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

REPLY BRIEF ON THE MERITS

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I.

INTRODUCTION

The primary argument by respondent, City of Los Angeles ("city"), has three steps. First, it presumes there is a conflict in the relevant statutes, without benefit of textual analysis. Second, it asks the Court to "harmonize" the statutes by appraising their relative social importance. Finally, the city proposes a "harmonizing" that would take a statute expressly designed to be exclusive and declare it nonexclusive.

Every step in the city's argument is untenable. First, its major premise of a conflict ignores most of the textual analysis presented by the appellant, Pacific Palisades Bowl Mobile Estates, LLC ("Palisades"). Second, policy appraisal is the *last* resort in resolving statutory conflicts, not the first; it is appropriate only if the text and history prove inconclusive. Finally, a court harmonizing statutes must give effect to every provision if at all possible, but the city proposes to nullify a central component of Govt. Code § 66427.5 (hereafter, "§ 66427.5").

This reply brief will begin with the relevant principles of statutory construction, and then revisit the three statutes in dispute. Palisades will show that the city is ignoring not only their plain language, but also the Legislature's underlying policies on affordable housing,

II.

THE CITY IGNORES FUNDAMENTAL RULES ABOUT STATUTORY CONFLICTS

A.

TEXT COMES FIRST, POLICY ARGUMENTS LAST

While the city cites *Mejia v. Reed* (2003) 31 Cal.4th 657 several times, it ignores the relevant holding on policy appraisal. *Mejia*'s discussion about statutory conflicts began: "we *first* examine the words themselves, giving them their usual and ordinary meaning and construing them in context." (*Id.* at 663; cit. omitted; italics added) Next, "[w]hen the plain meaning of the statutory text is *insufficient* to resolve the question of its interpretation the courts may turn to rules or maxims of construction." (*Id.*; italics added) And at that stage, too, "[c]ourts also look to the legislative history of the enactment." (*Id.*)

Only then did *Mejia* address policy appraisal: "[f]inally, the court may consider the impact of an interpretation on public policy. . . ." (*Id.*) But *Mejia* did not mean policy appraisal is always an *appropriate* last step — but only a last resort, when all else fails. The body of the opinion began with an exhaustive analysis of text, history, and canons of construction (*id.* at 664-668), all of which failed to resolve the statutory conflict. And the Court cited that failure as the only justification for the

ensuing section entitled "Policy Considerations." (31 Cal.4th 668-669) That section began:

> The Court of Appeal here concluded that neither the language of the statutes nor their legislative history was dispositive, and that it would ***have to*** turn to an analysis of the relevant policy considerations as they bear on the question of legislative intent. The court that decided *Gagan v. Gouyd* [1999] . . . 73 Cal.App.4th 835 . . . also found that neither the statutory text nor legislative history was sufficient to resolve the conflict, ***requiring*** it to base its decision on policy considerations. ***We arrive at the same juncture***. (31 Cal.4th 668; italics added)

B.

WHEN HARMONIZING STATUTES, A COURT MUST GIVE EFFECT TO EVERY PROVISION

The city ignores another relevant holding in *Mejia*:

> [w]here as here two codes are to be construed, they must be regarded as blending into each other and forming a single statute. . . . Accordingly, they must be read together and so construed as to give effect, when possible, to ***all*** the provisions thereof. (31 Cal.4th 663; italics added; cits. and internal quots. omitted)

Explaining the point another way, *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 779, stated that the courts, when harmonizing statutes, should do so "in such a way that no part of either becomes surplusage." (Cit. and internal quots. omitted)

Palisades, for example, when discussing the Mello Act, took pains to demonstrate how *all* its provisions could be harmonized with § 66427.5 to avoid an implied repeal. (AOB 44-49) By contrast, the city's so-called harmonizing construction of § 66427.5 would render its central component surplusage — its intended exclusivity. That is not "harmonizing" in any accepted sense of the term, and its exposes the fundamental weakness of the city's case.

III.

THE CITY IGNORES THE GREAT BULK OF PALISADES'S SHOWING ON THE CONVERSION STATUTE, GOVT. CODE § 66427.5

A.

TEXT IGNORED BY THE CITY REFUTES ITS THEORY OF AN EXCEPTION FOR OTHER STATE LAWS

The city's primary argument about § 66427.5 is that it prohibits circumvention only if predicated on "local ordinance requirements," not on "another state statute." (RB 19) But the city points to no textual support for that theory, and it is irreconcilable with powerful textual evidence the city ignores.

Subdivision (e) of § 66427.5 concludes that "the scope of the [map-approval] hearing shall be limited to the issue of compliance with

this section." Palisades's opening brief explained that this language makes two points. "First, it commands local agencies to limit their review to the criteria of § 66427.5, preempting any other *local* criteria." (AOB 17; original italics) The city appears to accept that point, by limiting its arguments to state-law justifications for deviating from § 66427.5.

But the city ignores the second aspect of Palisades's textual analysis: "[t]he 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." (AOB 18) That is the plain meaning of the text, and the city has nothing to say about it.

The city also ignores Palisades's point that no text in § 66427.5 *preserves* the applicability of other statutes. (AOB 18) Notably, Palisades cited examples of such provisions in the Coastal Act and Mello Act themselves. (*Id.*) By contrast, the Legislature used no such language in § 66427.5, and the omission powerfully confirms the affirmative expressions of exclusivity cited earlier.

Finally, the state-law exception urged by the city flies in the face of the essential thrust and purpose of the statute. The Legislature

expressed no interest whatsoever in the claimed *source of authority* for circumventing § 66427.5. It simply barred circumvention. Put another way, it prohibited a certain *action* by local government, not a particular rationale for that action. And the action it prohibited was stonewalling conversions by imposing *any* conditions not enumerated in § 66427.5.

B.

THE CITY'S SUBSTITUTE FOR TEXTUAL ANALYSIS, AN ARGUMENT ABOUT CASE LAW, IS UNAVAILING

As a substitute for textual analysis, the city place great reliance on an attempt to distinguish the two lead cases construing § 66427.5, *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App. 4th 1153 (*review denied*) and *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270 (*review denied*). The city claims they only "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." (RB 19)

To begin with, *Sequoia did* address a state-law justification of this kind, and rejected it. One of the local requirements it cited and rejected was an official's finding that "[t]he conversion to resident ownership is consistent with the General Plan, [and] any applicable Specific or Area Plan. . . ." (Quoted at 176 Cal.App.4th 1291)

Moreover, *Sequoia* cited and rejected the *justification* for that requirement — that its purpose was "[t]o implement the goals and policies of the General Plan Housing Element." (Quoted *id.* at 1288) That is a state-law justification. The "goals and policies" in question are directly mandated by one state statute (Govt. Code § 65302, subd. (c)) and heavily influenced by others. (Govt. Code §§ 65580 *et seq.*) Indeed, that justification is indistinguishable from the state-law justification advanced by the city based on the coastal statutes.

Although *Sequoia* did not elaborate on this state-law justification, it did strike down the associated general-plan requirement because it deviated from § 66427.5. That alone makes *Sequoia* applicable authority here.

But there is more. Following *El Dorado* in this respect, *Sequoia* articulated a *rationale* for its holding that applies to state law as much as local law. While *El Dorado* did not involve a state-law justification, it broadly held that local government "lacks authority to investigate or impose *additional* conditions to prevent sham or fraudulent transactions. . . ." (96 Cal.App.4th at 1165; italics added) That language rejects *any* such conditions, irrespective of their legal justification. And *Sequoia* read and applied *El Dorado's* holding that way. *Sequoia* explained that § 66427.5 does not "permit[] a local authority to inject

any other consideration into its decision whether to approve a subdivision conversion." (176 Cal.App. 4th at 1296; italics added)

Appraising precedent is not one-dimensional, as the city suggests. For example, *Etheridge v. Reins Intern. California, Inc.* (2009) 172 Cal.App.4th 908 (*review denied*) rejected a narrow construction of *Leighton v. Old Heidelberg, Ltd.* (1990) 219 Cal.App.3d 1062 based on its references to employees who provide "direct table service." But *Etheridge* pointed out that the rationale of *Leighton* was broader, aimed at "protecting the property rights of *all* employees . . . who render service to the same patron." (172 Cal.App.4th at 921; internal quots. omitted) So *Etheridge* followed *Leighton* in that broader sense.

So here. Even if the city were correct that neither *El Dorado* nor *Sequoia* involved state-law justifications, the rationale they articulated expressly encompassed "any" legal justification for avoiding § 66427.5. Both cases are persuasive precedent here.

C.

TEXT AND HISTORY IGNORED BY THE CITY ESTABLISH AN INTENT TO APPLY § 66427.5 THROUGHOUT THE STATE — THE COASTAL ZONE INCLUDED

Palisades cited textual evidence of the Legislature's intent to apply § 66427.5 throughout the State. (AOB 16-17) The new introductory

language, substituted in 1995, plainly applied to *all* conversions of the kind described in the statute.

When the language of a state statute is universal that way, it presumptively applies throughout the State. Thus, claims of an implied exception based on geography, or any other factor, face a heavy burden indeed. As stated in Code Civ. Proc. § 1858, it is not for the courts "to insert what has been omitted, or to omit what has been inserted. . . ."

The city attempts to shift that burden to Palisades. It says Palisades "fails to show where . . . the Legislature said or indicated that it intended to abridge the applications of the Coastal Act and the Mello Act." (RB 23-24) The city states that "the Legislature did not mention or consider th[at] notion. . . ." (RB 24) But silence is no justification for ignoring the text of § 66427.5 that plainly compels its universal application.

Moreover, the city ignores the legislative history materials repeatedly stating that the 1995 version of § 66427.5 applied to *all* the conversions it covered. (AOB 21-27) And it likewise ignores the Legislature's emphatic endorsement of the express holding in *El Dorado* that § 66427.5 "applies to *all* conversions of mobilehome parks to

resident ownership." (96 Cal.App.4th 1173; italics added; quoted at AOB 22-23)

D.

LEGISLATIVE FINDINGS AND HISTORY IGNORED BY THE CITY CONFIRM THE INTENDED EXCLUSIVITY OF § 66427.5 BY EXPLAINING ITS PURPOSE

Finally, while the city touts its own policy assessments about affordable housing, it ignores the *Legislature's* policy exhaustively documented by Palisades. (AOB 19-27) And that policy well explains the Legislature's deliberate crafting of § 66427.5 to be exclusive.

To summarize briefly, the Legislature considers it highly important to preserve mobilehome parks throughout the State as a source of affordable housing. Finding their use as such in jeopardy from economic pressures, the Legislature set out to protect that use not only by funding conversions to resident ownership, but also by protecting such conversions from local interference. And the protection strategy it adopted was to make the conditions stated in § 66427.5 exclusive throughout the State.

The city does not dispute Palisades's description of the Legislature's policy, or its rationality as applied in the coastal zone. The city simply ignores it.

IV.

THE COASTAL ACT DOES NOT APPLY TO THIS CONVERSION BECAUSE IT ENTAILS NO CHANGE IN THE DENSITY OR INTENSITY OF USE OF LAND

Palisades's opening brief demonstrated that, under the plain language of the Coastal Act, a subdivision of land is not a "development" covered by the Act (Pub. Res. Code § 30106) unless it effectuates a change in the density or intensity of use of the land. (AOB 29-31) Thus, a subdivision doing nothing but legally convert an existing, fully developed mobilehome park to resident ownership effectuates no such change. (AOB 37, 39, 41) It thus requires no permit under the Coastal Act.

In response, the city misstates our position, largely ignores our textual arguments, and entirely ignores our showing why the relevant holding in *California Coastal Commission v. Quanta Investment Corporation* (1980) 113 Cal.App.3d 579 went astray.

The city's heavy reliance on policy also misses the mark. Although it stresses various objectives of the Coastal Act, it pays lax attention to the manner in which the Legislature has chosen to implement them. Careful reading of the statutory scheme shows that the mere conversion

of a park to resident ownership would not impair any of the concerns spelled out in the city's brief. On the contrary, it protects a unique source of affordable housing that the Legislature has chosen to encourage.

A.

THE CITY MISSTATES PALISADES'S LEGAL POSITION

Contrary to the city's misunderstanding, we do not contend that the term "development" is limited to a proposed physical change to land. (See RB 31, 32, 35-36.) Cases such as *La Fe, Inc. v. Los Angeles County* (1999) 73 Cal.App.4th 231 and others, which involved no such change, reached correct results. (See AOB at 36 and accompanying note 9, discussing *La Fe, Ojavan Investors, Inc. v. Cal. Coastal Comm.* (1997) 54 Cal.App.4th 373, and *Dunn v. County of Santa Barbara* (2008) 135 Cal.App.4th 1281).

We contend that a legal subdivision, or any other activity, that is accompanied by no physical change to land is subject to the Coastal Act only if entails a change in the density or intensity of the land's use. Palisades's opening brief readily acknowledged that such activity would be covered by the Coastal Act. (AOB at 37) So, for example, activity without a physical change would be covered if, for example, it would facilitate new construction (*Ojavan Investors* and *Dunn*), or would

change the land's actual use (*La Fe* [lot line adjustment that would increase traffic load on emergency access road]). But, a subdivision for no purpose but changing the legal title of existing housing has no effect on the density or intensity of use, and so it is not a development covered by the Coastal Act.

B.

THE CITY HAS LARGELY IGNORED PALISADES'S TEXTUAL ANALYSIS OF THE "DEVELOPMENT" DEFINITION

Palisades's interpretation is mandated by the text of the Coastal Act's definition of "development." (Pub. Res. Code § 30106) The city does not dispute that the only potentially applicable aspect of the definition is the phrase, "change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act . . . , and any other division of land, including lot splits." (*Id.*) Yet, as we explained (AOB 30-31), grammatically, the statute's introductory phrase "change in the density or intensity of use of land" defines — and thus limits — the ensuing references to subdivision and any other land division. So, for example, *Pasadena University v. Los Angeles County* (1923) 190 Cal.786, 790, held that an antecedent phrase, "educational institution of collegiate grade," in a constitutional provision limited the scope of specifically enumerated words that followed. The city has entirely ignored this textual point.

Indeed, this Court — in an opinion the city itself cites (RB 49) — has read the Coastal Act precisely this way. *Landgate, Inc. v. California Coastal Commission* (1998) 17 Cal.4th 1006 stated, albeit in *dictum*, that the definition "extends to 'any . . . division of land' *that affects the density or intensity of development.*." (*Id.* at 1028; italics added) Yet the city ignores this too.

The city misunderstands the other textual point we made: that in light of the other activities encompassed by the "development" definition, the clause at issue here should be construed in the same manner, as restricted to subdivisions and other land splits that involve an actual change to the natural environment. (AOB at 33) Our point was not that the other clauses should be "treated independently" (RB 36), but the contrary — that the others inform the meaning of *this* one.

We also were not suggesting that this clause at issue here encompasses only physical change to land itself. (RB 36) The clause is no doubt intended to apply to land divisions that would result in changes such as increased traffic, a change in the use of land, or the extent of its use. But, *some* impact on the natural environment is surely contemplated by the phrase "change in the density or intensity of use of land . . . ," rather than simply some impact on the people who inhabit it. To read the statute more broadly would divorce this phrase from the

"company it keeps." (*Grafton Partners L.P. v. Superior Court* (2005) 36 Cal.4th 944, 960, quoting *People v. Jones* 2003) 112 Cal.App.4th 341, 354 (conc. & dis. opn. of Kolkey, J.) (internal punctuation omitted).)

C.

THE CITY'S TEXTUAL ANALYSIS IS FLAWED, AS ARE THE OPINIONS IN *QUANTA* AND *LA FE*

Ignoring both our textual analysis of § 30106 and this Court's textual construction in *Landgate*, the city contends the statute's "plain meaning" categorizes *any* subdivision or "other division of land" as a change in density or intensity of use. (RB 28; emphasis omitted; italics added) But the city does not explain why that is so. And, as next demonstrated, the three cases said to support its position do not.

Quanta Investment Corporation, supra, 113 Cal.App.3d 579, did not address this question but ignored it. As we pointed out (AOB 35) — and the city now ignores — *Quanta* assumed that all subdivisions and divisions of land fall within the statute's definition (113 Cal.App.3d at 590, 606), and no litigant contended otherwise. The only question was the meaning of the phrase, "any other division of land." *Quanta* held that it is not limited to the division of physical earth into units, but also includes the division of improved land. (*Id.* at 606-607)

Quanta's principal error was its failure to take account of the introductory phrase, "change in the density or intensity of use," and recognize that it limits all the examples that follow. The city does not address that analytical error. Nor does the city address either treatise we cited, one casting doubt on *Quanta* (AOB 35 n.8), and the other adopting our construction of the statute (AOB 35, citing *Miller & Starr, California Real Estate*).

Likewise, the city quotes extensively from *La Fe, supra*, 73 Cal.App.4th 231 (RB 30), which does contain comments suggesting that the Coastal Act applies categorically to all subdivisions, lot splits or other divisions of land. (*Id.* at 240; discussed at AOB 36 and RB 30). But, again, the city says nothing about the three points we made about that case:

(1) *La Fe*'s analysis was correct in one respect. It said a "subdivision of land or a lot split *can* result in changes in the density or intensity of use of property" — not that it *always* does so (*id.* at 240; italics added; discussed AOB 36);

(2) *La Fe*, unlike *Quanta*, did involve a change in the density or intensity of use of land (AOB 37 n.9 [carryover text]); indeed, the Coastal Commission explicitly so found (73 Cal.App.4th at 240 n.4);

(3) *La Fe's* comments about the statute's text, on which the city now so heavily relies, merely reflect that the statute "explicitly applies to

'a subdivision . . . and any other division of land. . . .'" (*Id.* at 240 [quoting Pub. Res. Code § 30106].) We agree. That observation is accurate so far as it goes. But it does not address the primary question presented here: whether the reference to subdivisions should be read in isolation from its introductory phrase. Quoting part of the statute is no substitute for analyzing it.

Finally, *South Cent. Coast Regional Comm'n v. Charles A. Pratt Const. Co.* (1982) 128 Cal.App.3d 830 (1982) does not support the city's reading either. Although it observed that "'[d]evelopment' is defined in section 30106 as including a subdivision pursuant to the Subdivision Map Act" (*id.* at 842, quoted at RB 30), that was *dictum* in an opinion addressing the Coastal Act's exemption for vested rights. Furthermore, *Pratt* involved two projects that would impact the intensity or density of use. One would divide a single lot into 86 residential lots (*id.* at 836), the other would divide grazing land into 6 parcels contemplating "later construction." (*Id.* at 830, n. 7)

D.

THE PERMIT STREAMLINING ACT IS IRRELEVANT

The city also contends that a similar definition of the term "development" in the Permit Streamlining Act (Govt. Code § 65927) supports its interpretation. (RB 34-35) It does not.

First, there is a significant distinction between the two on their face. The Permit Streamlining Act's definition of "development" excludes "the approval or disapproval of final subdivision maps . . . " (*See*, Govt. Code § 65927.) The Coastal Act's definition contains no such limitation. (Pub. Res. Code § 30106) On the contrary, it quite clearly embraces it. As the city's authority reflects, approval of a tentative subdivision map is not enough to create a vested right in a "development" under Pub. Res. Code § 30608(a). Only when the subdivider is entitled to final map approval under the Subdivision Map Act does a vested right to that "development" arise. (*Pratt, supra,* 128 Cal.App.3d at 834)

Second, while the Permit Streamlining Act definition "was . . . adapted from . . . the Coastal Act" (*Georgia Pacific Corp. v. California Coastal Comm'n* (1982) 132 Cal.App.3d 678, 696, the Permit Streamlining Act itself provides that its definitions "govern the construction of this chapter" unless "the context otherwise requires." (Govt. Code § 65925; emphasis added) For this reason, its definitions are of no interpretive value in construing the Coastal Act. (See, *Georgia Pacific*, 132 Cal.App.3d at 696; construing the phrase "new development project" as used in Govt. Code § 30212.) They were "enacted in a legislative context which isolates them to its own construction, and to its express legislative purposes. . ." (*Id.*)

Moreover, the two statutes have wholly different purposes. The Coastal Act is a substantive regulation of coastal resources. The Permit Streamlining Act, by contrast, has only a procedural/remedial purpose — "to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects . . . " (Govt. Code § 65921)[1] Accordingly, its "development" definition serves the very different statutory purpose of promoting bureaucratic transparency and fairness. And when statutes have such different purposes, words or phrases they use need not be construed identically. (*See, Union Iron Works v. Indus. Accident Comm'n of Cal.* (1929) 190 Cal.33, 43-44; *see also, Russ-Field Corp. v. Underwriters at Lloyd's, London, England* (1958) 164 Cal.App.2d 83, 96.)

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[1] The act is not limited to the coastal zone, but applies broadly to "all public agencies" at the state, regional and local level. (*Id.*; emphasis added; see also Govt. Code §§ 65920(b) & 65932 (defining "public agency"). Its scope includes subjects as diverse as environmental protection (see, e.g., Gov. Code §65943.5, 65959); hazardous waste (Gov. Code §65959.1); hazard waste facilities (Gov. Code §65963.1); geothermal steam projects and operations (see Gov. Code §65960); wireless telecommunications facilities (Gov. Code §65964); and most recently, wind energy systems (see Gov. Code §65895(b)(1) (incorporating the Act's time limits); Steve Stratton, Chapter 404: Wind Energy Gets An Overhaul, 41 McGeorge L. Rev. 626, 629 (2010)).

Finally, the city cites a canon of construction that similar language in statutes concerning *the same subject* should be given the same interpretation. (RB 34 & 35) But there was no such limiting language described above (Govt. Code § 65925) in the statutes involved in two of the cases the city cites.[2] And in the third, several statutes explicitly referred to a related statute with identical wording. (*See, Walker v. Superior Court* (1988) 47 Cal.3d 112, 132 and accompanying n. 13.) Unlike the statutes considered in *Walker*, the Coastal Act definition of "development" does not expressly incorporate the Permit Streamlining Act definition.

E.

THE MERE LEGAL CONVERSION OF A MOBILEHOME PARK TO RESIDENT OWNERSHIP WOULD NOT CONFLICT WITH ANY OF THE COASTAL ACT'S OBJECTIVES

The city emphasizes that one of the Coastal Act's goals is to maximize public access to the coast, and therefore argues that the "definition of development *as a whole* applies to consequences of activity . . . .[that] include changes in public access to the coastal zone, especially for housing, and in residential composition." (RB 31; italics

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[2] *See, Ford Dealers Ass'n v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 356 n.4 (quoting deceptive advertising statute governing car dealers)); *Kuntz v. Kern County Employees Ret. Ass'n* (1976) 64 Cal.App.3d 414, 417 (quoting Govt. Code § 31787).

added) It also stresses the affordable housing provisions in Pub. Res. Code § 30604, added in 2003, apparently as evidence that this mobilehome conversion is a "development." (RB 23, 51)

The fundamental problem with its arguments, however, is that this Court must construe the definition of "development" in light of its text. While the Act is to be liberally construed to accomplish its objectives (Pub. Res. Code § 30009), that is not license to impose a meaning divorced from what the statute says. And, as next explained, the city's policy emphases are misplaced for many reasons, in part because the impacts it alleges are not involved here.

1.

Conversion To Resident Ownership Would Not Affect Public Access to the Coastal Zone

A pure title conversion has no impact on the public's access to the coast. Who owns an existing mobilehome park, and in what form of legal title, is of course a matter of importance to park residents. But the public is entirely indifferent. Changing the form of legal ownership of existing, private housing has zero impact on the public's ability to access beaches, enjoy scenic coastal vistas, and make full use of all other coastal resources. Coastal regulators would have no possible reason in this circumstance to impose any access conditions, such as a dedicated

public easement. (*See*, Pub. Res. Code § 30121(a)) or public parking facilities [*id.*, § 30212.5].)

The city's position also has no support in the text of § 30106. Maximizing public access to the coast is indeed one of the Coastal Act's goals. (Pub. Res. Code § 30001.5(c)) But the *means* by which the Legislature chose to accomplish that goal was to confer permitting jurisdiction over "developments" — a specific list of enumerated activities, one of which requires a "change in the density or intensity of use" of land. (Pub. Res. Code § 30106) If an activity effectuates such a change, then Coastal Act permitting jurisdiction would attach. Regulatory authorities could then determine whether the activity is consistent with the Coastal Act's various goals and/or whether mitigation measures or conditions would be necessary in order to satisfy them.

However, the goal of promoting public access is not a free-roving mandate to sweep within coastal regulatory jurisdiction everything and anything that, in the abstract, could conceivably implicate it. Virtually anything could. A birthday party on the beach. An Independence Day parade down Main Street. And, indeed, every sale of real property located in the coastal zone — for when private property changes hands, all other members of the potential buying public are thereby excluded.

Rather, the statutory goal of promoting public access is a factor that permitting authorities must consider when reviewing proposed "developments" for coastal permits. The Coastal Act devotes an entire subsection to that subject. (*See*, Chap. 3 [Pub. Res. Code § 30200(a)] and Article 2 of Chapter 3 [*id.*, §§ 30210 *et seq.*)] The goal itself does not trigger Coastal Act permitting jurisdiction, however. It is nowhere mentioned in § 30106.

Finally, in stressing public access as one of the Coastal Act's objectives, the city points to the Act's exception for land divisions intended to facilitate public recreational use. (RB 31; see also Pub. Res. Code § 30106.) We do not doubt the's Legislature intention there was to encourage greater public access to the coast. (RB 31) But the reason for this exception sheds no light on the meaning of the clause from which it is exempt. Palisades's point was that a land division for public recreational use does entail a "change in the density or intensity of use of land . . . ," which is further textual evidence that the entire clause is qualified by this key introductory language. (AOB 35) The city ignores this point too.

2.

The City's Implication that the Conversion Could Impact "Residential Composition" Is Misplaced

The Court should also reject the city's implication that the subdivision and sale of interests in a mobilehome park is a "development" because it could affect the "residential composition" of the park or bear in some other unexplained way on "economic and social factors." (RB 32) The city's only authority is apparently page 78 of the Coastal Plan, excerpts of which Palisades has asked this Court to judicially notice.[3] (See RB 32, citing AOB 38, n. 10; see also AOB 39 and Palisades's motion for judicial notice, Ex. 8 at p. 78.)

Although that discussion mentions "residential composition" as a factor bearing on "intensity of use," it does not suggest that "economic and social factors" are too, because it mentions the latter concept separately. (AOB 39, n.10, quoting same) Regardless, however, neither reference supports the city's interpretation.

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[3] The city's reliance on a portion of this document is a retreat from its earlier opposition to Palisades's motion for judicial notice of portions of the Coastal Plan. (See objections filed on March 16, 2011, at 8-11, objecting to, *inter alia*, Exhibits 7 through 11 as irrelevant.) If not so intended, however, then at a minimum it is a concession that the Coastal Plan is relevant.

a.

A Transaction Is Not a "Development" Merely Because It Could Potentially Affect Residential Composition

The city's position proves too much and would have troubling and far-reaching consequences. The mere fact that a transaction could affect "residential composition" or "economic and social factors" in the coastal zone (RB 32) is not enough to bring it within Coastal Act jurisdiction. On the city's view, a coastal permit would be required any time a private residence changed hands. The prospect of coastal regulators reviewing proposed residential real-estate sales for family size and makeup, income level and other demographic criteria would create not just bureaucratic logjam, but serious constitutional implications. There is no hint in either the Coastal Act or its legislative history that the Legislature intended this.

Something more is required — at a minimum, "a change in the density or intensity of use of land . . . ." (Pub. Res. Code § 30106) This definition might encompass transactions changing the "residential composition" of existing housing, but only if they effectuate a change in density or intensity of use. So, for example, changing a seniors-only housing complex to one open to families with children (or vice versa) might entail no physical changes to any structures or the land itself, but it would doubtless change the land's "intensity of use." So too would

converting a private beachfront home to a bed and breakfast. But converting a mobilehome park to resident ownership entails no change in use at all, and thus no impact on the land's density or intensity of use.

b.

Mobilehomes Are *Already* Freely Transferable to Persons of any Means

Even if a change in "residential composition" were a sufficient basis for Coastal Act jurisdiction, the mere conversion of a park to resident ownership does not effectuate such a change. The Mobilehome Residency Law (Civil Code § 798 *et seq.*) (hereafter, "MRL") grants rental residents a virtually unfettered right to sell their mobilehome in place to any willing buyer. The few exceptions are set forth in Civil Code §§ 798.73 (b)-(e) & 798.74(a)). As stated in *Yee v. City of Escondido* (1992) 503 U.S. 519, 524, California park owners "may neither charge a transfer fee for the sale, nor disapprove of the purchaser, provided that the purchaser has the ability to pay the rent." (Citing Civ. Code §§ 798.72, 798.73 & 798.74; internal cits. omitted) Thus, tenants are *already* free to sell their homes to persons with higher income.

In short, there is no substance to the city's claim that a conversion to resident ownership would *change* the park's residential composition

to higher income groups. Accordingly, the conversion itself would have no impact on the State's interest in ensuring coastal access across all economic divides. In addition, as *Yee* also explained:

> Mobilehomes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. . . . When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located. (*Id.*)

The city makes no claim that the title conversion at issue here would change any of those unique features of mobilehome parks. Tenants will have the same right to sell their home in place to persons of higher income, and buyers will have the same right to keep the home there and continue to rent.

We note, finally, that *all* the unique features of mobilehome parks and regulations reviewed in this brief make the legal issues of this case unique as well. Accordingly, a ruling that a park conversion under Govt. Code § 66427.5 lies outside the Coastal Act does not compel a similar ruling on "all air-space subdivisions" (RB 38) or conversions of any other form of housing.

3.

The Coastal Act's Policy Of Encouraging Affordable Housing Sheds No Light On The Meaning of "Development"

Finally, the affordable housing provisions in Pub. Res. Code § 30604, added to the Coastal Act in 2003, are not evidence that this mobilehome conversion is a "development" either. (See, RB 23 & 51, citing Stats. 2003 ch. 793 §7 (S.B. 619), codified at Pub. Res. Code § 30604(f) and (g).)

In the first place, the affordable housing provisions of the Coastal Act have been relaxed since *Quanta* examined them some thirty years ago. (113 Cal.App.3d at 588, 609) At that time, Pub. Res. Code § 30123 provided that "housing opportunities in the coastal zone for persons and families of low or moderate incomes should be protected, encouraged, '*and where feasible, provided*;" (*Quanta*, 113 Cal.App.3d at 588; quoting former version; italics added) The Coastal Act no longer contains this mandate. (*See*, Pub. Res. Code § 30123 (current version).) Although it continues to encourage such housing opportunities (*id.*, § 30604(g)), it also now provides that "[n]o local coastal program shall be required to include housing policies and programs." (*Id.*, § 30500.1; added by Stats. 1981, ch. 1007, §3)

Furthermore, while the current provision directs the Coastal Commission to "encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone" (Pub. Res. Code § 30604(g)), the city ignores its context. This and other provisions were added in 2003 as part of a package of reforms intended to streamline the approval process for construction of *new* affordable housing.[4] They should be

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[4] For example, according to one committee report (italics added):

> Sponsors of SB 619 assert that one of the reasons for the failure of *housing production* to keep up with demand is due to inhospitable local governments. The author asserts that . . . many communities continue to resist *new housing development* . . . .(Assem. Com. on Housing and Community Development, Analysis of Sen. Bill No. 619 (2003-2004 Reg. Sess.) as amended July 2, 2003, p.6, available at http://www.leginfo.ca.gov/ pub/03-04/bill/sen/ sb_0601-0650/sb_619_cfa_20030708_094805_asm_com m.html, last visited May 31, 2011)

Likewise, another committee report explained (italics added):

> While the current interest rate environment has helped push *new housing construction* to its highest point in over a decade, California in 2002 still produced at least 55,000 fewer housing units than it needed. . . . Housing developers often cite . . . major barriers to *increasing the production of affordable housing.* According to the author's office, this bill is intended to streamline the approval process. . . . (Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 619 (2003-2004 Reg. Sess.) as amended August 25, 2003, p.6, available at

construed against that backdrop. The Legislature was not focused on changes in the legal form of existing housing.

Finally, the Coastal Act's affordable-housing objectives in no way abrogate the Legislature's express public policy "to *encourage* and facilitate the conversion of mobilehome parks to resident ownership" and "help establish acceptance for resident-owned . . . mobilehome parks in the private market" as a source of affordable housing. (Health & Safety Code § 50780(b); italics added) The city has cited nothing to suggest that the affordable housing provisions of the Coastal Act were intended to displace, or override, that public policy.

F.

THE CITY'S ARGUMENT THAT THIS PARTICULAR CONVERSION WOULD CHANGE DENSITY OR INTENSITY OF USE IS IMPROPER FACTUAL CONJECTURE

Finally, the Court should reject the city's argument that this particular conversion would entail a change in density or intensity of use. (RB 33) Palisades cited undisputed evidence to the contrary in its application (AOB 6-7), and neither the city nor either court below

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http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0601-0650/sb_619_cfa_20030829_164021_sen_floor.html (last visited May 31, 2011) .

disputed that. (AOB 7-9) Now, however, the city speculates that mobilehomes might be replaced with new, larger ones after the conversion, which could impact the physical infrastructure of the park and would themselves be "structures." (RB 33)

Even if this argument were cognizable, it is unavailing. As previously explained, most mobilehomes are never moved. But if someone did replace one in the coastal zone, whether the park were converted or not, *that* would constitute a "development" justifying Coastal Act review. (*See,* Pub. Res. Code § 30106 ["the placement or erection of any solid . . . structure."] But that possibility hardly compels Coastal Act jurisdiction over the pure title conversion at issue here.

G.

THE CITY FAILS TO DISTINGUISH THE THREE COASTAL ACT SECTIONS THAT PRESERVE OTHER STATUTES

Palisades also argued both the Coastal Act and Mello Act contrast sharply with Govt. Code § 66427.5 because they expressly preserve the force of other applicable statutes. As for the Coastal Act, Palisades cited three sections — Pub. Res. Code §§ 30005, 30005.5 & 30007 — expressly preserving any state-law limitations on local power that the Coastal Act itself would otherwise confer. (AOB 40-43)

The city calls this "a tortured reading" of the three sections (RB 38-39), but cites no specific text allegedly victimized. Instead, it argues that their "plain language . . . 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." (RB 38-39) This broad-brush response is unavailing.

First, Govt. Code § 66427.5 fits the description of a state-law requirement preserved by Pub. Res. Code § 30007. It did not have to be mentioned by name. (RB 39) In the broadest of terms, it preserves any state-law requirement "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." Govt. Code § 66427.5 fits *both* of those descriptions. It imposes requirements "with respect to providing low- and moderate-income housing," and also imposes an "obligation related to housing. . . ."

Likewise, Pub. Res. Code § 30005 expressly preserves any state-law limitation on local 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." Assume *arguendo*, for example, that the Coastal Act's development definition,

viewed in isolation, empowered the city to impose "further conditions" (*id.*) on Palisades's conversion application. Even if that were so, § 30005 preserves the force of Govt. Code § 66427.5 because it *limits* local power to impose such "further conditions."

Finally, Pub. Res. Code § 30005.5 operates the same way. It provides in relevant part that "[n]othing in this division [the Coastal Act] shall be construed to authorize any local government . . . to exercise any power it does not already have under the . . . laws of this state. . . ." Govt. Code § 66427.5 fits that description too, because it expressly limits local power to impose conditions beyond those it enumerates.

H.

THE CITY'S SUGGESTIONS OF A CONCESSION ON THIS ISSUE ARE MISLEADING

Neither the city, nor either court below, hinted that Palisades had conceded the applicability of the Coastal Act. And the Court of Appeal, treating that issue as fully joined and dispositive, rendered a direct holding on it that this Court properly found important enough to warrant review. Now, however, the city cites several passages where Palisades allegedly "admitted it was not challenging the Coastal Act's application" (RB 7), "made clear it was not contesting the Coastal Act's applicability" (RB

8), and "admit[ted]" in the application itself that "it is proposing a 'development' project. . . ." (RB 35)

Palisades, however, summarized the relevant context below (AOB 10-14), and the city does not dispute the accuracy of that summary. As shown there, Palisades contested the city's stance on the Coastal Act in several different ways. Primarily, though, it contended it was *unnecessary* to decide the applicability of the Coastal Act's terms because the case presented an assertion of power only by the city, not the Coastal Commission. Palisades reasoned that the preemptive force of Govt. Code § 66427.5 against *local* power was therefore sufficient to adjudicate the case. (Ironically, it was the city's insistence to the contrary below [AOB 16-17, RB/XAOB 44-47] that led to the erroneous holding on the Coastal Act this Court is now reviewing.)

Thus, the passages cited by the city explained that Palisades need not and was not *arguing* the applicability of the Coastal Act — not that it was *conceding* it.[5] Similarly, Palisades's principal appellate brief

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[5] The city's first record citation (Vol. 5, Appendix, p. 1100, fn. 2, lines 25-28) points to a footnote including Palisades's statement that it *seeks no ruling from this Court at this time* on whether the California Coastal Commission is preempted. [Citation]" (Italics added) And at the second citation, 9 AA 1922 [incorrectly rendered 9 AA "2"]: Palisades said that "[t]he Court is not being asked at this time to decide whether Palisades Bowl must seek a coastal development permit from the Coastal

below stated that the Coastal Commission's possible jurisdiction under the development definition was "an issue not before the Court.. . . ." (RB/XAOB 43; italics added) That is a far cry from a concession. (See also the other passages cited at AOB 10-13.)

It is equally unfair to claim a concession appeared in Palisades's application. The city is presumably referring to the standard caption at the top of the first page. (Appendix Vol. 2, p. 242) But it ignores what *Palisades* said in the application, repeatedly and plainly: "no additional development is proposed," and other words to that effect. (See quotations at AOB 6-7.)

Finally, if the city means to suggest there was a failure to preserve this point, Palisades adds another comment. There was a unanimous vote to review this issue by the unrecused Justices, it is closely intertwined with the others, and the city has fully briefed it both here and below. Accordingly, *People v. Braxton* (2004) 34 Cal.4th 798, 809, is direct and emphatic authority that the issue is properly before this Court.

Commission, which *is* a subject of state law." (Original italics)

V.

THE CITY FAILS TO REBUT PALISADES'S SHOWING ON THE MELLO ACT

The city's arguments on the Mello Act require less extensive response. The city begins by describing the statute's general purpose and operation as described in case law. (RB 39-40) Palisades has never disputed that.

Next, the city cites the statute's specific reference to conversions of mobilehomes and mobilehome parks. (RB 41) Palisades has never disputed that either. Indeed, its opening brief acknowledged that "[i]n 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." (AOB 44)

But Palisades went on to explain why that construction is *not* reasonable, and the city's next argument actually supports that point. It contends the term "conversion" in the Mello Act should be read in harmony with the development definition in the Coastal Act. (RB 42) Because the Mello Act "derived" from the Coastal Act, the city says "it makes little sense that the Mello Act's 'conversion' would be more extensive than the Coastal Act's 'development.'" (*Id.*) We agree, but

the point cuts the other way. It would *not* make sense to let the derivative Mello Act interfere with § 66427.5 when the primary Coastal Act does not. And Palisades demonstrated why the text and history of the Mello Act itself support that construction.

Before the city addresses that showing, however, it argues at length why the Mello Act is supposedly more "important" than § 66427.5. (RB 42-44) The city's major theme is that "[t]he Mello Act has two important advantages over Gov. Code section 66427.5 in protecting affordable housing." (RB 42) "The protections afforded by [§ 66427.5] do not measure up. . . ." (*Id.*)

The proper place for such argument is the Legislature, not a court determining legislative intent. Moreover, the city ignores the Legislature's *own* judgments of importance, along with the strategy it chose for protecting mobilehome parks as a source of affordable housing. Palisades documented those points exhaustively (AOB 19-27) and need not repeat them here.

In response to the city, though, Palisades can express its point a different way. We do not dispute that the Mello Act's protections for affordable housing differ from those intended by § 66427.5. (RB 42-43) Our point is that the Legislature finds that mobilehome parks are a

unique form of affordable housing, face special economic pressures, and require a special strategy to *preserve* them as affordable housing.

Thus, for example, the city is correct that the Mello Act focuses on preserving the affordability of particular housing units to persons of certain income levels. But the Legislature's policy judgment underlying § 66427.5 is that, when it comes to the special case of mobilehome parks, the greater good is to preserve them as affordable housing for *anyone*. And it makes no sense, therefore, to let localities sabotage that rescue by demanding Mello Act proceedings to preserve individual units. In this special case, the Legislature finds it self-defeating to focus on units when entire parks are facing elimination as affordable housing.

Finally, Palisades demonstrated that the Legislature expressed that policy in the text of the Mello Act itself, by its later enactment of § 66427.5, and implicitly by letting settled rules of statutory construction prevail without a contrary indication. (AOB 44-49) The city barely responds.

Palisades first cited subdivision (i) of the Mello Act, which contains this broad statement:

> 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.

Palisades explained that, because § 66427.5 limits local authority to preserve affordable housing by imposing additional conditions on certain park conversions, the Mello Act expressly preserved that limitation.

The city ignores that reasoning, but protests that subdivision (i) contains "no mention of section 66427.5 or any other state statute." (RB 48) But its plain meaning encompasses *any* law that otherwise delimits this particular authority of local governments. And that formulation served the Legislature's manifest purpose far better than an attempt to list every possible source of law in this category. Such a listing would risk unintended exceptions.

The city also ignores Palisades's next point, that the Mello Act's definition of "conversion" can reasonably be construed to exclude conversions covered by § 66427.5. The definition speaks of conversions "to a condominium, cooperative, or *similar* form of ownership. . . ." (Govt. Code § 65590(g)(1); italics added) Thus, Palisades argued that, while resident ownership under § 66427.5 is similar *technically* to a condominium or cooperative, the word "similar" is broad enough to exclude § 66427.5 conversions due to their special treatment by the Legislature.

The city likewise ignores Palisades's point that the foregoing construction would preserve the Mello Act's application to several other kinds of mobilehome park conversion. (AOB 46-47) Nonetheless, the city claims Palisades's construction would "require[] the Mello Act protections to be ignored." (RB 45)

The city does address Palisades's case citations on the subject of later-enacted statutes. (*Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160 and *Board of Supervisors of San Diego Cty. v. Lonergan* (1980) 27 Cal.3d 855) But the city's attempt to distinguish those cases fails.

First, it appears to argue that § 66427.5 was *not* enacted later than the Mello Act, when the chronology is undeniable. The city relies on a 2003 amendment to the Coastal Act alone, not the Mello Act. (RB 46, citing Pub. Res. Code § 30604(f) & (g))

As for *Penziner*, the city ignores the broad holding Palisades quoted in full at AOB 47. Instead, it claims the holding was limited because the constitutional provision included a statement that it supersedes conflicting authorities. (RB 46-47) But *Penziner* addressed the superseding clause as a separate issue (10 Cal.2d 175-175), and

Lonergan itself treated the subsequent rule of construction in *Penziner* as an independent proposition. (27 Cal.3d at 869)

Finally, the city attempts to distinguish *Lonergan* on the grounds that it modified a later-enacted provision, not an earlier one. (RB 46) But that misses the point. The city has consistently exaggerated Palisades's argument as an attempt to completely "abrogate" or "preempt" the Mello Act by citing the later-enacted § 66427.5. In response, Palisades cited the *Penziner* rule requiring courts to harmonize conflicting statutes, if possible, to *avoid* the "abrogation" the city alleges. To that end, Palisades has suggested a reasonable construction of the Mello Act based on its text and history, and the city has pointed out no flaws in that suggestion.

VI.

CONCLUSION

For all the foregoing reasons, more fully set forth in its opening brief, Palisades respectfully requests the Court to reverse the appellate judgment and remand with directions to the city to process Palisades's

application only in accordance with Govt. Code § 66427.5.

DATED: June 2, 2012

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 8,389 words as computed by the word processing program (WordPerfect X4) used to prepare the brief.

DATED: June 2, 2011

/S/
ELLIOT L. BIEN

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 --

REPLY BRIEF ON THE MERITS

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

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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: June 2, 2011

/S/
ELLIOT L. BIEN