Supreme Court No. S187243
2d Civil No. B216515
LASC Case No. BS112956

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SUPREME COURT

OF THE STATE OF CALIFORNIA

PACIFIC PALISADES BOWL MOBILE ESTATES, LLC
Plaintiff and Appellant,

vs.

CITY OF LOS ANGELES
Defendant and Appellant.

ANSWER BRIEF OF THE CITY OF LOS ANGELES

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INTRODUCTION

This appeal represents an attempt to sidestep compliance with two state laws of vast importance: the Coastal Act, and, by extension, the Mello Act. It erroneously elevates the importance of a single provision of the Subdivision Map Act: Government Code Section 66427.5(e). That section states that the scope of a hearing on a mobile home park conversion "shall be limited to the issue of compliance with this section." Appellant Pacific Palisades Bowl Mobile Estates, LLC ("Palisades Bowl") argues that this section should be interpreted as excluding the two extensive state laws—the Coastal Act and the Mello Act—from applying to a mobilehome park conversion.

There is no doubt that the Coastal Act and the Mello Act apply to mobilehome park conversions that take place in the state's coastal zone. Enacted to protect the coast from untrammeled development and to ensure public assess to the coastal zone, the Coastal Act requires a coastal development permit for any development project proposed for the coastal zone. By its plain terms, the Coastal Act's permit requirement applies to any proposed subdivision under the Subdivision Map Act that takes place in the coastal zone. The Mello Act was enacted to protect affordable housing units in the coastal zone

for low and moderate income families, and by its plain language applies to conversions of mobilehome parks in the coastal zone.

Palisades Bowl argues that if the Legislature wanted to make the Mello and Coastal Acts applicable to a Government Code section 66427.5[1] subdivision, it would have explicitly said so in 2002 when it last amended section 66427.5. Palisades Bowl's primary support for its argument includes the first appellate court case to interpret section 66427.5: *El Dorado Palm Springs, Ltd. v. City of Palm Springs*[2] and the content and date of enactment of the most recent amendment to section 66427.5. Palisades Bowl argues that taken together these authorities show that Government Code Section 66427.5(e) is the sole law that should apply to the conversion of a mobile home park, and that it therefore supplants all other conflicting law, even other state law.

Palisades Bowl's argument lacks merit because the cases on which it relies, including *El Dorado Palm Springs, Ltd. v. City of Palm Springs,* are easily distinguishable. In these cases, section 66427.5(e) preempted a *local* law. By contrast, the facts in the instant case involve the interplay between section 66427.5(e), which is part of

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[1] Hereafter "section 66427.5"
[2] (2002) 96 Cal.app.4th 1153.

the Subdivision Map Act and two other *state* laws, the Coastal Act and the Mello Act. Section 66427.5(e) does not supplant these two state laws because the legislative history of section 66427.5(e) shows that the Legislature's desire was to streamline mobilehome park conversions by protecting them only from *local* ordinances, not state laws. The overriding policy considerations behind the Coastal and Mello Acts require their application to a section 66427.5 subdivision application. Thus, section 66427.5(e) and the two state laws must and can be harmonized and each one fully applied to a mobilehome park conversion in the coastal zone.

For these reasons, the appellate court's decision in *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2010) 187 Cal.App.4th 1461 should be upheld.

STATEMENT OF THE CASE

Palisades Bowl owns a mobilehome park with more than 170 units, located across Pacific Coast Highway from Will Rogers State Beach in the coastal zone. *Palisades Bowl, supra,* 187 Cal.App.4th at 1467. In April 2007, Palisades Bowl representatives contacted the City to discuss various issues related to its proposed mobilehome park

conversion, including the City's requirements. *Id.* at 1468.[3] Following one such conversation, City Planner Lynn Harper sent Palisades Bowl's representative a package of materials, including various forms and instructions (such as those related to Mello Act clearances and coastal development permits), and a tract map checklist. *Id.*

A. Palisades Bowl's Incomplete Application to Subdivide

Palisades Bowl representatives went to the Planning Department counter in June 2007 and attempted to submit an incomplete application for the proposed subdivision and were advised that the application was incomplete. *Id.* Shortly thereafter, the Chief Zoning Administrator for the Department of City Planning, Michael LoGrande, assigned a case manager, Richard Ferguson, to work directly with Palisades Bowl. Over the next few months, Ferguson had several communications with representatives of Palisades Bowl, both by telephone and e-mail, regarding various issues, including the

[3] Although Palisades Bowl sets forth the superior court's rendition of the facts (Opening Brief, p. 9), Palisades Bowl's failure to challenge the Court of Appeal's factual findings in a petition for rehearing or in the petition for review to this Court binds Palisades Bowl to the facts as determined by the Court of Appeal. Rule of Court 8.500(c)(2).

requirements Palisades Bowl needed to satisfy and the allowable scope of the City's review of the proposed subdivision.

On November 13, 2007, representatives of Palisades Bowl arrived at the Planning Department counter to submit its subdivision application. *Id.* at 1468-1469. The face of the application advised that Palisades Bowl was applying for a "development permit." (Vol. 2, Appendix, pp. 242, 237.) Planning staffers Lynn Harper and Richard Ferguson advised that the application was incomplete, as it was missing applications for a coastal development permit and a Mello Act affordable housing determination, and that Ferguson would send a follow up e-mail. On November 20, 2007, Ferguson sent an e-mail to Palisades Bowl's engineer, listing "the items you need to file your application." The e-mail specifically mentioned two of the missing items - an application for a coastal development permit from City and an application to the Housing Department for clearance under the Mello Act. *Palisades Bowl, supra*, 187 Cal.App.4th 1461, 1469.

B. The Trial Court's Erroneous Decision that the Limiting Language of Section 66427.5(e) Superseded the Mello Act and Pre-Empted the Requirement for a Coastal Development Permit

No further action was taken, by the City or Palisades Bowl, until Palisades Bowl filed the petition for writ of mandate and complaint for injunction and declaratory relief on January 17, 2008. *Id.* at 1469. The petition and complaint alleged the City failed to compile a proper list of items needed to apply for a mobilehome park conversion; the City improperly refused to accept Palisades Bowl's application; and that the application should be deemed complete under the Permit Streamlining Act.

In August 2008 Palisades Bowl filed a motion for a peremptory writ of mandamus and declaratory relief based on the City's alleged failure to provide a checklist for mobilehome park conversions and its failure to make a timely completeness determination. The trial court denied the motion and concluded that Ferguson's November 20 e-mail substantially complied with the Permit Streamlining Act's requirement that the City provide a written completeness determination. *Id.*

The trial court then granted Palisades Bowl's request to file a second amended petition to address whether the City could require Palisades Bowl to provide the items listed in Richard Ferguson's email. During the trial court proceedings, Palisades Bowl admitted it was not challenging the Coastal Act's application to the proposed subdivision. (Vol. 5, Appendix, p. 1100, fn. 2, lines 25-28.; Vol. 9, Appendix, p. 2, lines 20-22.) Rather, Palisades Bowl argued that the City, lacking a certified local coastal program under Public Resources Code section 30600(d), had no state-delegated authority to require a coastal development permit. After hearing on Palisades Bowl's second motion for issuance of a writ, the trial court held that the language of Government Code section 66427.5(e)[4] precluded the City from requiring compliance with the Mello Act and preempted what the trial court considered the City's local (not State mandated) requirement that Palisades Bowl apply for a coastal development permit from the City. *Id.* at 1470.

The trial court entered judgment and issued a peremptory writ commanding the City to deem Palisades Bowl's application complete and to evaluate the application for approval, conditional approval, or

[4] "the scope of the hearing shall be limited to the issue of compliance with this section"

disapproval. *Id.* at 1471. The trial court's writ commanding the City to process Palisades Bowl's application is stayed pending these appeals. Contrary to Palisades Bowl's assertion (Opening Brief, p. 4), the City did not impose any conditions on Palisades Bowl's project; the City has not begun to evaluate Palisades Bowl's application, let alone impose conditions.

C. The Appellate Court Proceedings and Its Correct Determination that the Mello and Coastal Acts Apply to a Section 66427.5 Subdivision

The City appealed the judgment and Palisades Bowl cross-appealed. The City contended the Mello Act and the Coastal Act could be harmonized with section 66427.5; the City also contended that the trial court erred by finding that section 66427.5 precluded the City from requiring Palisades Bowl to comply with the Mello Act and preempted the City from requiring a coastal development permit. As in the trial court, Palisades Bowl made clear it was not contesting the Coastal Act's applicability to its proposed subdivision application: "Palisades Bowl does not contend here (nor did it contend to the trial court) that §66427.5 somehow preempts the state statutes that require it to obtain a coastal development permit from the Coastal Commission." (Palisades Bowl's Combined Respondent's Brief and

Cross-Appellant's Opening Brief, at page 40, footnote 7.) Instead, Palisades Bowl asserted that the City's coastal development permit requirement was a purely local requirement which was pre-empted by the state code mandates of section 66427.5. *Id.* at 40. In its cross-appeal, Palisades Bowl contended the trial court abused its discretion in finding that the City satisfied the requirement of the Permit Streamlining Act to provide a written completeness determination. *Palisades Bowl, supra,* 187 Cal.App.4th at 1471.

The Appellate Court issued a published decision on August 31, 2010, upholding the trial court's determination that Palisades Bowl was not entitled to have its application deemed complete due to the City's alleged failure to comply with the Permit Streamlining Act. Palisades Bowl did not seek review of that portion of the opinion. The Appellate Court also decided that despite the limiting language in section 66427.5, the Mello Act and Coastal Act apply to a mobilehome park conversion within the coastal zone and that the local authority must ensure compliance with those acts in addition to compliance with section 66427.5. *Id.* at 1467. The panel determined that the City was following state law mandates in requiring Palisades Bowl to obtain a coastal development permit and a Mello Act

clearance from the City. *Id.* at 1484-1485. The court distinguished the *El Dorado* and *Sequoia Park* cases which held that section 66427.5 pre-empted local agencies from applying local requirements to such subdivisions, while the Mello and Coastal Act requirements are state law mandated. The court noted that it was undisputed that Palisades Bowl was located in the coastal zone.

The Appellate Court rejected the trial court's conclusion that the City's coastal development permit requirement was a local requirement not mandated by state law. The court noted that the Coastal Act 'is an attempt to deal with coastal land use on a statewide basis.' (*Yost v. Thomas* (1984) 36 Cal.3d 561, 571…; see also *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075…["a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government"]. *Id.* at 1479. "Once the City adopted a coastal development permit program that was accepted by the Coastal Commission [in 1978], the requirement for developers to obtain a coastal development permit from the City became a state mandate. (Pub. Resources Code, §§30600, subd. (b), 30620.5, subd. (b);

Cal.Code Regs., tit. 14, §13301.)" *Id.* at 1484. Palisades Bowl does not contest that portion of the opinion.

The Appellate Court held that Palisades Bowl's proposed subdivision was a "development" for purposes of the Coastal Act, which required Palisades Bowl to obtain a coastal development permit. *Id.* at 1481. "[A] project that involves a subdivision under the Subdivision Map Act constitutes development for purposes of the Coastal Act. (Cf. *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 240...)..." *Id.*

The *Palisades Bowl* appellate panel concluded that Section 66427.5 did not exempt a mobilehome park conversion applicant from having to comply with the Coastal Act and the Mello Act mandates that a developer obtain a coastal development permit and that low and median income units be preserved in the coastal zone. Relying on principles of statutory construction, the panel explained: "To be sure, the policy behind section 66427.5 is an important one-to encourage conversions of mobilehome parks to resident ownership while protecting nonpurchasing residents....But the policy considerations behind the Coastal Act-as well as the Mello Act, inasmuch as its

genesis was the Coastal Act [citations]-are far more extensive." *Id.* at 1485.

The court found that section 66427.5 did not offer as much protection for affordable housing as the Mello Act did. "[T]he Mello Act preserves the availability of housing units in the coastal zone dedicated to persons and families of low or moderate income; section 66427.5 would diminish the availability of such dedicated housing units. In short, the protections for low and moderate income persons and families provided by section 66427.5 does not provide the kind of protection so clearly mandated by the Mello Act." *Id.* at 1483.

The court concluded "[I]n light of the 'paramount concern' for protecting coastal resources by regulating development as expressed in the Coastal Act (and by implication, the Mello Act), we conclude that section 66427.5 does not preclude the City from imposing conditions and requirements mandated by the Mello Act and Coastal Act on a subdivider seeking to convert to resident ownership a mobilehome park located in the coastal zone." *Id.* at 1485.

ARGUMENT

I. INTRODUCTION

Because there is an apparent conflict between the Mello Act, Coastal Act and Government Code section 66427.5, the court's task is to harmonize the three statutes. *Mejia v. Reed* (2003) 31 Cal.4th 657, 664.

"[E]very statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect." (*Moore v. Panish* (1982) 32 Cal.3d 535, 541....) "Where as here two codes are to be construed, they 'must be regarded as blending into each other and forming a single statute.' [Citation.] Accordingly, they 'must be read together and so construed as to give effect, when possible, to all the provisions thereof.' [Citation.]" (*Tripp v. Swoap* (1976) 17 Cal. 3d 671, 679...) *Id.*

Section 66427.5(e) states that "the scope of the hearing shall be limited to the issue of compliance with this section." According to Palisades Bowl, this means a local agency considering a section 66427.5 subdivision may not consider any factors not explicitly mentioned in section 66427.5. Under this view, both the Mello Act

and the Coastal Act would be excluded because they are not among the factors explicitly mentioned in section 66427.5. Yet the plain language of the Mello Act provides that a local agency may not approve a conversion of existing affordable housing units, including "a mobilehome or a mobilehome park...to a condominium, cooperative or similar form of ownership" in the coastal zone unless provision has been made for replacement dwelling units. Gov. Code section 65590(g)(1). Meanwhile, the Coastal Act requires a coastal development permit for any development "changing density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act..."

As in this instance, when the plain meaning of the statutory text and its legislative history are insufficient to resolve the question of statute's interpretation, the court must consider the public policy impact of a given interpretation. Where "'uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.'" *Mejia v. Reed* (2003) 31 Cal.4th 657, 664 *citing* D*yna-Med, Inc. v. Fair Employment and Housing Com.* (1987) 43 Cal.3d 1379, 1387. If a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be

followed. *Absher v. Autozone, Inc.* (2008) 164 Cal.App.4th 332, 340. As demonstrated below, policy considerations behind the Mello and Coastal Acts are far greater than that of section 66427.5. In fact, exemption of section 66427.5 subdivisions from the Coastal and Mello Acts would have serious ramifications which contradict the purposes of the Mello and Coastal Acts and chip away at the Acts' breadth and purposes. Consequently, the Mello and Coastal Acts must be applied to this section 66427.5 subdivision.

II. THE PLAIN LANGUAGE OF THE MELLO ACT, COASTAL ACT AND SECTION 66427.5 REVEAL THE CONFLICT BUT FAIL TO RESOLVE IT

We begin with a review of the statutory texts and the relevant legislative history. *Mejia, supra*, 31 Cal.4th at 664-667.

A. Section 66427.5 Only Precludes Application of Local Ordinance Requirements to This Subdivision

Section 66427.5[5] is located squarely in the Subdivision Map Act and is one of three subsections governing subdivisions of

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[5] **§ 66427.5. Displacement of nonpurchasing residents**
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.

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

mobilehome parks. The Subdivision Map Act is the 'primary regulatory control' governing the subdivision of real property in California. *Gardner v. County of Sonoma* (2003) 29 Cal.4th 990, 996-997 *quoting Hill v. Clovis* (2000) 80 Cal.App.4th 438, 445.

Section 66427.5 applies to conversions of mobilehome parks to residential ownership. An application for a subdivision under section 66427.5 must include 1) a tentative tract or parcel map application, 2) a report on the impact of the conversion on the residents, and 3) a survey of resident support. Additionally, the subdivider must attempt to avoid the economic displacement of non purchasing residents in several ways. First, the subdivider must offer each existing tenant the

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(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...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."

option to either purchase his unit or to continue residency as a tenant. (Section 66427.5(a).) For the residents who are unable or unwilling to purchase, the subdivider must 1) allow low income residents to continue to rent at the current monthly rate, increased by no more than the consumer price index, and 2) allow the remaining residents to continue to rent: market rate levels of rent will be phased in over four years. (Section 66427.5(f).)

Finally, Section 66427.5(e) provides that "the scope of the hearing [on the map] shall be limited to the issue of compliance with this section." The three published cases interpreting section 66427.5(e), have held that it precludes local authorities from "inject[ing] ... factors [other than those set forth in the statute] when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis." (*Sequoia Park Associates v. County of Sonoma* (2009) 176 Ca.App.4th 1270, 1297...; see also *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1163-1164 [the city did not have power to impose mitigating conditions on mobilehome park owner] and *Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal.App.4th at 1487) *Palisades Bowl, supra*, 187 Cal.App.4th at 1477. As the Appellate

Court correctly pointed out, the three decisions addressed situations in which the local authority imposed requirements that were not mandated by another state statute, and thus none of the cases controls here. *Id.*

For example, the City of Palm Springs conditioned approval of *El Dorado's* section 66427.5 subdivision application upon three *locally devised* measures intended to protect the non-purchasing tenants. *El Dorado, supra*, 96 Cal.App.4th at 1156. *El Dorado* challenged the city's action, arguing that Palm Springs was not permitted by Gov. Code section 66427.5 to require the three further mitigating conditions. The three *locally devised* conditions were 1) use of a "Map Act Rent Date;" 2) use of a sale price established by a specified appraisal firm and 3) financial assistance to all residents in the park to facilitate their purchase of the lots underlying their mobilehomes.

The *El Dorado* court found the legislative purpose of section 66427.5 was to avoid economic displacement of nonpurchasing residents in the event of a conversion to resident ownership. *Id.* at 1166. According to the court, section 66427.5 carries out this purpose by requiring the subdivider to offer each existing tenant the option to

either purchase their subdivided unit or to remain as a tenant with rents increasing to market levels over a four-year period. *Id.* Ultimately, the court found the city of Palm Springs lacked the authority to condition approval of the subdivision application on imposition of the three *local* mitigation measures, since section 66427.5 limited the power of the local authority to a determination of whether the subdivider had complied with the provisions of the section. *Id.* at 1163-1164.

Similarly, the *Sequoia Park* court concluded that Sonoma County's ordinance governing mobilehome park subdivisions "is impliedly preempted because the Legislature, which has established a dominant role for the state in regulating mobilehomes, has indicated its intent to forestall *local intrusion* into the particular terrain of mobilehome conversions, declining to expand section 66427.5 in ways that would authorize *local governments* to impose additional conditions or requirements for conversion approval." *Sequoia Park, supra,* 176 Cal.App.4th 1270, 1275 (emphasis added). As a prelude to its holding, the *Sequoia Park* court reviewed the state's mobilehome park legislation to illustrate the extent of *state* control in the area.

The *Sequoia Park* court rejected Sonoma County's entire ordinance, primarily because it mandated *local* tenant displacement mitigation measures of the sort overruled in *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153. For example, Sonoma County's ordinance required the local advisory agency to deny the subdivision application if less than 20% of the residents supported the conversion. *Sequoia Park, supra*, 176 Cal.App.4th at 1292. The ordinance also authorized the county to approve the application only if the subdivider demonstrated that appropriate financial provision had been made to underwrite and ensure proper long-term management and maintenance of all common facilities and infrastructure. *Id.* at 1299.

Most recently, the *Colony Cove, supra,* panel noted that the City of Carson's local ordinance governing mobilehome park subdivisions improperly imposed additional requirements in connection with obtaining tentative map approval which were not expressly authorized by section 66427.5. For example, if the tenant survey indicated 50 percent or more of the park residents supported the conversion, it would be presumed bona fide; and if resident support fell between 35 and 50 percent, the owner would be required

to demonstrate a plan to convey the majority of the lots to current residents within a reasonable period of time. 187 Cal.App.4th at 1492.

The *Colony Cove* court was careful to distinguish between the issue raised in *Colony Cove* and the issue raised in *Palisades Bowl* "the City [of Carson] does not claim that it is attempting to implement a different state statute, which by its terms, applies to conversions of mobilehome parks." 187 Cal.App.4th at 1497, fn. 9. Similarly, the *Palisades Bowl* panel noted the *Colony Cove* case did not address the issue raised here, involving the contention that the local authority has imposed additional requirements mandated by a different state statute. *Id.* at 1477.

The notion that the Mello Act and the Coastal Act, both of which are state law, are superseded by a small portion of the Subdivision Map Act is not consistent with the holding in any of the three cases – *Sequoia Park, supra, El Dorado, supra, and Colony Cove, supra.*

Palisades Bowl claims that there are several indicia which reveal the Legislature's intent to make the procedures set forth in Section 66427.5(e) the exclusive statewide procedure for subdivisions of mobilehome parks to residential ownership. (Opening Brief, p. 26.)

This theory is not supported by the legislative history. First, Palisades Bowl's assumption that section 66427.5 is the Legislature's last relevant word on the issue is incorrect. (Opening Brief, p. 22.) In fact, the last word from the Legislature appeared in 2003 when it amended the Coastal Act to reconfirm the importance of preserving affordable housing in the coastal zone for low and moderate income families. (Pub. Res. Code sections 30604(f) and (g).) Similar language, which stated that one objective of the Coastal Act was to preserve affordable housing in the coastal zone, existed in the former Pub. Res. Code section 30213, from 1976 until 1981. The language had been removed from Pub. Res. Code section 30213 when the Mello Act was enacted.

Palisades Bowl also argues that if the Legislature wanted the Mello and Coastal Acts to apply to section 66427.5 subdivisions, it would have said so when they amended the statute in 2002. (Opening Brief, pp. 22-23.) There are some primary shortcomings to this approach. First, and as discussed in more detail, *post*, in plain language, the Legislature has already indicated that the Mello and Coastal Acts apply to subdivisions of mobilehome parks in the coastal zone. Second, Palisades Bowl fails to show where, either before or

after *El Dorado, supra*, the Legislature said or indicated that it intended to abridge the applications of the Coastal Act and the Mello Acts.

No part of the legislative history for which Palisades Bowl seeks judicial notice concerning the 2002 amendments to section 66427.5 bolsters its position in any way. (RJN, Exhibits 2-5.) The legislative history materials proffered by Palisades Bowl compel just one definite conclusion – the Legislature did not mention or consider the notion that section 66427.5 would preclude the application of other state statutes, including the Mello and Coastal Acts, to such conversions.

B. The Coastal Act's Purpose is Fortified by Its Requirement of a Coastal Development Permit for Any Development in the Coastal Zone

The Coastal Act of 1976, Pub. Res. Code §§30000 *et seq.*, is the legislative-continuation of the coastal protection afforded by Proposition 20, the Coastal Initiative of 1972. One of the primary reasons for both of these acts was to avoid the deleterious consequences of haphazard and random development on coastal resources. *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 162-163. The Coastal Act is a comprehensive

statutory scheme aimed at protecting the coastal zone; its goals include protecting the overall quality of the coastal zone and its natural and artificial resources, assuring balanced utilization and conservation of resources, maximization of public access and recreational opportunities, assuring priority for coastal dependent and related development, and encouraging state and local initiatives and cooperation. *Marine Forests Society v. California Coastal Commission* (2005) 36 Cal.4th 1, 19, fn.3. The Coastal Act is to be liberally construed to accomplish its purposes and objectives. (Pub. Res. Code §30009); *Ojavan Investors, Inc. v. California Coastal Commission* (1997) 54 Cal.App.4th 373, 386.

The "*Coastal Act is an attempt to deal with coastal land use on a statewide basis*...[I]n matters of general statewide concern the state may preempt local regulation." *Yost v. Thomas* (1984) 36 Cal.3d 561, 571 (emphasis added). "A fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. (See *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472.)" *Pratt Construction Co., Inc. v. California Coastal Commission* (2008) 162 Cal.App.4th 1068, 1075-1076.

The coastal legislative program was reinforced by the cardinal requirement that in addition to obtaining any other permit required by law from any local government or from any state, regional or local agency..."any person wishing to perform or undertake development in the coastal zone...shall obtain a coastal development permit." *California Coastal Commission v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 588. Pub. Res. Code §30106 defines a development in part as "changing the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commending with Section 66410 of the Government Code), and any other division of land, including lot splits..." As explained in more detail, *post*, a mobilehome park conversion is a subdivision under the Subdivision Map Act and therefore a development under the Coastal Act. *Quanta Investment Corp., supra*, 113 Cal.App.3d at 609 (conversion of a 100 unit apartment building to a stock cooperative is a "development" for purposes of the Coastal Act as it fell into the ambit of "any other division of land.").

The Coastal Act contemplates that local governments will take on coastal permit responsibility. There are two methods, set forth in

Pub. Res. Code §§30600(b) and 30600(d), by which a local government may ensure applicants obtain the state mandated coastal development permit. Prior to certification of its local coastal program under Pub. Res. Code section 30600(d), a local government may take on coastal permit responsibility under Pub. Res. Code §30600(b), as the City of Los Angeles has since 1978. *Palisades Bowl, supra*, 187 Cal.App.4th at 1480-1481. It may "establish procedures for the filling, processing, review, modification, approval or denial" of coastal development permits within its coastal zone. (Pub. Res. Code §30600(b).) The local procedures are strictly prescribed by the commission. (14 Cal. Code Regs. §13302; Pub. Res. Code §30620(a)(3)).

Finally, when a development permit is sought in a dual jurisdiction zone, a developer must first seek and obtain a coastal development permit from the local government. Then the developer must seek and obtain a coastal development permit from the Coastal Commission. (Pub. Res. Code section 30601.) It is undisputed that Palisades Bowl is in the dual jurisdiction zone. *Palisades Bowl, supra*, 187 Cal.App.4th at 1480.

C. The Proposed Subdivision Clearly Comes Within the Coastal Act's Definition of Development

The cardinal rule of the Coastal Act is that a developer must obtain a coastal development permit for every development project in the Coastal Zone. This requirement is in addition to any other permits required by law.

Pub. Res. Code section 30106 defines development as a "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....." The plain meaning categorizes either a "subdivision pursuant to the Subdivision Map Act" or "any other division of land" as a *change* in density or intensification of use.

This is supported by case law. In *Quanta, supra,* the Second Appellate District decided that a conversion of existing apartment units into a stock cooperative form of ownership was a "division of land" and therefore a "development" under the Coastal Act. 113 Cal.App.3d 579. "[T]he Coastal Act 'shall be liberally construed to accomplish its purposes and objectives.' One such objective is the

protection of and provision for, housing opportunities for low and moderate income persons in the coastal zone. Conversion of existing apartments into stock cooperatives may have an impact of concern in this area of Commission interest." *Id.* at 609. The court, referencing the plain language of Pub. Res. Code section 30106[6] recognized that a subdivision under the Subdivision Map Act or any other division of land, like a stock cooperative, was a development for purposes of the Coastal Act.

The *Quanta* court rejected the notion that the phrase "division of land" referred only to division of physical earth into units. *Id.* at 606. The court pointed out that the phrase 'division of land' was "embedded in, and interwoven with, a context dealing with changes in land use 'including, but not limited to, subdivision pursuant to the Subdivision Map Act'.... Like map act subdivisions which subsume not only physical divisions of unimproved land but also the division of improved land in which interests may be created in entities such as condominiums and community apartments, ... the use of the words 'any other division of land,' when read in context, conveys a meaning

[6] Hereafter "section 30106."

other and more comprehensive than mere physical partition of the terrain." *Id.* at 607 (emphasis added).

Similarly, in *La Fe, Inc. v. County of Los Angeles,* the court found that "development" for purposes of the Coastal Act included a lot line adjustment even though the adjustment did not create additional parcels. (1999) 73 Cal.App.4th 231, 240-242. "The Legislature's stated intent was to grant the commission permit jurisdiction with respect to any changes in the density or intensity of use of land, including any division of land. *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.* (emphasis added).[7] The court noted that Pub. Res. Code section 30106 explicitly applies to a 'subdivision...and any other division of land...' "The *key point* is that section 30106 applies to a 'division of land' and that a lot line adjustment was such a division of land." *Id.* at 240 (emphasis added). Accord *South Coast Regional Commission v. Pratt* (1982) 128 Cal.App.3d 830, 842 ["Development" is defined in section 30106 as including a subdivision pursuant to the Subdivision Map Act].

[7] In a footnote the court noted that the commission had found the proposed lot line adjustment changed the density and intensity of use of the land. *Id.*, fn. 4.

The Coastal Act provides an expansive definition of the activities that constitute "development" for purposes of the Act. *Gualala Festivals Committee v. Cal. Coastal Commission* (2010) 183 Cal.App.4th 60, 67. The act's goals include protection of the coastline and its resources and maximization of public access. The act is to be liberally construed to accomplish its purposes and objectives. *La Fe, supra*, 73 Cal.App.4th at 235.

The definition of development as a whole applies to the consequences of activity which may or may not involve a developer's taking physical action on land. The consequences include changes in public access to the coastal zone, especially for housing, and in residential composition.

Land divisions brought about in connection with the purchase of land by a public agency for public recreational use, unlike other divisions of land, are exempt from the definition of development. (Pub. Res. Code section 30106; Opening Brief, p. 35.) Palisades Bowl fails to recognize that such divisions of land, which facilitate public access to the coastal zone, are likely exempt because they are encouraged under the Coastal Act. The Coastal Act's exemption for public lands for public recreation underscores the purpose of the

Coastal Act's permit requirements, which is to ensure that developments (even where no dirt is ever shoveled) do not have adverse impacts on, and are supportive of, public access to the coast. See *Marine Forests Society, supra,* 36 Cal.4th at 19, fn. 3.

For example, a section of the California Coastal Plan contains a recommendation to restrict inappropriate development. The Plan (Palisades Bowl's Request for Judicial Notice, Exhibit 8) advises that to determine whether something is inappropriate development, one must consider, among other things, "residential composition" and "economic and social factors." (Opening Brief, p. 38, fn. 10.) A consideration of "residential composition" would certainly involve a consideration of whether the subdivision and sale of interests in a mobilehome park adversely changes the residential composition of the park and coastal zone. Since the Coastal Act also seeks to foster the goal of low and middle income housing availability in the coastal zone [*California Coastal Commission v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 588; See also Pub. Res. Code section 30604(g) (Stats 2003 ch 793 §7 (SB619))], and access to the coastal zone, a project that potentially alters "residential composition" is a project that requires a coastal development permit review.

Another underlying issue is whether Palisades Bowl's proposed subdivision *could* effect a change in density or intensity of use. The answer is yes. There is a likelihood of change in the density and intensity of use with a mobilehome park subdivision. After a conversion, mobilehome owners who did not purchase an interest in the park may remove their mobilehomes, while the new owners of park interest may bring in their mobilehomes. The removal of some homes, and replacement with new homes, has two potential physical affects. The new homes may well be larger with additional impact on the sewer and power infrastructure. For example, Palisades Bowl was a mobilehome park at least as early as 1954. (Vol. 2, Appendix, p. 253.) Consequently, some of its infrastructure likely dates back to 1954 when mobilehomes were smaller. Any additional pressure from larger mobilehomes on an older infrastructure can result in a change in intensity of use.

Additionally, mobile homes might be considered "structures" as Palisades Bowl acknowledges (Opening Brief, p. 28, fn. 5). Subdivision of the park would bring the foreseeable removal of mobilehomes of prior residents and installation of mobilehomes of new residents, as new owners buy an interest in the park and displaced

residents move out. This might be considered "development" under section 30106, which includes "placement or erection of any solid material or structure."

Likewise section 66427.5 subdivisions must be considered "development" for purposes of the Coastal Act, just as they are considered "development" for purposes of the Permit Streamlining Act. "Identical language appearing in separate provisions dealing with the same subject matter should be accorded the same interpretation." *Walker v. Superior Court* (1988) 47 Cal.3d 112, 132 *citing Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 359. "Development" is defined virtually identically in both the Coastal Act [Pub. Res. Code section 30106] and the Permit Streamlining Act [Government Code §§65920 et seq.].[8] In each Act, the definition of "development" includes the following language: "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act

[8] The Coastal Act definition explicitly includes "lot splits" within the definition of development, while the Permit Streamlining Act definition does not. Additionally, the definition of development in the Permit Streamlining Act contains two sentences at the end of the definition which are not contained in the Coastal Act definition.

(commencing with Section 66410 of the Government Code), and any other division of land..."

Language with an accepted judicial interpretation should be given that same interpretation in other statutes where the language appears. *Ford Dealers, supra*, 32 Cal.3d at 359 *citing Kuntz v. Kern County Employees Retirement Assn.* (1976) 64 Cal.App.3d 414, 422. For purposes of the Permit Streamlining Act, an applicant for a tentative subdivision map is an applicant for a development project. *Landi v. County of Monterey* (1983) 139 Cal.App.3d 934, 936. Palisades Bowl's application admits it is proposing a "development" project. Since the parties, the trial court and the appellate court agreed that Palisades Bowl's proposed subdivision is a "development" for purposes of the Permit Streamlining Act, there should be little debate that the proposed subdivision is also a development for purposes of the Coastal Act.

Palisades Bowl now argues that its proposed subdivision is not "development" for purposes of the Coastal Act. Palisades Bowl apparently claims that the definition of development, which by its plain terms applies to subdivisions under the Subdivision Map Act, should instead be interpreted narrowly and limited to actions which

involve a developer's affirmative physical action to the environment. Palisades Bowl did not present this argument in the trial court or on the briefing of the City's appeal.[9]

Palisades Bowl contends that a subdivision, absent a developer's affirmative physical act, i.e., construction, demolition, dredging, etc. cannot be considered a change in intensity or density of use, since that would be different in meaning from the other phrases of section 30106.[10] (Opening Brief, pp. 29-30.) Palisades Bowl employs a visually attractive yet factually misleading rendering of the definition of development, including fictitious subdivision numbers [1] – [7], to claim that each of the several phrases which constitute the definition of development ought to be treated independently and to analogize section 66427.5 to the statute considered in *Grafton Partners L.P. v. Superior Court* (2005) 36 Cal.4th 944. (Opening Brief, p. 32.) Since it was enacted, the definition of development in

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[9] Palisades Bowl belatedly raised a similar argument, that the definition of development in the Los Angeles Municipal Code section 12.20.2 did not pertain to the proposed subdivision, for the first time in its reply brief on its cross-appeal concerning the Permit Streamlining Act. (Respondent/Cross-Appellant Palisades Bowl's Reply Brief, pp. 27-31.) The Appellate Court granted the City's motion to strike the portion of Palisades Bowl's reply brief, containing the new argument, as improper under Rule of Court 8.216(b)(3). 187 Cal.App.4th 1461, 1472, fn. 6.

section 30106 has been constituted as one large paragraph, with seven phrases, and one smaller paragraph.[11]

In *Grafton Partners,* the Court employed the canon of statutory construction *noscitur a sociis*, "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," to interpret a statute. 36 Cal.4th at 960. There, the court determined it was compelled to narrowly interpret any statute providing for a waiver of the right to a jury trial in light of the important constitutional principle. *Id.* at 952. The Coastal Act, which is to be liberally construed, stands in stark contrast to the principle of a jury trial, waiver of which is to be narrowly construed. Palisades Bowl's effort to restrict the interpretation of the phrase "change in the density or intensity of use of land, including, but not limited to , subdivision pursuant to the Subdivision Map Act," is inconsistent with the Legislature's directive that the Coastal Act be construed liberally to effect its purposes. (Pub. Res. Code section 30009.) *Grafton Partners, supra*, provides no support or guidance for Palisades Bowl's

[11] The Permit Streamlining Act definition of development is set up in exactly the same manner. Gov. Code section 65927.

assertion that the rule compels a restricted interpretation of "subdivision." *Id.*

Palisades Bowl's theory that conversion of a mobilehome park to residential ownership does not change the density or intensity of use, and thus is not a development, has further reaching implications. Taking this theory to its logical extreme would have the unintended consequence of exempting all air-space subdivisions of existing apartment buildings to condominiums from having to obtain a coastal development permit. According to Palisades Bowl's theory, air space subdivisions do not change the density or intensity of use and therefore are excluded from operation of the Coastal Act. This ignores the fact that airspace subdivisions create change in density or intensity by virtue of their division into multiple ownership interests, as well as their effect on housing and residential composition. See *Quanta, supra,* 113 Cal.App. 3d at 607.

Finally, Palisades Bowl argues that the Coastal Act itself limits its own application to section 66427.5. (Opening Brief, p. 41.) This is a tortured reading. The plain language of Pub. Res. Code sections 30007 and 30519 simply says that nothing in the Coastal Act exempts the local government from meeting state law requirements concerning

providing low and moderate income housing or authorizes local government to exercise power it does not have. There is no mention of section 66427.5 or any other state statute. Consequently, these sections present no basis for finding the Coastal Act would abridge the application of its own or any other state law directive to local governments to provide affordable housing.

Palisades Bowl attempts to limit the effect of the several cases which hold or assume that "development" under the Coastal Act refers broadly to any subdivision under the Subdivision Map Act. Yet Palisades Bowl provides no case which holds the contrary. Since the proposed conversion could effect a *change*[12] in density or intensity of use, it falls to the City and the Coastal Commission to determine whether to approve, conditionally approve or deny the permit application.

D. The Mello Act's Protection of Affordable Housing in the Coastal Zone Plainly Extends to Conversions of Mobilehome Parks

"In 1981 the Legislature enacted the Gov. Code §65590. This provision is known as the Mello Act and its purpose is to preserve residential housing units occupied by low or moderate-income persons

[12] Not necessarily an increase.

or families in the coastal zone." *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1552, 1562-1563. The Mello Act's purpose to protect affordable housing in the coastal zone had its genesis in the Coastal Commission's Interpretive Guidelines and former Public Resources Code §30213 (part of the Coastal Act) which sought to protect, encourage and provide housing opportunities in the coastal zone for persons and families of low or moderate incomes. *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 741, concurring opinion; *Quanta Investment Corporation, supra*, 113 Cal.App.3d at 588. The Mello Act shifted responsibility for providing affordable housing in the coastal zone from the Coastal Commission to local governments. (Stats 1981, ch 1007 §1.)

The Legislature recognized there is a severe shortage of affordable housing throughout California, especially for persons of low and moderate income. Interpretation of the Mello Act involves consideration of an important public right to preserve affordable housing in the coastal zone. *Venice Town Council, supra,* 47 Cal.App.4th at 1564.

The Mello Act imposes a ministerial, mandatory duty on the City to require replacement housing units for low or moderate income persons or families in the coastal zone when those units are converted or destroyed. *Venice Town Council, supra*, 47 Cal.App.4th at 1552 and 1562-1563. "[S]ubdivision (b) of section 65590 forbids local agencies from approving any conversion or demolition of existing affordable housing 'unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income,' which replacement units are to be located "within the coastal zone if feasible...." *Palisades Bowl, supra*, 187 Cal.App.4th at 1478.

The plain language of the Mello Act specifically applies to conversions of mobilehome parks to resident ownership. "Conversion" as defined in the Mello Act "means a change of a residential dwelling, including a mobilehome, ...or a mobilehome lot in a mobilehome park as defined in Health and Safety Code section 18214...to a condominium, cooperative or similar form of ownership..." (Gov. Code §65590(g)(1).) Health and Safety Code §18214 has consistently defined mobilehome park as an area or a tract of land *where two or more lots* are rented or leased, held out for rent

or lease, or *were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium* or other form of resident ownership, to accommodate manufactured homes, mobilehomes, or recreational vehicles used for human habitation.

The Mello Act's definition of conversion (mobilehome park converted to a subdivision) also lends support for the notion that the Coastal Act's definition of development must be interpreted to include any subdivision, whether or not any dirt is moved. Since the Mello Act and its protections for affordable housing in the coastal zone are originally derived from the Coastal Act, it makes little sense that the Mello Act's "conversion" would be more extensive than the Coastal Act's "development."

Any interpretation that holds section 66427.5(e) supersedes the Mello Act requirements as applied to a mobilehome park conversion to residential ownership effectively strikes the plain language of the Mello Act.

E. The Mello Act Provides More Extensive Protection for Affordable Housing Units at Mobilehome Parks in the Coastal Zone than Section 66427.5

The Mello Act has two important advantages over Gov. Code section 66427.5 in protecting affordable housing. First, the Mello Act

protects lower income and moderate income units. The protections afforded by Gov. Code section 66427.5 do not measure up in this regard. Section 66427.5(f) allows only lower income households to remain tenants at a monthly rental which does not increase more than the Consumer Price Index. All other households who wish to remain tenants must, within four years of the conversion, pay a monthly rental equivalent to market rate. Or they must purchase their interest in the mobilehome park at, presumably, a cost equal to market rate. Neither of the latter options involves any consideration of the moderate income families' means, as the Coastal Act intends.

Second, Mello also has a broader reach with respect to protecting low income affordable *units*. Section 66427.5 protects only those low income families who choose to remain at the mobilehome park after it is subdivided. Once those families move, however, the units would not be preserved as affordable housing for low income families. The Mello Act takes a longer view. Rather than simply providing temporary rent control which ends when low income tenants move from the mobilehome park, as Gov. Code section 66427.5 does, the Mello Act preserves affordable *units* for low and moderate income families in the coastal zone.

The notion that the policy underlying Health and Safety Code section 50780 would weigh against the Mello Act's application to a section 66427.5 conversion is not consistent with the plain language of section 50780.

(Opening Brief, p. 19-20.) As Palisades Bowl noted, section 50780 pertains to state funded mobilehome park conversions ("MPROP"). The Legislature stated its intent to encourage and facilitate conversion of mobilehome parks to resident ownership by qualified nonprofit housing sponsors or by local public entities to protect low income mobilehome park residents from physical and economic displacement in the event of mobilehome park conversions to other uses. (Section 50780.) This policy is compatible with the policy behind the Mello Act which provides more extensive protections for preserving affordable housing *units for low and moderate income* families in the coastal zone.

Palisades Bowl advocates giving the Mello Act a "narrow" construction such that it will have no greater affect than the provisions of 66427.5(f) in conversions of mobilehome parks to residential ownership. (Opening Brief, p. 46.) In other words, it will not protect moderate income families, as the Mello Act does. Nor will affordable

units be preserved in the coastal zone after the original low and moderate income residents have left. Palisades Bowl attempts to make this solution more palatable by offering that Mello Act's protections during mobilehome park conversions may still apply to other mobilehome park conversions, just not those under section 66427.5. Ultimately, Palisades Bowl's solution for harmonizing the two statutes simply requires the Mello Act protections to be ignored. Under *Fuentes v. Workers Compensation Appeals Board* (1976) 16 Cal.3d 1, 7, statutes must be reconciled to avoid interpretations that would require one or another to be ignored. Palisades Bowl's interpretation fails to reflect any true analysis or measurement of the breadth of affordable housing protected by the Mello Act compared with that protected by section 66427.5.

Palisades Bowl's reliance on *Penziner v. West American Finance Co.*[13] and *Board of Supervisors of San Diego County v. Lonergan*[14] to advocate for a "modified" and "narrowed" application of the Mello Act to mobilehome park conversions other than under section 66427.5 is misplaced. (Opening Brief, p. 47.) First, Palisades Bowl's suggestion is based on the notion that section 66427.5 is the

[13] (1937) 10 Cal.2d 160.
[14] (1980) 27 Cal.3d 855, 867-868.

last statement from the Legislature, as it was amended in 2002; while the Mello Act was enacted in 1981 and last amended in 1982. Ergo, posits Palisades Bowl, the Mello Act, as the earlier enacted, must be modified. Yet, the assumption that section 66427.5 is the Legislature's last word regarding affordable housing is wrong. In 2003, the Legislature made its most recent statement confirming the importance of affordable housing in the coastal zone for low and moderate income families when it amended the Coastal Act. (Pub. Res. Code section 30604(f) and (g).)

Second, in *Lonergan*, *supra*, where two constitutional provisions appeared to conflict, the court determined that rather than implying a repeal of the earlier enacted provision, the *later* enacted constitutional provision would be "modified." "The law shuns repeals by implication, particularly where, as here, 'the prior act has been generally understood and acted upon.'" *Id.* at 868. This holding is exactly contrary to the one Palisades Bowl seeks since Palisades Bowl wants to modify the earlier enacted Mello Act's application to mobilehome park subdivisions.

Nor does *Penziner, supra*, aid Palisades Bowl's position. There, a recently enacted constitutional clause specifically provided,

"[T]he provisions of this section *shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith.*" 10 Cal.2d at 173 (*emphasis added*). The court decided that much of the earlier enacted usury law was compatible with the Constitution, but did find that some portions of the earlier enacted usury statute were not compatible. Rather than repealing the entire usury statute, the court deemed just the incompatible portions of the usury law as amended by the constitutional provision. *Id.* at 174. Section 66427.5 contains no similar "conflict" provision. Consequently, Palisades Bowl has provided no basis for "modifying" or narrowing the impact of the Mello Act on its proposed subdivision.

Palisades Bowl disingenuously claims that statements in its subdivision application "no tenant will be displaced or evicted as a result of this project" and "[n]o tenant will be evicted or asked to terminate their tenancy" were not disputed by the City. (Opening Brief, pp. 6-7.) Such statements are demonstrably false. The very terms of the Mello Act and section 66427.5 assume some non-purchasing residents will be displaced.

Palisades Bowl also appears to claim that the following quotation: "[n]o 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" from the Mello Act's section 66590(i) means that section 66427.5's limits on a local agency's authority over maintaining affordable housing supersedes the Mello Act's requirements. (Opening Brief, p. 44.) This is a tortured reading, similar to that Palisades Bowl gave to the Coastal Act. The plain language simply says that the local government's authority to ensure the continued affordability of housing is neither enlarged nor limited by section 66590(i). There is no mention of section 66427.5 or any other state statute. Consequently, there is no cause to decide that the Mello Act's section 66590(i) limit on a *local agency* would abridge the application of the whole of the Mello Act's mandatory state law directive to local governments to preserve affordable housing in the coastal zone.

III. THE OVERRIDING POLICY CONSIDERATIONS BEHIND THE COASTAL AND MELLO ACTS REQUIRE THEIR APPLICATION TO PALISADES BOWL'S PROPOSED SUBDIVISION

Relying upon *Mejia, supra*, the appellate court appropriately concluded that the application of ordinary rules of statutory construction—examination of the plain meaning of the statutory text

and the legislative history to determine legislative intent-did not assist them, because neither the statutory text nor the legislative history provides insight into the legislative intent as to which statute prevails. *Palisades Bowl, supra*, 187 Cal.App.4th at 1484. The Supreme Court instructs us, at this juncture, to turn to an analysis of the relevant policy considerations as they bear on the question of legislative intent. *Id.*

As the Legislature has declared, "the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people," and "the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and the nation," which requires "[t]hat existing developed uses, and future developments [be] carefully planned and developed consistent with the policies of [the Coastal Act]." *Palisades Bowl, supra*, 187 Cal.App.4th at 1485 *citing* Pub. Res. Code section 30001, subd. (a), (b), (d).

The requirement for a coastal development permit is not excused by compliance with the Subdivision Map Act. *Landgate, Inc. v. Cal. Coastal Commission* (1998) 17 Cal.4th 1006, 1028. "The 1976 Coastal Act and its predecessor, the California Coastal Zone

Conservation Act of 1972, represent a major statement of overriding public policy regarding the need to preserve the state's coastal resources not only on behalf of the people of our state, but on behalf of the people of our nation." *South Central Coast Regional Commission v. Charles Pratt Construction Co.* (1982) 128 Cal.App.3d 830, 844.

Palisades Bowl has been asking why the Mello and Coastal Acts should apply if section 66427.5 does not explicitly mention them. It is the wrong question. The question is whether an exemption from the Coastal and Mello Acts for section 66427.5 subdivisions frustrate or conflict with the goals and purpose of the Coastal and Mello Acts. It would. "Even if there were a conflict between the Subdivision Map Act and the Coastal Act, ...[the Coastal Act prevails.] The Legislature enacted the Coastal Act to protect the coast statewide, while it generally gave local government power to regulate local subdivisions throughout the state. (Gov. Code §66411). However, local regulation of property within the particular area of the coastal zone gives way to the state's authority to preserve the coast's natural resources; otherwise the Coastal Act's purposes would be hindered and the Coastal Act would not specifically refer to the

Subdivision Map Act." *Ojavan Investors, Inc. v. California Coastal Commission* 54 Cal.App.4th 373, 388. (See also Pub. Res. Code section 30106[4].)

The Coastal Act, as the genesis of the Mello Act, also seeks to foster the goal of low and middle income housing availability in the coastal zone. *California Coastal Commission v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 588; See also Pub. Res. Code section 30604(g) (Stats 2003 ch 793 §7 (SB619)).

The Coastal Act recognized that "'meaningful access to the coast requires housing opportunities as well as other forms of coastal access.' (Cal. Coastal Com., Interpretive Guidelines on New Construction of Housing (1981) §II.A, p. 13.) 'The access, economic development and environmental policies of the Coastal Act all provide that the coastal zone will not be the domain of a single class of citizens but will instead remain available to the entire public; the provision of affordable housing benefits not only those who live in it but all members of society.' (*Id.*, §II.B, p. 14.)" *Coalition, supra*, 34 Cal.4th at 741. The Mello Act retained the original purpose expressed in the Interpretive Guidelines. *Id.* The reason for the concern with the absence of affordable housing in the coastal zone is obvious. The

coastal zone offers some of the choicest, and most expensive, land. *Id.* The housing market, left to itself, might well make the coastal zone, the domain of a single class of citizens, i.e., the wealthy, contrary to the public policy of access embodied in the Coastal Act and the Mello Act. *Id.*

As the Appellate Court appropriately noted, the Mello Act's focus on the continued availability of affordable housing units in the coastal zone trumps the considerably more limited focus of the temporary rental protections provided by section 66427.5, subdivision (f), which protect only against economic displacement of current nonpurchasing residents of the mobilehome park being converted. *Palisades Bowl, supra,* at 1479.

The paramount and overriding policy concerns expressed in the Mello and Coastal Acts demand that the City impose conditions mandated by Mello and Coastal Acts on a subdivider seeking to convert a mobilehome park in the coastal zone to resident ownership pursuant to section 66427.5.

IV. CONCLUSION

The Appellate Court decision should be affirmed.

Dated: May 2, 2011, Respectfully submitted,

CARMEN A. TRUTANICH, City Attorney
KENNETH FONG, Deputy City Attorney
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CITY OF LOS ANGELES

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CERTIFICATE OF COMPLIANCE

I, Counsel for Defendant and Respondent, certify that pursuant to California Rules of Court, Rule 8.204 (c) that this ANSWER BRIEF OF THE CITY OF LOS ANGELES is produced using Times New Roman font, 14 point type size, and contains 7,970 words as counted by the word processing program.

Dated: May 2, 2011 Respectfully submitted,

CARMEN A. TRUTANICH, City Attorney
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By: _____
AMY BROTHERS
Deputy City Attorney

Attorneys for Defendant and Appellant
CITY OF LOS ANGELES

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 700 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On May 2, 2011, at my place of business at Los Angeles, California, a COPY of the attached **ANSWER BRIEF OF THE CITY OF LOS ANGELES** was placed in a sealed envelope addressed to:

SEE ATTACHED SERVICE LIST

BY MAIL - I deposited such envelope in the mail at Los Angeles, California, with First class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED on May 2, 2011, at Los Angeles, California.

GUADALUPE LOPEZ

PACIFIC PALISADES BOWL MOBILE ESTATES, LLC,
vs.
CITY OF LOS ANGELES,
Supreme Court Case No. S187243
2d Civil No. B216515
LASC Case No. BS112956

2nd Appellate District – Div. 4
300 S. Spring St., 2nd Floor
Los Angeles, CA 90012

Honorable James C. Chalfant
c/o Clerk – Dept. 85
Los Angeles Superior Court
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