park to resident ownership, without more, has no such impact. For this reason too, it is not a "development" subject to the Coastal Act.

F.

EVEN IF THE COASTAL ACT APPLIED IN OTHER WAYS, IT EXPRESSLY PRESERVES THE FORCE OF A STATUTE LIKE § 66427.5

Finally, the Coastal Act contrasts sharply with Govt. Code § 66427.5 in its intended relationship with other statutes. Unlike

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[11](...continued)
have been developed to existing zoned capacity; (2) the parcels resulting from the division would be no smaller than the average size of surrounding parcels; (3) no significant growth inducing impact or precedent for development in a natural resource or scenic resource area would be established by the division; (4) the division would not restrict future options for productive lands or lands of significance because of their scenic, wildlife, or recreational values; and (5) all public services are readily available. (See also Policy 36 regarding agricultural lands and Policy 38 regarding forestry lands.) Where an increase in the number of parcels available for residential use is permitted, priority shall be given to lands in or near already developed areas. This policy shall not be interpreted to require development of parcels that would adversely affect coastal natural and scenic resources. This policy shall not apply to areas where 80 per cent of the land within a half-mile radius of the proposed division of land is developed to a density of two units per acre or more. (RJN 8, p. 81)

§ 66427.5, which leaves no room for parallel or supplemental rules on its subject matter, the Coastal Act repeatedly acknowledges such rules and expressly preserves their force. And it does so on the very subject of local authority. As a result, to whatever extent the Legislature may have intended the Coastal Act to apply to mobilehome parks, that legislation expressly preserves the limitations other statutes impose on local authority on that subject.

To begin with, Pub. Res. Code § 30005 provides that the Coastal Act itself is not intended to limit certain enumerated local powers. But immediately afterwards, it preserves the force of *other* statutes that might limit those powers. It qualifies the Coastal Act's own recognition of those powers by stating: "[e]xcept as *otherwise* limited by state law. . . ." (Subd. (a); italics added) And one of the powers enumerated is limited by Govt. Code § 66427.5. It is the power "to adopt and enforce . . . regulations . . . imposing further conditions . . . with respect to any land . . . use . . . which might adversely affect the resources of the coastal zone." In short, even if the Coastal Act might otherwise authorize local action on coastal policies, the Coastal Act itself preserves the limitation imposed by § 66427.5.

To the same effect is Pub. Res. Code § 30005.5. It provides, in relevant part: "[n]othing in this division shall be construed to authorize

any local government . . . to exercise any power it does not already have under the . . . laws of this state or that is not specifically delegated pursuant to [Pub. Res. Code] Section 30519." As applied here, one of the "laws of this state" preempts the power of local governments to impose criteria for conversion applications not enumerated in § 66427.5. Nor does Pub. Res. Code § 30519 address that subject at all. In short, Pub. Res. Code § 30005.5 expressly defers to a power-limiting statute like Govt. Code § 66427.5.

Finally, Pub. Res. Code § 30007 provides in pertinent part: "[n]othing in this division shall exempt local governments from meeting the requirements of state . . . law with respect to providing low- and moderate-income housing . . . or any other obligation related to housing imposed by existing law or any law hereafter enacted." Section 66427.5 is one such "requirement." It compels local governments to approve the subdivision maps it covers if they meet the uniform statewide criteria of § 66427.5. And as shown previously, the underlying purpose of that requirement is to maintain California's mobilehome parks as a special source of affordable housing.

The foregoing provisions, by preserving other state statutes like § 66427.5, go hand-in-hand with the Coastal Act's development definition. Its wording, too, avoids Coastal Act interference with a

purely technical subdivision that leaves density and intensity of use wholly unchanged.

V.

THE MELLO ACT DOES NOT APPLY TO THIS TYPE OF CONVERSION EITHER

A.

INTRODUCTION

The full text of the Mello Act appears as Appendix C to this brief. The provisions in dispute read as follows:

> (a) In addition to the requirements of Article 10.6 (commencing with Section 65580), . . . the provisions and requirements of this section shall apply within the coastal zone . . . .
>
> (b) The conversion . . . of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income.

The word "conversion" is later defined as follows:

> "Conversion" means a change of a residential dwelling, including a mobilehome, . . . or a mobilehome lot in a mobilehome park, . . . or a residential hotel . . . to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a

> mobilehome, or a mobilehome lot in a mobilehome park, or a residential . . . hotel to a nonresidential use. (Govt. Code § 65590(g)(1))

In isolation, of course, it is reasonable to construe the foregoing provisions as the city does: as a mandate to insist on Mello Act proceedings in addition to the requirements of § 66427.5. But another provision in the Mello Act precludes that construction, and its history does as well. The proper construction is one that limits the Mello Act's application to other forms of mobilehome park conversions. We begin, as always, with the text.

B.

THE MELLO ACT EXPRESSLY PRESERVES THE FORCE OF OTHER STATUTES LIKE § 66427.5

Subdivision (i) of the Mello Act (Govt. Code § 65590) preserves the operation of other state statutes much the way the Coastal Act does. Subdivision (i) states:

> No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.

As applied here, that language expressly preserves the limitation on local power imposed by Govt. Code § 66427.5 — a prohibition of

any conditions for the map approvals at issue here that are not enumerated in § 66427.5. Indeed, subdivision (i) of the Mello Act could hardly be clearer, but any doubt about its impact on this case is removed by the history of these two enactments.

C.

DEFERENCE TO § 66427.5 IS COMPELLED BY CASE LAW ON SUBSEQUENT ENACTMENTS

The construction advocated by this brief is compelled by this Court's case law on subsequent enactments. The city has falsely accused Palisades of advocating an implied repeal or complete "preemption" of the Mello Act by the later-enacted § 66427.5. As this brief previously documented, Palisades in fact has advocated a narrow but reasonable construction of the Mello Act to avoid its nullification by § 66427.5.

Consider, first, the city's proposed construction. It would flatly contravene § 66427.5 by (1) inviting stonewalling of the conversions it protects; (2) exposing such conversions to the risk of death by delay, cost, and local opposition; (3) favoring one low-income population over others; and (4), for all the foregoing reasons, placing mobilehome parks themselves at risk of conversion to other uses, jeopardizing their

availability as an important source of affordable housing in the coastal zone. (See policies underlying § 66427.5 quoted *ante*, pp. 19-20.)

By contrast, there is a natural construction of the Mello Act that avoids the foregoing problems while maintaining its application to other mobilehome park conversions. The relevant definition speaks of conversions "to a condominium, cooperative, or *similar* form of ownership. . . ." (Govt. Code § 65590(g)(1); italics added) To be sure, the resident ownership at issue here is similar *technically* to a condominium or cooperative. But the word "similar" is broad enough to encompass other factors. And the existence of a highly specialized statute like § 66427.5 is surely grounds to treat its subject matter as dissimilar to other types.

Nor would this construction rob the Mello Act of *any* application to park conversions as the city argued below. It would still apply to (1) conversions of some or all spaces in the park to a different form of residential use; (2) conversions of the entire park when initiated by two-thirds of its residents (Govt. Code § 66428.1); and (3) conversions of some or all spaces to a "nonresidential use" (Mello Act, subd. (g)(1)), any number of which would lend themselves to user-owned spaces in an attractive but affordable coastal setting. Existing structures could be used

as studios for artistic endeavors popular in the coastal zone, and unimproved spaces for small-scale planting.

This Court's case law on prior enactments strongly favors a narrowing construction of the kind Palisades is advocating. The leading authority is *Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160. As the Court held there:

> The presumption is against repeals by implication, especially where the prior act has been generally understood and acted upon. To overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. *The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together. Where a modification will suffice, a repeal will not be presumed.* (*Id.* at 176; italics added)

Accord, Board of Supervisors of San Diego Cty. v. Lonergan (1980) 27 Cal.3d 855, 867-868 (citing *Penziner* as controlling authority).

Penziner dictates the same approach here, and no "modification" of the Mello Act is required. Moreover, *Penziner* compels a narrow construction more forcefully because we could find no judicial endorsement of the city's position on the Mello Act any time from 1982 until the appellate decision below. *Penziner* declares that the presumption against implied repeal is "especially" strong "where the

prior act has been generally understood and acted upon" in a relevant manner. Here, accordingly, where the presumption against replied repeal lacks that extra force, any remaining doubt on this issue should be resolved in favor of narrowly construing the Mello Act.

The result compelled by *Penziner* also comports with relevant legislative history in two ways. First, when the Mello Act was initially adopted in 1981, it made no reference at all to mobilehomes. (Stats. 1981, c. 1007, § 1) And even in 1982, when the Legislature added them to the "conversion" definition, it gave only cursory attention to that subject. There was only a brief expression of desire to add mobilehomes to the Act's coverage. (RJN 11) We could find no discussion of the scope of that coverage, or how it might square with a statute akin to § 66427.5 or a policy underlying it.

While the Legislature obviously intended *some* coverage of mobilehome park conversions in the Mello Act, its cursory attention to that subject in 1980 and 1981 stands in sharp contrast to the exhaustive attention devoted in 1984, 1991, 1995, and 2002. That history strongly supports the narrow construction urged by Palisades. No later than 2002, certainly, it is apparent that the Legislature *actually* intended the Mello Act to defer to § 66427.5. Thus, it makes perfect sense to apply the *Penziner* rule to this case.

Second, and lastly, the Mello Act incorporates by reference the same policies that underlie § 66427.5. The former begins with a proviso that its terms are "[i]n addition to the requirements of Article 10.6," which comprise the primary statewide housing policies. And those policies include a mandate (1) to treat mobilehome parks as an important source of affordable housing in general, not just for the specific low-income population defined in the Mello Act (*e.g.*, Govt. Code §§ 65583(c); (2) to "[c]onserve and improve the condition of the existing affordable housing stock . . ." (*id.*, subd. (c)(4)); and (3) to maximize the use of public funding for affordable housing. (*E.g.,* Govt. Code §§ 65581(b) and 65583(a) & (c)). Insofar as the Mello Act incorporates those policies by reference — which are indistinguishable from the policies underlying Govt. Code § 66427.5 — it is all the more appropriate to give the earlier enactment a narrowing construction to avoid an implied repeal by the later enactment.

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CONCLUSION

For all the reasons set forth in this brief, the Court should reverse the Court of Appeal's judgment below and remand with directions to the city to process Palisades's application only in accordance with Govt. Code § 66427.5.

DATED: March 1;, 2011

Respectfully submitted,

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CERTIFICATE OF LENGTH OF BRIEF

The undersigned, counsel for the plaintiff and respondent, hereby certifies pursuant to Rule 8.204(c)(1) , California Rules of Court, that the foregoing brief is proportionately spaced, has a 13-point typeface, and contains 10,093 words as computed by the word processing program (WordPerfect X4) used to prepare the brief.

DATED: March 1, 2011

/S/
ELLIOT L. BIEN

Government Code § 66427.5. Subdivision created by conversion of rental mobilehome park to resident ownership; nonpurchasing residents; avoidance of economic displacement

At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d)(1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

(3) The survey shall be obtained pursuant to a written ballot.

(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

APPENDIX A

(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

(Added by Stats.1991, c. 745 (A.B.1863), § 2. Amended by Stats.1995, c. 256 (S.B.310), § 5; Stats.2002, c. 1143 (A.B.930), § 1.)

Public Resources Code § 30106. Development

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with ection 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

(Added by Stats.1976, c. 1330, § 1.)

APPENDIX B

Government Code § 65590. Application of law; conversion or demolition; replacement; new housing developments; incentives; local coastal programs

(a) In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirements of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.

(b) The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.

For purposes of this subdivision, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or family was evicted from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this subdivision. If a substantial number of persons or families of low or moderate income were evicted from a single residential development within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this subdivision and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this subdivision.

APPENDIX C

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

(1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either "coastal dependent," as defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code. However, the coastal-dependent or coastal-related use shall be consistent with the provisions of the land use plan portion of the local government's local coastal program which has been certified as provided in Section 30512 of the Public Resources Code. Examples of coastal-dependent or coastal-related uses include, but are not limited to, visitor-serving commercial or recreational facilities, coastal-dependent industry, or boating or harbor facilities.

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone, and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision. As otherwise required by this subdivision, the replacement units shall, (i) be located within the coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three miles of the coastal zone, and (ii) shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.

The requirements of this subdivision for replacement dwelling units shall not apply

to the demolition of any residential structure which has been declared to be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction.

(c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not "coastal dependent", as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b).

(d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.

(e) Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.

(f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources

Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section.

(g) As used in this section:

(1) "Conversion" means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a residental [FN1] hotel to a nonresidential use.

(2) "Demolition" means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions.

(3) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

(h) With respect to the requirements of Sections 65583 and 65584, compliance with the requirements of this section is not intended and shall not be construed as any of the following:

(1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government's jurisdiction which is located within the coastal zone.

(2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section.

(3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section.

(i) No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.

(j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section.

(k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

(Added by Stats.1981, c. 1007, § 1. Amended by Stats.1982, c. 43, § 3, eff. Feb. 17, 1982; Stats.1982, c. 1246, § 1.)

CERTIFICATE OF SERVICE BY MAIL

The undersigned declares:

I am over the age of 18 years and am not a party to the above entitled cause. I caused to be served --

OPENING BRIEF ON THE MERITS

by enclosing true copies of said document in envelopes with proper postage prepaid and addressed to –

Carmen A. Trutanich, Esq.
City Attorney
Amy Brothers, Esq.
Deputy City Attorney
200 North Main Street, 700 CHE
Los Angeles, CA 90012

Attorneys for Respondent,
City of Los Angeles

Los Angeles Superior Court
Honorable James C. Chalfant c/o Clerk – Dept. 85
111 North Hill Street
Los Angeles, CA 90012

Clerk, Court of Appeal
300 S. Spring Street, 2nd Floor
North Tower
Los Angeles, CA 90013

and placing same for delivery by the United States Postal Service in my usual manner on the date stated below.

The foregoing is true and correct. Executed under penalty of perjury at Novato, California.

DATED: March 1, 2011

ELLIOT L. BIEN