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TO: Commissioners and Interested Parties

FROM: Charles Lester, Executive Director
Sarah Christie, Legislative Director

SUBJECT: Report on Coastal Act Affordable Housing Policies and Implementation

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This report has been prepared at the request of the Commission to summarize past and present Coastal Act affordable housing polices and implementation, and to provide some context for the consideration of those policies.

1976-1981: Implementation of Coastal Act Section 30213

From the date of its enactment in 1976 through 1981, the California Coastal Act included broad policy language requiring the provision of affordable housing in the coastal zone for persons of low and moderate income. As originally enacted, Section 30213 of the Coastal Act provided:

> *Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided.*

Under this authority, the Commission developed statewide interpretive guidelines for the Commission implementation of Section 30213. The guidelines were originally adopted by the Commission on October 4, 1977, and subsequently revised on July 16, 1979, and May 5, 1981 (see attached).

The original guidelines provided for the protection of existing low and moderate income housing by prohibiting its demolition for other than health and safety reasons, and gave priority to new residential proposals that included affordable housing opportunities. The definition of low and moderate income households was anyone earning up to 120% of the median income, which included about 2/3 of California households at the time. Density bonuses and reduced parking requirements were also addressed as mechanisms to support affordable housing.

Subsequent versions of the interpretive guidelines identified additional mechanisms to protect, encourage and provide affordable housing such as requiring in-lieu fees, land dedications and housing credits in certain circumstances. The revised guidelines also made findings to support the economic feasibility and policy rationales for requiring specific percentages of affordable units to be set aside for low and moderate income households through deed restrictions and rent controls. One-third of condominium conversions were to be set aside for low to moderate income households. All versions of the guidelines made clear that affordable housing could not be used as a trade-off for protecting coastal resources. All of the guidelines stated that any housing, affordable or otherwise, would only be permitted consistent with coastal resource protection, including public access.

Although the guidelines were refined in subsequent versions, ultimately exempting new developments of 9 units or less, and rental housing all together, as a general rule they required that larger projects provide approximately 25% affordable units on site as a part of the project. Applicants could make the case for specific projects to provide fewer units, but otherwise these inclusionary units had to be built and maintained as affordable housing with re-sale controls to ensure their continued affordability for persons of low to moderate income. The May 5, 1981 guidelines stated:

> *Meaningful access to the coast requires housing opportunities as well as other forms of coastal access… If the coast is not to exclude the less affluent members of society and become an exclusive enclave of the wealthy, affordable housing must be protected, encouraged, and, where feasible, provided.*

The Commission's inclusionary housing program resulted in the approval of approximately 5000 affordable units between 1977 and 1981, with about two-thirds of these located in Southern California (San Diego, Orange, and Los Angeles Counties).[1] According to a study based on the best available data through 1984, approximately 1000 units, perhaps more, were constructed (best estimates were 1300 units); and the Commission protected more than 1100 existing affordable units by denying their proposed demolition.[2] In Orange County, 766 affordable residential units were built in the communities of Laguna Nigel, Dana Point, San Clemente, and various unincorporated areas of Orange County. The Commission also required approximately $2,000,000 in in lieu fees for affordable housing between 1977 and 1981.[3]

Legislative Changes to Amend Section 30213 Implementation

The Commission's implementation of the Coastal Act's original affordable housing policy was controversial. Many local governments objected to the loss of "local control" and stated that the Coastal Act's housing policies were preventing them from preparing Local Coastal Programs.

From 1978 through 1981, numerous bills were introduced to repeal or reduce the Commission's authority over affordable housing. The Commission opposed each of these bills, and none succeeded until 1981, when Senator Henry Mello introduced SB 626, sponsored by the League of Cities. SB 626 (Ch. 1007 Statutes of 1981) repealed the Commission's statutory authority to protect and provide affordable housing for persons of low and moderate income in the coastal zone by amending PRC Section 30213 as follows:

> *Lower cost visitor and recreational facilities ~~and housing opportunities for persons of low and moderate income~~ shall be protected, encouraged, and, where feasible, provided.*

And by adding Section 30500.1 which states:

> *No local coastal program shall be required to include housing policies and programs.*

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[1] See Johnston, Robert A. et al, 1990. "Inclusionary Housing in the California Coastal Zone." *Coastal Management* 18, 1.
[2] *Id*.
[3] *Id.*

Further, Section 30607.2(a) allowed for developers with approved, but not-yet-built projects, to be relieved of the inclusionary housing requirements of their coastal development permits. Section 30607.2 (a) states:

> *Conditions requiring housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, which were incorporated into a coastal development permit issued prior to January 1, 1982, may, at the request of the permittee, be amended or modified by the commission or by a local government having the authority to issue coastal development permits. In approving such amendments or modifications, only those conditions and requirements authorized by Section 65590 of the Government Code may be imposed on the permittee.*

Subsequently multiple permits were amended by the Commission to remove affordable housing requirements, including a previously approved project known as Monarch Beach (A-79-5539), which requested removal of conditions requiring the provision of 429 affordable units.

SB 626 also added Section 65590 to the Government Code, authorizing the demolition or conversion of existing affordable housing units in the coastal zone, but only if replacement units were constructed within the same city or county, within 3 miles of the coastal zone.

Implementation after 1982 and subsequent Coastal Act Amendments

Although the Coastal Act no longer specifically authorizes the Commission to require affordable housing, available data suggests that over the last three decades the Commission has approved multiple projects with affordable components, either directly or on appeal. In addition, local governments have permitted projects with affordable components pursuant to their LCPs. Most recently, for example, the Commission approved a 10 unit low-income housing project in Solana Beach, finding that the project was consistent with the Coastal Act (Hitzke Development Corporation).

In 2002, the Commission became aware that many of the existing affordable units which had previously been built as a result of permit conditions in Orange County had been released from their deed restrictions and reverted to market rate units. Some had been purchased by qualified buyers, but were being rented out at full market rates. Others had been sold to unqualified buyers despite deed restrictions that should have prevented the sale.

The 1981 Mello amendments to the Coastal Act generated questions regarding whether the Commission had the authority to take enforcement actions against the illegally rented/sold units, and/or whether it had a continuing legal obligation to protect the viability of the affordable units built under the auspices of the Commission's original permit conditions. In response to these questions, Assemblymember Alan Lowenthal (D-Long Beach), Chair of the Assembly Housing and Transportation Committee, introduced AB 2158 to give explicit direction to the Commission to take appropriate steps necessary to protect the continuing affordability of deed restricted units existing as of January 1, 2002. As signed into law AB 2158 (Chapter 297, Statutes of 2002) added Section 30614 to the Public Resources Code, to read:

> *30614. (a) The commission shall take appropriate steps to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.*

> *(b) Nothing in this section is intended to retroactively authorize the release of any housing unit for persons and families of low or moderate income from coastal development permit requirements except as provided in Section 30607.2.*

AB 2158 established the Commission's continuing enforcement authority over affordable units built pursuant to Commission permit conditions, and the Commission's enforcement unit implemented the new legislative direction by coordinating with the Orange County housing program administrator, the Civic Center Barrio Housing Corporation (CCBHC), to conduct an extensive analysis and investigation into the status of the deed-restricted units over several months. As a result, the Commission issued 139 Notice of Intent (NOI) letters and/or Executive Director Cease and Desist Orders to property owners who were out of compliance with their deed restrictions by either renting or selling their units at fair market value rather than through the affordable housing program. Ultimately, the Commission was able to develop enough evidence to pursue enforcement actions in approximately 90 of these cases.

While the Commission could not prevent the loss of affordable units through the lawful expiration of deed restrictions, the intent of the Commission's enforcement actions was to address the violations for those units that had been sold or rented illegally without complying with the affordable housing deed restrictions in the deeds. The affected property owners, some of whom were realtors who had knowingly purchased the units and had been renting them at market rates, banded together to challenge the Commission's authority. The cases were consolidated into a single case, collectively known as Blanton et al v. California Coastal Commission.

On April 12, 2005, Orange County Superior Court Judge Jonathan H. Cannon ruled against the Commission. His opinion stated that the Commission and CCBHC were legally barred from enforcing affordable housing restrictions on the units in question. Consequently, the deed restrictions were terminated and all 90 units were released from the affordable housing program, and the owners were free to sell or rent them for fair market value. The litigation was limited to a very unique situation involving the Commission's continuing responsibility over permits issued before the Coastal Act's statutory authority to protect and provide affordable housing was repealed. And even though a trial court opinion is not binding precedent, it is indicative of the challenges the Commission has faced in its efforts to protect and provide affordable housing.

In 2003, Senator Ducheny (D-San Diego) introduced SB 619 (Chapter 793, Statutes of 2003), addressing a variety of affordable housing-related issues across a number of statutes. Specific to the Coastal Act, SB 619 added PRC Sections 30604 (f) and (g) directing the Commission to "encourage housing opportunities for persons of low and moderate income" and preclude the Commission from reducing density bonuses below what is otherwise allowable in the Government Code, unless specific findings are made regarding Chapter 3 policies:

> *(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the*

> *applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.*
>
> *(g) The Legislature finds and declares that it is important for the 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.*

Subsequent to the passage of SB 619, Senator Ducheny clarified through a letter to the Commission that she intended her legislation to be narrowly interpreted, and not used as a justification for any additional actions on the part of the Commission to increase additional affordable housing beyond what was allowed for in the Government Code related to density bonuses (see attached). Since that time the Commission has interpreted Coastal Act 604(f) and (g) as direction to encourage affordable housing by supporting it, including density bonuses, unless there is a Chapter 3 problem, but not as giving the Commission any proactive authority to require the protection or inclusion of affordable housing through specific permit or LCP actions.

Recent Legal and Legislative Activity Related to Affordable Housing

Over the last several decades, many California cities and counties have adopted inclusionary housing ordinances to address affordable housing shortages. These local ordinances variously required a range of measures, such as mandatory construction of on-site, deed-restricted affordable units to off-site units, reduced rents, in-lieu fees and donations of land for future affordable projects. Some of these local ordinances have been challenged in court, and there is now some uncertainty about the viability of the inclusionary housing approach.

In response to legal challenges, many cities and counties have repealed or revised their inclusionary ordinances to reflect the new rulings and conform to case law. To clarify the law regarding inclusionary housing, in 2011, Senator Leno (D-San Francisco) introduced SB 184 to expressly authorize local governments to pass and implement inclusionary housing ordinances. The bill was unable to gain enough votes to pass the Senate Floor in 2012.

In 2013, Assemblymember Atkins (D-San Diego) introduced similar legislation. AB 1229 passed both Houses of the Legislature, but was not signed by the Governor. The Governor's veto message included a stated desire to await decisions in pending litigation with the California Supreme Court. The following week, on October 17, 2013, the Supreme Court issued its unanimous opinion in *Sterling Park, L.P. v. City of Palo Alto*. The Court held that requiring 10 on-site, below-market units and an in-lieu fee as part of a 96-unit condominium project were "exactions" rather than land use regulations. This distinction is significant to a local government's implementation of local laws such as the Mitigation Fee Act as exactions require more rigorous analysis and findings of "nexus" than local land use regulations require. A second case challenging a city's inclusionary housing ordinance, *California Building Industry Association v. City of San Jose*, is currently pending before the California Supreme Court.

Conclusion

Although the 1981 amendments to Section 30213 repealed the Commission's ability to require affordable housing and Section 30500.1 prohibits the Commission from requiring affordable housing policies in LCPs, nothing precludes local governments from submitting Land Use Plan Amendments with provisions that protect and encourage affordable housing consistent with the Chapter 3 policies of the Coastal Act. Once certified, these Land Use Plan policies become the standard of review for both implementation plan amendments and coastal development permits issued by the local government and the Commission on appeal.

Finally, the Assembly Housing and Community Development Committee will hold an informational hearing on February 18 to look at the Housing Market and the State's Housing Resources and Programs. An improving economy may provide new opportunities to pursue additional efforts that address housing shortages through a variety of legislative initiatives.

INTERPRETIVE GUIDELINE ON NEW CONSTRUCTION OF HOUSING

SYNOPSIS

As a general rule, permits to construct 21 or more dwelling units for sale will be conditioned to require that approximately 25% of the units be affordable to low- and moderate-income persons, subject to controls to assure continued affordability. Smaller for-sale projects of 10 to 20 units could comply with the "25% affordable" policy through contribution of a fee rather than through actual provision of affordable units; the fee would be equal to 6% of the total market sales price of the project and would be used for land acquisition for public construction of affordable housing in the same local market area from which the fees were derived. On projects of nine units or fewer, the inclusion if affordable units, either directly or by fee, is usually neither feasible nor practical and will not be required unless required by local inclusionary ordinances, proposed in certified land use plans, or pursuant to State or Regional Commission resolutions on local community conditions, as provided on pages 20 and 21.

New bona fide rental housing projects make a significant contribution to affordable housing in the typical coastal rental market by their construction alone; such projects would therefore not be required to make any further contribution.

The guideline provides that to assist the feasible inclusion of affordable units in for-sale projects, density "bonuses," reduced parking requirements, or other enhancement techniques will be encouraged, where consistent with environmental and access policies.

The provision of affordable housing, however, will not be used as a trade-off against real environmental protection. Housing, whether or not affordable, will be permitted only where consistent with environmental constraints.

Where the inclusion of units within the project is infeasible, the affordable housing requirement may be met by provision of units off-site or by dedication of land either on or off-site, or by combinations of these techniques.

The guideline would provide for more extensive inclusionary programs to be adopted by Regional Commission policy, where unique local circumstances require it, and would allow lower percentages of affordable housing in projects which provide other significant public benefits such as parkland dedication.

This proposed guideline would supercede that portion of the Commission's October 4, 1977, Statewide Interpretive Guideline on Housing Opportunities titled "1. New Housing." This proposed guideline would not alter any other Commission guideline or policy, specifically the recently adopted Condominium Conversion and General Definitions Guideline or the October 4, 1977, Guideline on "Existing Housing." This guideline was revised on May 5, 1981 to allow for "affordable housing credits", and expediting procedures as noted in Exhibit 3. The findings for these revisions are available upon request and were adopted as part of the revisions.

I. INTRODUCTION

A. The Significance of Guidelines

This guideline is adopted by the Coastal Commission pursuant to Section 30620 of the Coastal Act of 1976, which provides in part:

> The Commission shall ... prepare interim procedures for the submission, review and appeal of coastal development permit applications ... [including] Interpretive Guidelines designed to assist local governments, the regional commissions, the commission, and persons subject to the provisions of [the Act] in determining how [the Act's] policies shall be applied in the coastal zone prior to certification of local coastal programs ...

The Commission's housing guidelines, then, are intended to provide a guide for permit applicants, local governments, and the Commission in interpreting the requirements of the Coastal Act. Interpretive Guidelines adopted by the Commission are interim guidelines to be used prior to the adoption and certification of local coastal programs (LCP's). The guideline will be superseded by the LCP's and is not intended to be a standard, or test, for the LCP's. At the same time, since the guideline represents the Commission's interpretations of the policies set out in the Coastal Act, local governments will need to address the issues covered by these guidelines. It is expected that local coastal programs will reflect local needs and concerns, and that local governments may choose to meet the housing policies of the Coastal Act in other ways than those provided for in these guidelines.

As interim guidelines for permit applications pending the certification of LCP's, the guidelines are merely guides, not regulations having the effect of law. The final test on permit decisions remains the terms of the Coastal Act; the guidelines are intended to help interpret the Act, and to provide notice of the Commission's interpretation to local governments and applicants, but they are not binding. The Coastal Commission is required by the Act to consider projects in light of all existing circumstances affecting a project, taking into account all the policies of the Coastal Act.

These guidelines replace the guidelines on new construction adopted on October 4, 1977. Guidelines adopted at that time on demolition remain in effect, as do guidelines on condominium conversions adopted on July 16, 1979. The general housing definitions adopted on July 16, 1979, defining low- and moderate-income housing opportunities and rental and sale programs to provide such opportunities are incorporated here by reference, and shall apply to all housing proposals in the coastal zone.

B. Current Guidelines

Coastal Act Section 30213 states in part:

> ... housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided ... New housing in the coastal zone shall be developed in conformity with the standards, policies, and goals of local housing elements adopted in accordance with the requirements of Subdivision (c) of Section 65302 of the Government Code.

To implement these policies in coastal development permits, the Commission adopted Interpretive Guidelines on Housing on October 4, 1977. The Commission's former Guideline on "New Housing" stated:

> Where residential development is proposed, priority should be given to proposals that include housing opportunities for persons of low and moderate income, particularly where government funds are available to help finance or subsidize housing for these persons (e.g., HUD Section 8 Program). Where the amount of new residential development in an area is limited by availability of land, sewer, road, or water capacity, the housing needs of persons of low and moderate income should receive full consideration in any resulting allotment system developed for residential construction. Incentives for building houses for persons of low and moderate income in the coastal zone should be considered; where appropriate, these may include density bonuses, reduced parking requirements, and other incentives consistent with public access and environmental constraints.

Since the adoption of this guideline, both State and Regional Commissions have sought to implement Section 30213 through applying conditions to permits for new residential construction which require the inclusion of housing opportunities for low- and moderate-income persons ("affordable units"). Affordable units have been required as a condition of many new residential projects in the coastal zone; current (January 1, 1980) estimates show nearly 400 affordable units have been built, and 1500 more are expected to be built, as a result of coastal permit conditions.

Through the Commission's permit experience, it has become evident that the current guideline is not sufficient to guide applicants in planning a project. The revised guidelines are an attempt to distill the Commission's experience with numerous projects to provide potential applicants, local governments, and concerned citizens a better understanding of the Commission's goals and approaches to implementation of Section 30213. In addition, Coastal Commission staff and Commissioners will benefit from a more thorough discussion of approaches to housing policies, and the applicants will benefit from a more uniform, and hopefully expedited, procedure. By providing applicants with a much clearer understanding of Coastal Act requirements, these guidelines should help to prevent misunderstandings and surprise and should allow applicants to prepare permit applications for projects with some certainty they will meet Coastal Act housing policies.

C. Commission Precedents

The State Commission has now had before it a significant number of decisions which have required that low- and moderate-income housing opportunities be included in new construction ("inclusionary" conditions). Among the most significant have been Appeals No. 70-77 (Shepard), which required that 68 of 169 units be Section 8 rentals (while allowing an additional 27,000 sq. ft. of commercial development), No. 73-78 (Shappell Ind.), which gave the developer a density bonus and required 90 of 357 units for a Section 8 program, and No. 87-78 (W & B Builders), which required 75 of 368 units to be Section 8 (and allowed a dedication of 6 acres of land as an alternative).

Smaller projects have also been required to provide lower-cost housing opportunities. Examples include Appeals No. 228-77 (Jordan), which required that one unit of six be a Section 8 rental (and allowed the developer more units than he had applied for as a "density bonus") and No. 502-78 (Lind and Rogers), which

required one unit of five to be Section 8 (with a density bonus). The Commission has also found there to be no substantial statewide issue raised by several appeals of Regional Commission decisions in which similar inclusion was required in smaller projects, thereby upholding the Regional Commission action.

Where inclusion of affordable units within a project is not feasible, the Commission has allowed projects to meet the affordable housing requirement by dedicating land to an agency which could ultimately construct affordable housing, either on or off-site; recent precedents include Appeals No. 90-97 (Zanderson), requiring land for 12 units be dedicated on site, while permitting construction of 23 condominiums and two restaurants, and No. 81-79 (Prim Investments), requiring land for 16 units be dedicated off site, while permitting construction of 50 condominium units. In general, these permits have required that land dedications provide land area suitable for the construction of twice the number of units which would other wise be provided within the project (i.e., a project to build 30 condominiums might be required to provide 10 affordable units; if such provision was found infeasible, the requirement might be met by dedicating land alone for 20 units), since land dedications are less expensive than actual construction and do not, by themselves, provide affordable units.

In general, such land dedications have been allowed only where the land is within the coastal zone in the same market area or community as the project site. In Appeal No. 376-78 (Harvey), the Commission indicated the limited circumstances under which off-site dedications might be allowed outside the coastal zone:

> ...off-site mitigations outside the coastal zone may be appropriate where the housing provisions represent new units rather than replacement housing and where the alternative siting area (1) is in close proximity to the project site; (2) is in close proximity to the coastal zone (i.e., within walking distance from the area within the zone); and (3) is a part of the same coastal community as the proposed development and the amenities of the coastal zone extend to the entire community.

In recent permit decisions--Appeals No. 86-79 (McGilvray), No. 211-79 (Collie), and No. 269-79 (Roth-Copeland)--the Commission has found that the inclusion of affordable units in small projects (2-4 units) is generally neither feasible nor a practical use of the Commission's limited staff and hearing time. However, such small projects are recognized to have a potentially significant cumulative effect, and the Commission has found in Appeals 211-79 and 269-79 that a feasible contribution to the provision of affordable housing <u>can</u> be made by such projects through use of an in-lieu fee alternative to actual provision of units.

II. AFFORDABLE HOUSING IN THE COASTAL ZONE

A. Housing As Aceess

The Statewide Housing Plan prepared by the Department of Housing and Community Development has documented a tremendous need for affordable housing throughout the State of California. Preliminary reviews of Local Coastal Programs, Housing Assistance Plans prepared by local governments as part of the Community Development Block Grant process, and Fair Share Housing Allocations developed by regional Councils of Government all indicate that there is a substantial unmet need in nearly every coastal community for housing opportunities which are affordable to low- and moderate-income households.

The shortage of affordable housing is particularly acute within the coastal zone because of the great demand for housing near the coast; demand for coastal housing has been caused by many factors, including health reasons, development of major employment centers, and recreational opportunities. Such factors created severe market pressures leading to displacement of affordable housing both before and after the passage of Proposition 20 and the Coastal Act. Because of this demand, housing prices have increased tremendously in recent years, eliminating a great deal of affordable housing. New units that are proposed within the coastal zone are rarely priced for the low- and moderate-income market except as a condition of a coastal permit.

Section 30213 of the Coastal Act is a recognition that meaningful access to the coast requires housing opportunities as well as other forms of coastal access. The California Constitution guarantees access to the coast to all California residents. If the coast is not to exclude the less affluent members of society and become an exclusive enclave of the wealthy, affordable housing must be "protected, encouraged, and, where feasible, provided."

The very reason that housing costs are so high in the coastal zone--intense demand--makes it feasible for new developments to provide affordable housing while still allowing developers a reasonable return on investment. Since the coast is itself a public resource which adds to the value of land in the coastal zone, it is appropriate that the public value be dedicated to public purposes--such as access, through affordable housing.

Many applicants have argued that affordable housing can be provided outside the coastal zone, in other areas of a city, or in another city. Such arguments miss the importance of housing as access to the coast under the Coastal Act. Unlike the housing element law, Government Code Section 65302(c), the Coastal Act's housing policies are not intended to address general community or regional housing needs but the specific need for housing in the coastal zone.

In addition, recent court decisions--Metropolitan Housing Development Corp. v. Arlington Heights 558 f2d 1283 (7th Cir. 1977); Associated Homebuilders v. City of Livermore 18 Cal. 3d 532, 135 Cal Rptr. 41 (1976); and NAACP v. Mt. Laurel 67 N.J. 151, 336 A2d 713 (1975) among others--indicate that regulation of communities which allow development to occur must provide for a fair share of affordable housing to be consistent with the federal Fair Housing Act and the due process and equal protection provisions of the U. S. Constitution. The requirements of Section 30213, therefore, are important not only to secure access to the coast but also to comply with constitutional and statutory fair housing requirements.

B. Other Coastal Act Housing Requirements

Other sections of the Coastal Act in addition to Section 30213 imply an affordable housing requirement. Coastal Act policies which encourage visitor-serving commercial development (Sections 30220-30223), agricultural production (Sections 30241-30242), and coastal-dependent industry (Sections 30702-30708) have the effect of increasing and maintaining employment opportunities in the coastal zone which are relatively low-paying. If such low- and moderate-income workers are unable to find affordable housing in the coastal zone, the viability of such Coastal Act policies would be seriously threatened. Employers would have difficulty securing a labor force or would be forced to pay wages which would make the activity economically infeasible.

Even if sufficient affordable housing was available outside the coastal zone for such workers, the impacts on transportation corridors caused by forced commutes could impact coastal access routes. The provision of affordable housing in the coastal zone is a logical corollary of the agricultural, visitor-serving commercial, and industrial provisions of the Coastal Act.

Long commutes caused by a lack of affordable housing for coastal zone workers have additional Coastal Act impacts. Under Section 30414(b), the State Air Resources Board (ARB) "may recommend ways in which actions of the Commission...can complement or assist in the implementation of established air quality programs," and Section 30253 requires that permit actions "be consistent with requirements imposed...by the ARB." The ARB has, in fact, determined in the context of Orange County housing developments that where "there is an inadequate supply of low- and moderate-income housing...and there are significant and expanding opportunities for blue- and white-collar workers with modest incomes,...workers must commute excessive distances because of a lack of affordable housing within close proximity to work...such commute distances caused by this imbalance between jobs and affordable housing have had and will have an increasing negative impacts on air quality."

To mitigate the air quality impacts of forced commutes caused by an imbalance between employment and housing opportunities, the ARB has required that projects within the Aliso Water Management Agency district provide from 35 - 50% of the units as affordable housing. Pursuant to Sections 30414(b) and 30253 of the Coastal Act, the ARB's actions and findings indicate that the provision of affordable housing is an important method of protecting and enhancing environmental quality in the coastal zone. In order to comply with those sections and to "protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment" (as provided in Section 30001.5), affordable housing should be provided in every area which shows an unmet need insofar as such provision is feasible.

C. Balanced Development

Section 30001.5(b) of the Coastal Act provides that one of the basic goals of the State for the coastal zone is to "assure orderly, balanced utilization and conservation of coastal zone resources, taking into account the social and economic needs of the people of the State." The provision of affordable housing is central to such "orderly, balanced utilization" of resources. 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.

In addition, a balanced community requires that all groups in society be represented; the displacement of low-income persons from the coastal zone affects all low-income persons but causes particular hardships for certain sections of society. The elderly and handicapped in many cases seek coastal housing for health and access reasons which are essential to their very existance and well-being.

The goal of providing "a decent home in a suitable living environment for every family" has been accepted by the State and the nation, by builders and developers, as well as low-income housing advocates, not out of sympathy, but out of an understandin that such a goal is necessary to society. As the president of the California Building

Industry Association stated at the organization's recent annual meeting, "the locking out" of lower-income families from the housing market today represents "a threat to the very fiber of society and to its prospects for social progress." Such a result is inconsistent with the basic goals of the Coastal Act and can be prevented only if affordable housing is provided in the California coastal zone as well as in the rest of the State.

D. The Relationship of the Housing Element to Coastal Act Requirements

A number of persons have argued that the sentence in Section 30213 which provides that "new housing in the coastal zone shall be developed in conformity with... local housing elements" means that the Commission may not require housing provisions which go beyond or differ from an adopted local housing element. Such an interpretation of Section 30213 would mean that the initial sentence, which states that "housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided ...", would be entirely superfluous. Apart from the fact that a more natural reading of the two sentences together is to give weight to both requirements, there are two basic reasons why such a reading is incorrect.

First, to say that the housing element requirement supercedes the "provide where feasible" language would render the first sentence of Section 30213 entirely superfluous. It is, however, a basic and well-settled rule of statutory construction that a statute be construed so as to give effect to all of its provisions, and to avoid constructions which would render provisions superfluous.)See, e.g., Stewart v. Board of Medical Quality Assurance 80 Cal. App. 3d 172, 179 (1978); Van Nuis v. Los Angeles Soap Co. 36 Cal. App. 3d 222, 228-229 (1973)). In construing Section 30213, therefore, a construction which renders the first sentence redundant or superfluous is to be avoided if it is possible to give effect to both provisions. Here the natural reading is the one which is also legally correct -- that developments in the coastal zone must conform with local housing elements and must provide new housing opportunities for low- and moderate-income persons, where feasible.

Second, the substantive policies expressed by the two sentences are quite different. The housing element law is designed to provide for general community-wide or regional housing issues. The first sentence of section 30213, however, addresses the issue of access, through housing opportunities, to the coastal zone. It is, thus, location-specific. Equally significantly, while the housing element must "make adequate provision for the housing needs of all economic segments of the community," the first sentence of Section 30213 is concerned with a particular segment of the community, low- and moderate-income persons. Clearly these differences are significant, and not to be dismissed by relying on the adoption of local housing elements. As discussed in more detail in the letter distributed on October 10, 1979, attached as Exhibit 1, "while the housing element is an appropriate place to develop housing policies for the coastal zone, as well as the rest of a city or county, the adoption of a housing element does not automatically assure that the policies and programs of the housing element will meet the requirements of the Coastal Act." There is still the requirement that "housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided."

III. GENERAL INTERPRETIVE GUIDELINE ON NEW CONSTRUCTION

The following is the general policy which describes the pattern of past staff recommendations and Commission actions and which should now be taken as explicit guidance to developers of new residential projects. It should be noted at the outset to avoid any confusion, that such guidelines do not override basic concepts of environmental protection. Housing developments, whether or not they provide affordable housing, will only be permitted where consistent with environmental constraints. Given such environmental approval, it is the policy of the Commission:

1. that where new residential construction is appropriate, projects should be developed in a manner which adds to the community's stock of housing for persons of low and moderate income, as a means of providing equitable access to coastal resources;

2. that the economic feasibility of providing such units, while typically more limited in smaller projects, would not bar a requirement that projects as small as 10 units include 25% of the project as affordable housing; direct inclusion in projects of 10-20 units is preferable, but where a project's small size (i.e.,10 to 20 units) makes direct provision of units infeasible, a developer fee in lieu of actual provision of units will be required an an alternative; *

3. that in larger projects, those of 21 units or more, the provision of 25% of the total number of units as affordable housing has generally been found to be feasible;

4. that in order to meet affordability goals, particularly on smaller projects, a density increase, reduced parking standards, or other offsetting techniques should be considered in order to enhance the economic feasibility of such projects, where appropriate to the nature of the community and consistent with environmental constraints and other public access requirements;

5. that projects will present differing balances of public benefits--extraordinary public access or parkland dedications, or wetland restoration measures, for example--which may reduce the feasibility of meeting the Commission's 25% includionary goal; in such instances, a smaller inclusionary percentage may be required;

6. that provision of actual units within a project will be required where feasible and that only where such provision is clearly not a feasible means of meeting the Commission's inclusionary goal will such alternatives as off-site units or on- or off-site land dedications be considered.

7. that due to the extreme shortage of rental housing in the coastal zone any new bona fide rental tenancy projects will represent a contribution to the community's stock of affordable housing; in any community having an impacted rental market (i.e., rental vacancy rate of 5% or less), new rental projects will encourage affordable housing by assisting is the relief of this shortage and therefore need provide no further inclusionary contribution; such rental projects will be conditioned to limit leaseholds to periods of less than two years; conversions of such rental projects will be required to meet the Commission's guidelines on condominium conversions.

*See Exhibit (3) for revisions in compliance precedures for projects in the 10-20 unit category.

IV. SPECIFIC APPLICATIONS

A number of factors will affect the amount of affordable housing which will be required or achievable in any individual permit and the manner in which provision of affordable units will occur. The following factors will be considered in individual applications:

(A) Project Size and Economic Feasibility

(B) Alternatives to On-Site Inclusion of Units

(C) Regional Commission Findings on Local Conditions

(D) Unique Development Costs and Public Benefits

(E) The Community's Need for Affordable Housing

(F) Public Service Constraints

A. Project Size and Economic Feasibility

Section 30213 of the Coastal Act states that "housing opportunities for persons of low and moderate income shall be...where feasible, provided." (Emphasis added) The Coastal Act's definition of feasibility in Section 30108 ("capable of being accomplished...") requires consideration of the economic impacts of inclusionary requirements. Through the experience of processing many permits in which affordable housing was a key issue and the many hours of public testimony thereby received in consideration of economic feasibility, the Commission may reasonably draw some general conclusions on this subject.

1. Large Projects: Direct Inclusion Feasible. The Commission's permit experience, the experience of developers actively seeking to provide affordable housing (as, for example, in the Aliso Water Management Agency area, where large developers--Shapell, Sterling, Warmington--have agreed to provide 35%-75% of their projects as affordable housing), and the experience of cities and counties in creating and administering inclusionary programs (e.g., Orange County, which requires 25% affordable housing) have together demonstrated that in large projects substantial inclusion of affordable units is economically feasible when developers design with this intent.

Therefore, in large projects, those of 21 units or more, the Commission finds that direct inclusion of approximately 25% of the total units as affordable housing for persons of low and moderate incomes is both feasible and practical. No independent individual analysis of economic feasibility will be undertaken by the Commission for such large projects in the general case, although unique factors, as discussed in Sections C-F below, may require an increase or decrease in the proportion of affordable units required. In any individual project, of course, if it can be demonstrated that a 25% requirement is not feasible, a lesser inclusionary percentage would be appropriate. Such a demonstration of infeasibility must be substantiated by an independent analysis of project data, taking into account possible redesign, to be carried out by consultants mutually approved by the applicant and the Commission. Such analysis will be funded by the applicant, as provided in Commission Regulation 13055(d).

2. Intermediate Projects: Developer Fees Permitted. In projects of less than 21 units, the Commission has found through its permit process that direct provision of approximately 25% of project as affordable units, although often economically feasible for the developer, may not be administratively practical in managing lower-cost housing programs. The Commission may, therefore, allow developers of such projects two alternatives -- provision of affordable units, or payment of a fee in lieu of providing units. *

Smaller projects lack economies of scale in the construction process, have greater development cost, and provide a lower number of market rate units over which fixed costs may be distributed. In a small project, the administrative expenses for the Commission and local government agencies to establish and monitor each inclusionary site are as great as for a program with a large number of units.

In recognition of the more limited economics of smaller projects and to provide for more efficient aggregation of affordable units to avoid an excessive commitment of administrative resources, the Commission may permit the use of developer fees an an alternative and in lieu of provision of actual units in projects of 10-20 units. This approach allows medium-sized projects to meet the individual project requirements set forth in Section 30213 while at the same time devising an implementation mechanism which is responsive to the practical problems for both applicant and government in providing affordable housing in such small projects. Developer contributions will be directed to an agency which will purchase land for the construction of affordable units within the same local market area from which the fees were derived; where no local agency has a program of land acquisition to which these funds could be readily directed, the Coastal Conservancy will act as the recipient agency.

The Commission may allow, as an alternative to inclusion of affordable units in projects of 10-20 units, the payment of a fee of 6% of the market price of the project to an appropriate housing fund. This amount is intended to satisfy two requirements--first, that the fee be sufficient to provide a genuine contribution to affordable housing in relation to an inclusionary requirement, and second, that the fee be economically viable for small projects. Market-rate units are often offered for sale at prices considerably in excess of estimates made during the permitting process; as a result of the strong demand, housing prices have been increasing at a faster rate than inflation, and profits have risen with prices. Given the profitability of coastal development and the price elasticity of the market (housing prices having increased from 15-20% a year in many coastal communities), a 6% fee can be readily absorbed in coastal developments without reducing the ability of a developer to make a reasonable profit (generally 12% of the total costs). The Commission has therefore determined that a 6% fee is economically feasible.

In order to assure that the in-lieu fee does not encourage the under-utilization of land where greater density is appropriate (e.g., reducing a project from 21 to 15 units in order to avoid inclusionary requirements) and to assure that developers are treated equitably in proportion to the size of the project, the fee must be large enough to make a substantial contribution to affordable housing. Experience has shown that the cost of providing affordable housing generally ranges from 5-10% of a project's overall market value and that 6% therefore represents an equitable contribution by developers of medium-sized projects, while still allowing developers a reasonable profit from the development. Should market conditions change in the future so that the cost of providing affordable housing substantially exceeds 6%, the Commission will adjust the in-lieu fee accordingly.

*See Exhibit (3) for revisions adopting alternative methods of compliance and new in-lieu fee requirements.

The actual provision of affordable units in a project is preferred over the use of an in-lieu fee and should be investigated before turning to the fee alternative. In the event that the actual development costs of affordable units in a particular community can be shown to be less than 6%, the applicant may, after verifying such development costs, use such cost as the in-lieu fee.

In both large and small projects in which affordable units are provided, the units should generally reflect a range of unit sizes (i.e., number of bedrooms, though not necessarily square footage) similar to that of the market-rate units.

3. Small Projects: Inclusion Not Generally Required. In projects of nine units of less, the Commission will not impose an inclusionary requirement, except pursuant to a resolution of a Regional Commission for a particular region as provided in Section C below, as projects of this size have not generally been found to have the economic flexibility to make inclusion feasible. From both the economic and administrative points of view, the Commission cannot find that a general inclusionary requirement for projects of fewer than 10 units would be feasible.

B. Alternatives to On-Site Inclusion of Units

In some instances, on-site construction of inclusionary units by a permit applicant, in accordance with the Commission's inclusionary goals, may be either economically infeasible or undesirable due to the project's location. Several alternatives should be considered in such cases:

1. On-Site Dedication of Land. Decisions of the State Commission have determined that where a project's environmental constraints do not allow for a density increase and where on-site development of a sufficient number of affordable units is therefore not feasible for the private developer, and where substantial other public amenities are provided by the project, fulfillment of the inclusionary requirement through dedication of land alone to a public or private non-profit agency which will construct affordable units would provide reasonable conformance with the intent of Coastal Act Section 30213.

Dedication of land alone produces a substantially smaller contribution to affordable housing than actual construction of units. Public or private financing is required to carry out construction and may be unavailable or limited as to the type of project fundable. Additional local governmental approvals will be required, which may delay or obstruct project completion. Even if financing is available and local approvals forthcoming, a significant contribution of local administrative effort will be required to bring the project to the construction stage; such a staff effort could exceed the capability of local governments operating on severely limited budgets. For all of these reasons, the probable result of which will be to produce fewer units, at a greater cost, than were they constructed by the developer, the dedication of land alone is not a very attractive alternative. Where it has been permitted, the Commission has found that land so dedicated should be sufficient under current zoning to accommodate at least twice the amount of affordable housing which would be required if constructed by the developer.

2. Off-Site Dedications or Construction. Where severe constraints prevent on-site development or dedication of affordable housing or where locational factors (e.g., distance to employment or shopping facilities, lack of transit availability) make on-site inclusion undesirable, construction of new inclusionary units and/or land dedications may be allowed off site.

Where off-site construction is permitted, the secondary site or sites should be within the coastal zone of the same local jurisdiction as the original project, unless similar constraints or locational factors apply; where off-site construction will take place in a different locality from the project site, final local approval or, at a minimum, concept local approval should generally be obtained for the off-site project(s) prior to issuance of the initial development permit. The secondary site or sites should, if possible, be located in a nearby jurisdiction which has a need for affordable housing. To expedite processing of projects intended to comply with an off-site permit condition issued by the State Commission, the State Commission will exercise jurisdiction over subsequent applications for permits needed to fulfill the terms of the original coastal permit.

3. Inclusion Outside of the Coastal Zone. Where all on-site and off-site alternatives prove infeasible within the coastal zone, land dedications or new construction needed to meet the Commission's inclusionary goals may be permitted outside the coastal zone. The limited conditions under which such an off-site condition could be considered were outlined in Appeal No. 376-78 (Harvey):

> ...off-site mitigations outside the coastal zone may be appropriate where housing provisions represent new units rather than replacement housing and where the alternative siting area (1) is in close proximity to the project site; (2) is in close proximity to the coastal zone (i.e., within walking distance from the area within the zone); and (3) is a part of the same coastal community as the proposed development and the amenities of the coastal zone extend to the entire community.

C. Regional Commission Findings on Local Community Conditions

While the Commission's guidelines provide the general basis for Regional Commission actions on permit applications, the Commission recognizes that its findings on feasible provision of affordable housing are conservative estimates and based on generalized statewide experience and may therefore understate the economic and social feasibility of providing affordable units in specific coastal communities. Local construction or land costs may be lower or local market conditions may be sufficiently strong to support a greater degree of inclusion than the general case. In addition, may coastal communities have developed with zoning and subdivision patterns which will make projects of 10 or more units unlikely, and some communities may have adequate adminsitrative resources to monitor adequately many small-scale (1-3 unit) affordable housing sites. Where a local community's circumstances differ from the general case such that a greater degree of direct inclusion is feasible than the Commission's guidelines would provide for, it is the Commission's intent that a Regional Commission may adopt a more liberal policy of inclusion.

Specifically, the Commission recognizes that there may be communities in which an in-lieu fee system would not adequately maintain coastal access, where a direct inclusionary program may be feasible and necessary in projects of 10-20 units. Alternatively, a Regional Commission may find that in particular neighborhoods or communities local market conditions make a contribution to affordable housing economically feasible in projects of fewer than 10 units through use of the in-lieu fee system, and that protection of the character of a particular community makes such an inclusionary approach essential. Where such circumstances occur, a Regional Commission may, through adoption of a resolution after public hearing, adopt a policy which provides that in specified communities or neighborhoods inclusion would be appropriate in projects smaller than 10units or that direct inclusion rather than in-lieu fees will be required for projects greater than 10 units.

Where a Regional Commission adopts such a resolution, it shall make findings as to why the Commission's general guidelines would not alone result in full compliance with Coastal Act Policy 30213 in specific coastal communities. This resolution shall be adopted by the Regional Commission prior to the imposition of any inclusionary requirement in excess of those specified in these guidelines and shall be transmitted to the chairman of the Commission. Such a resolution shall constitute a Regional Interpretive Guideline and addendum to this Statewide Guideline, unless specifically rejected by the Commission after public hearing.

D. Unique Development Costs and Public Benefits

As one of several Public Access policies contained in Article 2 of Chapter 3 of the Coastal Act, provision of housing opportunities for persons of low and moderate income should not be pursued to the detriment of alternative means of enhancing access. In considering proposed new development, therefore, the Commission will consider unique development costs imposed by access-related conditions and public benefits to be derived from such conditions and will seek to achieve an "access package" which provides the greatest overall public benefit. In a particular instance, this could mean foregoing compliance with some part of the Commission's inclusionary goal in favor of developer contribution to improved transit, provision of unique vertical access dedications, installation of access benefits such as public parking, or similar access improvements.

The Commission recognizes that in some circumstances, unique problems of development resulting from compliance with Coastal Act policies may reduce the economic feasibility of providing affordable units. The Commission finds that where such circumstances occur, conformity with other Coastal Act policies which may constrain certain lands from development or impose unique development costs should take priority over "least-cost" alternatives which would permit full conformance with the Commission's inclusionary goals. In making its findings on permit applications, the Commission will seek to document the cost impacts of unique land constraints and reduce or eliminate inclusionary requirements accordingly if necessary.

E. Community Need

Under the Coastal Act, the definition of feasibility in Section 30108 requires that the Commission "take into account economic, environmental, social and technological factors". In order to address the social factors which determine the feasibility of providing affordable housing in new developments, projects within communities with low needs for affordable housing will not be required to meet the 25% inclusionary target. If an applicant argues that a development should not be

required to meet this target because the community has a low need for affordable housing, an initial assessment will be made of community need, using generally available statistics. Wherever possible, the Commission will use the community's "total need" for affordable housing, as determined by regional Councils of Governments, taking into account the fair share allocations plans prepared pursuant to the State housing element guidelines.

Where a community shows a relatively low need for affordable housing, after consideration of the effects of future development and demand, proposed developments will not be required to meet the 25% inclusionary target. Instead, a lower percentage, depending on the need of the community, will be required. If a community is found to have no need for new affordable housing, either under current conditions or as determined by estimates of future demand, the Commission will not require any inclusion of affordable units.

It is the intent of these guidelines that Commission permit actions should assist all coastal jurisdictions in fulfilling their respective responsibilities under State Housing Laws.

F. Public Service Constraints

Where public services (e.g., roads, water, sewer, public transit, etc.) are limited by technological, fiscal, or environmental constraints, provision of housing opportunities for persons of low and moderate income shall be considered a priority use in any allocation of remaining capacity to residential uses.

V. MISCELLANEOUS

1. Assuring Performance. In order to assure the performance of affordable housing conditions, deed restrictions, performance bonds, or other provisions acceptable to the Executive Director to assure performance shall be required prior to the issuance of the permit.

2. Definitions. "Low-income persons," "moderate-income persons," and "affordable housing for persons of low and moderate income" are defined in accordance with the Commission's Interpretive Guideline on Condominium Conversions, adopted July 17, 1979, which are attached for reference purposes.

Adopted May 5, 1981

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

July 16, 1979

TO: INTERESTED PARTIES

SUBJECT: INTERPRETIVE GUIDELINES ON CONDOMINIUM AND STOCK COOPERATIVE CONVERSIONS AND GENERAL DEFINITIONS

The following Interpretive Guidelines were adopted by the California Coastal Commission on July 16, 1979 pursuant to Section 30620 of the Coastal Act of 1976. That section provides in part that:

> The Commission shall...prepare interim procedures for the submission, review and appeal of coastal development permit applications...(including) Interpretive Guidelines designed to assist local governments, the regional commissions, the commission, and persons subject to the provisions of (the Act) in determining how the (Act's) policies shall be applied in the coastal zone prior to certification of local coastal programs; provided, however, that such guidelines shall not supersede, enlarge, or diminish the powers or authority of any regional commission, the commission, or any other public agency.

These guidelines, then, are intended to provide a guide for permit applicants, local governments, and the Commission in interpreting the requirements of Section 30213 of the Coastal Act, which states in part that:

> ...housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible, provided...

Interpretive Guidelines adopted by the Commission are <u>interim</u> guidelines to be used prior to the adoption of local coastal programs (LCP's) by local governments and certification of the local coastal programs by the Commission. The guidelines will be superseded by the LCP's and are not intended to be the test for the LCP's (although local governments will need to address the <u>issues</u> considered by interpretive guidelines, it is expected that local program will reflect local needs and concerns which may or may not be reflected in statewide guidelines).

Finally, the Commission wishes to make clear to applicants and others that guidelines are merely <u>guides</u>, not regulations or law. The final test on permit decisions remains the terms of the Coastal Act; the guidelines are intended to help interpret the Act, but they are not binding on the Commission, which will consider projects in light of all circumstances and all of the policies of the Coastal Act.

These guidelines replace guidelines on condominium conversions and definitions adopted October 4, 1977. Other guidelines on new construction and demolition adopted at that time remain in effect; however, proposals for new guidelines in those areas will be considered by the Commission in the near future.

A. <u>Definitions</u>

1. <u>Low- and Moderate-Income Housing Opportunities</u>. Low- and moderate-income housing opportunities are hereby defined as dwelling units which are capable of being purchased or rented by low- and moderate-income households, or are occupied by low-

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or moderate-income households. A low-income household is one which earns 80% or less of the median income as established annually by the U.S. Department of Housing and Urban Development (HUD) for the Standard Metropolitan Statistical Area within which the proposed development is located, as adjusted for the number of members of the household. A moderate-income household is one which earns 81 - 120% of the median income (as established above).

A dwelling unit is capable of being purchased by a low- or moderate-income household if the total purchase price of the units does not exceed two and one half (2.5) times the annual income of the low- or moderate-income purchaser for whom the unit is intended to provide a housing opportunity. This ratio may be adjusted from time to time to reflect lending practices, interest rates, association fees, and other changes which may affect the ability of low- and moderate-income persons to purchase the units. Alternatively, and particularly in large projects, an affordable price may be determined by a formula similar to the following which tales into account association fees, taxes, interest rates, and other housing costs and results in a housing cost which does not exceed 33 1/3% of the purchaser's income.

$$\text{Sales Price} = \frac{(\text{Purchaser's Income} \times 33\%) - (\text{Home Ownership Association Fees})}{\text{Real Estate Tax Percent} + \text{Debt Service Constant Percent}}$$

A dwelling unit is capable of being rented by a low-income household if the monthly rental cost does not exceed 25% of the gross monthly household income of the renter and is capable of being rented by a moderate-income household if the monthly rental cost does not exceed 30% of the gross monthly income of the renter.

Low- and moderate-income housing opportunities shall be provided, when offered as sale units, in a range of affordability so that they are available to households earning from 50 - 120% of the median income and shall be geographically dispersed throughout the project, consistent with the size, number, and location of units within the project.

Because of the scarcity of low-income housing within the coastal zone, the provision of low-income units shall be given priority; where the provision of low- and moderate-income housing opportunities is a condition of a permit, such a condition may be met by providing more housing for low-income persons than would otherwise be required. (An example of the application of this guideline would be that for every unit of low-income housing provided beyond that which would otherwise be required, the applicant would satisfy the requirement of two units of moderate-income housing.)

2. Rental and Sale Programs for Low- and Moderate-Income Housing Opportunities.

a. Rental Units. If the low- or moderate-income housing opportunities are to be developed as rental units, prior to the issuance of a permit, the developer shall enter into an agreement with the Commission to assure that the units will continue to be rented at a price which is affordable to low- or moderate-income renters. The agreement shall bind the applicant and any successors in interest to the real property being developed and shall be recorded as a covenant to run with the land, with no prior liens other than tax liens, for a period extending 30 years from the date the agreement is recorded. The agreement shall provide that either:

(1) The rents on the units shall be fixed at a rent which is affordable to low-income persons; this rent may be adjusted annually to reflect changes in the median income; or,

(2) The units shall be rented at the Fair Market rent for existing housing as established by the Department of Housing and Urban Development (HUD) either to persons who meet the standards established by HUD for rent subsidy under Section 8 of the Housing

EXHIBIT ① (2079)

Act of 1937, as amended, or as it may subsequently be amended, and applicable regulations; or persons who meet the requirements of any other rent subsidy or funding program that provides rental housing for low-income households. The applicant shall make best efforts to accomplish the intent of the provision; those efforts shall include, but are not limited to, entering into any contracts offered by HUD, a local Housing Authority, or such other agency administering a rent subsidy program for low-income households, and refraining from taking any action to terminate such rent subsidy program thereby entered.

In the event that at any time within 30 years after the agreement is recorded housing subsidies are not available, the applicant or his/her successor shall maintain the rental levels for the unit at amounts no higher than those that would otherwise be the maximum for Section 8 housing units and shall rent the units to qualified low-income tenants. In the event that Section 8 or comparable maximum rental levels are no longer published by the Federal government or by local governmental agencies, maximum rental levels shall be a base rent established by the last rental ceiling published for the Section 8 program adjusted by a percentage to reflect the percentage increase or decrease in the median income.

b. Sale Units. If the low- or moderate-income housing opportunities are to be developed as sale units, prior to the issuance of a permit the developer shall enter into an agreement with the Commission, or its designee, to assure that subsequent sales following the initial sale of the unit will be at a price which is affordable to households earning substantially the same percentage of the median income as the initial purchasers of the units and shall be recorded as a covenant to run with the land, with no prior liens other than tax liens. The agreement shall include substantially the following conditions:

(1) The applicant, his successors, and any subsequent purchasers shall give a governmental or nonprofit agency, subject to the approval of the Executive Director, an option to purchase the units. The agency or its designee may assign this option to an individual private purchaser who qualifies as a low- or moderate-income person in substantially the same income range as the person for whom the initial sales price was intended to provide a housing opportunity.

(2) Whenever the applicant or any subsequent owner of the unit wishes to sell or transfer the units he/she shall notify the agency or its designee of his/her intent to sell. The agency, its designee, or its assignee shall then have the right to exercise the option within 180 days in the event of the initial sale of the units by the developer, or within 90 days for subsequent sales. Following the exercise of the option, escrow shall be opened and closed within 90 days after delivery of the notice of exercise of the option.

(3) Following the notice of intent to sell the unit, the agency or its designee shall have the right to inspect the premises to determine whether repair or rehabilitation beyond the requirements of normal maintenance ("deferred maintenance") is necessary. If such repair or rehabilitation is necessary, the agency or its designee shall determine the cost of repair, and such cost shall be deducted from the purchase price and paid to the agency, its designee, or such contractors as the Department shall choose to carry out the deferred maintenance and shall be expended in making such repairs.

(4) The agency or its designee may charge a fee, to be deducted from the purchase price paid by the assignee for its reasonable costs of qualifying and counseling purchasers, exercising the option, and administering this resale control program.

EXHIBIT ① (3 of 9)

(5) The option price to be paid by the agency, its designee, or assignee, shall be the original sales price of the unit plus an amount to reflect the percentage of any increase in the median income since the time of the original sale.

(6) The purchaser shall not sell, lease, rent, assign, or otherwise transfer the premises without the express written consent of the agency or its designee. This provision shall not prohibit the encumbrancing of the title for the sole purpose of securing financing; however, in the event of foreclosure or sale by deed of trust or other involuntary transfer, title to the property shall be taken subject to this agreement.

(7) Such other conditions as the Executive Director determines are necessary to carry out the purposes of this agreement.

B. Condominium/Stock Cooperative Conversions

This guideline shall apply to all conversions of rental units into sale units, including, but not limited to, conversions to condominiums, stock cooperatives and community apartment projects.

1. In considering whether to allow a conversion, the Commission shall consider the impact of the conversion on low- and moderate-income housing opportunities, on public access, and other relevant coastal policies.

Where units currently provide significant low- and moderate-income housing opportunities and where rental vacancy rates are low, the Commission will not approve a conversion unless the Commission finds that the conversion provides a greater housing opportunity for persons of low and moderate income than the rental housing proposed to be converted.

In analyzing a conversion, the Commission will consider the following factors:

a. Whether the rental units currently provide low/moderate income housing opportunities; and, if so, whether the conversion will provide new low and moderate income housing opportunities; and what the indirect impact is, if any, of the loss of existing rental units on other low and moderate income housing opportunities;

b. Whether other units are available in the same general coastal area (i.e., within walking distance to the coastal zone) at comparable rents (one evidence of which would be a 5% rental vacancy rate for the six months preceding the conversion);

c. Whether the building meets current off-street parking requirements, recognizing that parking requirements may be relaxed, where consistent with environmental needs and public access requirements, in order to encourage the provision of low- and moderate-income housing opportunities;

d. Whether the proposed conversion is handicapped accessible, or in any way discriminates against purchasers on the basis of age, sex, sexual preference, or otherwise;

2. In any conversion which is approved, the following requirements should be met in order to protect, encourage, and provide housing opportunities for low- and moderate-income persons.

EXHIBIT (1) (4 of 9)

a. All current tenants are given at least 120 days notice of the proposed conversion following the issuance of the permit and are given a first option to purchase market rate and low/moderate ("affordable") units (if the current tenant qualifies as a low/moderate income person.)

b. One-third of the units in the project are dedicated to low- and moderate-income housing opportunities, either through a controlled rental program (such as the Section 8 program), or a sale program with resale controls to prevent speculation and to guarantee continued affordability (as defined in these guidelines). In such conversions, the units shall first be offered for sale to the current tenants. In the event that more than two-thirds (2/3) of the units are purchased at market rates by the current tenants, the low/moderate set-aside requirement will be satisfied by whatever number of units remain unsold to the current tenants. (For example, if a 90-unit project is proposed for conversion, 30 units should be dedicated to low/moderate income housing; if 70 units are purchased at market rates by the current tenants, the low/moderate requirement will be met by dedicating the remaining 20 units.)

In unusual situations, where the applicant can demonstrate that the dedication of low- and moderate-income units within the building to be converted is infeasible because of circumstances which make the on-site provision impossible, the low/moderate housing requirement may be met by the provision of new low/moderate income housing opportunities off site within the coastal zone in the project market area. In considering this off-site provision, the Commission will consider the off-site and on-site units as one project in determining the number of units to be provided off-site.

c. Provision is made to prevent or mitigate displacement of elderly and handicapped tenants, and tenants who must relocate are given reasonable assistance in seeking comparable housing.

EXHIBIT D (5 of 9)

AFFORDABLE HOUSING OPPORTUNITIES IN THE COASTAL ZONE: CALCULATIONS

Existing Opportunities

M= median income (family of four), for the appropriate SMSA.

Family Size	No. Bedrooms	LOW (I ≤80%M) Income	LOW (I ≤80%M) Rent(25%)	MOD.1 (I ≤100%M) Income	MOD.1 (I ≤100%M) Rent(30%)	MOD.2 (I ≤120%M) Income	MOD.2 (I ≤120%M) Rent(30%)
1	0	[(0.6)xM]	x0.25	[(0.75)xM]	x0.3	[(0.9)xM]	x0.3
2	1	[(0.64)xM]	x0.25	[(0.8)xM]	x0.3	[(0.96)xM]	x0.3
3	2	[(0.72)xM]	x0.25	[(0.9)xM]	x0.3	[(1.08)xM]	x0.3
4	2	[(0.8)xM]	x0.25	[(1.0)xM]	x0.3	[(1.2)xM]	x0.3
5	3	[(0.85)xM]	x0.25	[(1.05)xM]	x0.3	[(1.28)xM]	x0.3
6	3	[(0.9)xM]	x0.25	[(1.12)xM]	x0.3	[(1.35)xM]	x0.3
7	4	[(0.95)xM]	x0.25	[(1.19)xM]	x0.3	[(1.43)xM]	x0.3
8	4	[(1.0)xM]	x0.25	[(1.25)xM]	x0.3	[(1.5)xM]	x0.3

New Opportunities

Affordable For-Sale Units= (2.5) x Income

Exhibit 1

EXHIBIT (1) (6 of 9)

HOUSING OPPORTUNITIES

Section 30213 of the 1976 Coastal Act requires that:

> "...housing opportunities for persons of low and moderate income shall be protected, encouraged, and where feasible provided...New housing in the coastal zone shall be developed in conformity with the standards, policies and goals of local housing elements adopted in accordance with the requirements of subdivision (c) of Section 65302 of the Government Code."

To implement these policies the following guidelines shall be applied in the permit process.

1. New Housing

Where residential development is proposed, priority should be given to proposals that include housing opportunities for persons of low and moderate income, particularly where governmental funds are available to help finance or subsidize housing for these persons (e.g., HUD Section 8 Program). Where the amount of new residential development in an area is limited by availability of land, sewer, road, or water capacity, the housing needs of persons of low and moderate income should receive full consideration in any resulting allotment system developed for residential construction. Incentives for building houses for persons of low and moderate income in the coastal zone should be considered; where appropriate, these may include density bonuses, reduced parking requirements, and other incentives consistent with public access and environmental constraints.

2. Existing Housing

Existing structures that provide housing for persons of low and moderate income should not be torn down unless they pose a health or safety hazard. To the extent that private or public funds are available, existing housing for persons of low and moderate income should be rehabilitated rather than demolished. If such housing is to be demolished, comparable replacement housing should be provided; this requirement should not apply to owner-occupied single-family homes when replaced by another single-family home. In case of dispute over soundness of construction or the feasibility of rehabilitation, the Commissions will request a report on the structure from the State Department of Housing and Community Development. Any such reports received by the Commission will be sent to the local jurisdiction for its review and comment.

3. New Housing in Existing Neighborhoods

In neighborhoods that provide significant housing opportunities for persons of low or moderate income, continued development should contribute to maintaining a sense of community character. New development, whether on vacant lots or where existing structures are demolished, should be of scale, size, and design compatible with the prevailing character of the community.

4. Consistency with the Housing Element

Because the Coastal Act requires that new housing in the coastal zone be consistent with the standards, policies, and goals of local general plans, the Commission will, where a significant amount of development is being proposed, request an analysis

EXHIBIT ① (7 of 9)

from the Department of Housing and Community Development as to whether the jurisdictions have adopted housing standards, policies and goals in accordance with subdivision (c) of Section 65302 of the Government Code. This section of the Government Code requires that the Housing Element "shall make adequate provision for the housing needs of all economic segments of the community" and "provision of adequate sites for housing". Any such analysis will be sent to the local government for its comments before any permit action is taken by the Commission.

5. Condominium Conversion

Rental units that provide housing for persons of low and moderate income may be converted to condominiums if (a) tenants are first given at least 120 days notice of the proposed conversion, (b) current tenants are given the first option to purchase units, (c) the building meets current standards in building codes, safety codes, etc., and meets current off-street parking requirements, and (d) other units are available in the same general coastal area at comparable rents (as evidenced by a 5 percent rental vacancy factor for the 6 months preceding the conversion).

6. Redevelopment Projects

In an redevelopment project under State law proposed in the coastal zone, no less than 20 percent of all taxes allocated to the Redevelopment Agency from tax increment financing should be used to improve or increase the supply of housing for persons of low and moderate income. An exception to this requirement can be made only if the Commission finds that the local government is making a substantial effort to meet the housing needs of persons of low and moderate income in the coastal zone as evidenced by obligation of funds currently available for this purpose from State, local and Federal sources. Any redevelopment project proposed within the coastal zone should not be allowed to displace housing for persons of low and moderate income unless at least an equivalent number of replacement units are provided within the coastal zone. The replacement units need not necessarily be within the project area.

7. Definitions

In accordance with the regulations of the California Housing Finance Agency, "persons of low and moderate income" are defined to include all of the following:

(1) A "very low income family" is a family whose income does not exceed 50 percent of the median income for the area, as determined by HUD[1] with adjustments[2] for smaller and larger families.

(2) A "low income family" is a family whose income does not exceed 80 percent of the median income for the area, as determined by HUD[1] with adjustments[2] for smaller or larger families, except that income limits higher or lower than 80 percent may be established on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

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[1]Generally defined by HUD as county; [2]Adjustments as made by HUD

Exhibit ① (8 of 9)

(3) A "moderate income family" is a family whose income does not exceed 120 percent of the median income for the area, as determined by HUD[1] with adjustments[2] for smaller and larger families.

(4) For purposes of this section "family" includes an elderly, handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in Section 201 (a) of the Housing and Community Development Act of 1974.

Adopted October 4, 1977

[1]Generally defined by HUD as a county; [2]Adjustments as made by HUD

Exhibit ① (9 of 9)

State of California

Memorandum

To : Interested Parties

Date : October 10, 1979

Subject: Use of Housing Elements Local Coastal Programs

From : California Coastal Commission
Michael L. Fischer, Executive Director

This policy statement is in response to several letters from coastal cities and counties concerning the housing component of Local Coastal Programs (LCPs) and the required housing elements of local General Plans. We have reviewed the issues raised by these letters in some detail; I hope you will find this response helpful in resolving your concerns.

Several coastal cities in Los Angeles and Orange counties have proposed that local housing elements, adopted pursuant to Government Code Section 65302(c) and housing element guidelines promulgated by the Department of Housing and Community Development, should constitute the formal plans for meeting local housing needs, and that no separate additional housing component should be required for a Local Coastal Program. Furthermore, these cities have suggested that "providing low and moderate income housing ... be applied uniformly on a citywide basis, through a Housing Element, as opposed to special regulations for any one particular (coastal) area of a city."

In general, we agree. The housing element should provide the basis for each city's housing planning and may, in fact, serve as the housing component of the LCP.

Since a housing element must identify and document housing needs and contain a program designed to address such housing needs, it would be the logical document for a city or county to use in developing a housing plan which would meet the requirements of the Coastal Act. We certainly agree that a citywide housing policy would be more cost-efficient and effective than "special regulations for any one particular area of a city." The Coastal Commission's planning staff has consistently advised cities and counties that the housing element is an appropriate place to set out housing policies and programs which, in so far as they apply to the coastal zone, may then be used as the housing component of the LCP.

However, while the housing element is an appropriate place to develop housing policies for the coastal zone, as well as the rest of a city or county, the adoption of a housing element does not automatically assure that the policies and programs of the housing element will meet the requirements of the Coastal Act. (Conversely, the failure of a city or county to adopt an approved housing element does not mean that the city or county could not submit a housing component which would meet the Coastal Act requirements.) The reason for this is that there are two quite different standards established in the housing element legislation and the coastal legislation. Let me explain what I mean.

The Coastal Act's housing policies are spelled out in Public Resources Code Section 30213:

> ... housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided. ... New housing in the coastal zone shall be developed in conformity with the standards, policies, and goals of local housing elements adopted in accordance with the requirements of subdivision (c) of Section 65302 of the Government Code.

This section of the Coastal Act thus contains two separate policies for housing in the coastal zone: 1) the housing component of an LCP must incorporate the local housing element's standards and policies for new construction; and 2) the housing component must also contain plans, zoning ordinances and implementing actions which will protect, encourage and provide low and moderate income housing opportunities.

In contrast, Government Code Section 65302 (c) provides that "(t)his element of the plan shall make adequate provision for the housing needs of all economic segments of the community."

There are, therefore, a number of differences between Coastal Act and housing element requirements. While the housing element requires the "provision" of housing opportunities for "all economic segments of the community", the Coastal Act requires "protection" of existing housing as well as provision of new housing, and is concerned with opportunities in the coastal zone for "low and moderate income persons", rather than all segments of the community.

Unlike the housing element, the basic intent of the Coastal Act is not to solve community or regional housing issues, but rather to assure that the coastal zone not become the exclusive province of the affluent. In order to carry out the fundamental policy of the Coastal Act (that access to the coast should be available to all Californians), housing opportunities for low and moderate income persons in the coastal zone must be protected, and must be provided where feasible in new construction. The Coastal Act, in other words, is concerned with meaningful access to the special strip of land that makes up the coastal zone, in contrast with the housing element's more general concerns for communitywide housing needs.

The requirements of the Coastal Act and housing element law, however, in spite of the differences, contain many similarities. Section 6460 of the housing element guidelines, which sets out the basic test for "adequate provision of housing needs", states:

> Adequate provision for the housing needs of all economic segments of the community requires each locality, through its housing element, to make a good faith, diligent effort to provide opportunities for and to facilitate the maintenance, improvement and development of an appropriate variety and choice of housing for all economic segments of the community, consistent with its identified need and fair share responsibilities ...

Exhibit ② (2 of 3)

Section 6454 of the housing element guidelines provides further that "the housing program shall emphasize the importance of preserving affordability at the same time conditions are being improved or maintained." A housing element that meets these housing element guidelines on a city or countywide basis will thus contain policies and programs designed to protect and provide low and moderate income housing opportunities; to the extent that these areawide programs are applied to the coastal zone, such a housing element should be sufficient to meet the requirements of a housing component of an LCP. They need not be the same document, but we agree that it would be far better were they so.

As a general rule, we do expect that housing elements will make up the housing component of the LCPs; the test, however, is not whether the housing element is a valid housing element, nor whether it meets the housing element guidelines, but whether it satisfies the requirements of the Coastal Act. It is quite possible that a housing element could meet the requirements of housing element law, and still not meet the Coastal Act requirements for an LCP (as, for example, with a housing element which did not provide for any low and moderate income housing opportunities in the coastal zone); conversely, a housing element could be inadequate to meet the requirements of Section 65302 (c), and still satisfy the requirements of the Coastal Act.

I hope this memo has clarified the Coastal Commission's position on the relationship of the housing element to the Local Coastal Program. We encourage cities and counties to use their housing elements as the housing component of their LCP to the extent that the housing element contains policies and programs for the coastal zone which protect, encourage and provide, where feasible, housing opportunities for persons of low and moderate income.

If you have further questions or concerns, I would welcome the opportunity to discuss them with you. We do, in fact, view ourselves as partners in this unique coastal planning effort, and greatly respect and appreciate the tough burden--both political and financial--which the Coastal Act places on local government. Please let us know how to help you.

Exhibit ② (3 of 3)

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

May 7, 1981

TO: REGIONAL DIRECTORS, PERMIT CHIEFS AND INTERESTED PERSONS

FROM: ROY GORMAN, CHIEF COUNSEL, TIM EICHENBERG, STAFF COUNSEL AND EVELYN LEE, LEGAL COUNSEL

RE: REVISION OF HOUSING GUIDELINES

On May 5, 1981, the California Coastal Commission revised the Interpretive Guidelines for New Construction of Housing. The change was effective on that date as outlined in the attached staff report and recommendations. The Commission's current policies on condominium conversions and demolitions as they relate to affordable housing is not affected by the action. The revisions, as adopted by the Commission, are as follows:

(1) New construction projects of 9 units or less should not have affordable housing requirements unless required by local inclusionary ordinances, proposed or certified land use plans, or pursuant to State or Regional Commission resolutions on local community conditions as provided in the Commission's Guidelines.

(2) 25% of all new construction projects of 10 to 20 units should be made available to persons of low or moderate income using the following methods:

(a) providing 25% of the units on-site; or

(b) Making the equivalent of 25% of the units available at an off-site location, or pursuant to the housing credit program described in paragraph (5) below. These units shall be located in the same city or unincorporated community planning area as determined by the Executive Director within the Coastal Zone or within walking distance of the Coastal Zone not to exceed one-half mile; or

(c) dedicating land within this same area to the Coastal Conservancy, local government, local housing authority or other nonprofit agency acceptable to the Executive Director, zoned to permit the construction of twice the number of units as would be required under the 25% formula; or

(d) provide a fee equal to 6% of the market price to the Conservancy or local housing authority. This option should only be approved by the Commission where the applicants submit a letter of intent from the local government or housing authority to accept the fee for a specific affordable housing project located in this same area as applicant's project. Prior to issuance of the permit the applicant should record a written agreement with the accepting entity binding the applicant and future heirs, successors and assigns to the provision of the fee and binding the accepting agency to use of the fee for a specific affordable project.

EXHIBIT (3) (1 of 3)

(3) Applications for permits that contain one of the options listed in (2) above should be placed on the consent calendar for expeditious processing so long as preliminary staff review reveals that no other significant environmental or coastal impacts exist.

(4) Applicants who wish to demonstrate that the inclusion of affordable housing conditions make their project economically infeasible, should complete a "feasibility questionnaire" prepared by staff detailing, among other things, applicant's land costs, carrying charges, construction loans and contracts, lending institutions, initial investments, partnership agreements, other cost estimates and information relating to applicant's ability to proceed with their project. This questionnaire should form the basis for staff's recommendation to the Commission with regard to the feasibility of providing affordable housing under Section 30213 of the Coastal Act and if necessary may be submitted for independent analysis at applicant's expense if deemed necessary by the Executive Director.

(5) Applicants who desire to construct affordable housing within the Coastal Zone shall be given credits for each unit constructed beyond the 25% requirement. These "affordable housing credits" may be utilized by the applicant or any other person to satisfy the affordable housing requirements of Section 30213 of the Coastal Act. This "affordable housing credit" program should be implemented pursuant to the following general guidelines:

a) the Commission should not allow the use of a credit where it would result in the impaction or concentration of low cost housing;

b) credits alone should not entitle applicants to coastal permits if their projects are otherwise inconsistent with Coastal Act policies;

c) the Commission should specify that it makes no warranties regarding the marketability of "housing credits" to applicants who construct in excess of their 25% requirement or any one else constructing affordable housing near the Coastal Zone; nor should the Commission warrant that an applicant possessing a credit is ncesssarily entitled to a coastal development permit;

d) credits should be made available to applicants who provide affordable housing units in excess of their 25% requirement or who make land available that is zoned to permit the construction of units in excess of their normal requirements;

e) Applicants constructing a project within the Coastal Zone exceeding their 25% requirement should receive a coastal permit that states they are entitled to use the excess housing credits to satisfy their affordable housing requirements in other projects undertaken by them or anyone else otherwise entitled to a coastal development permit within the city or unincorporated community planning area as determined by the Executive Director within the Coastal Zone (or within reasonable walking distance of the Coastal Zone not to exceed one-half mile) in which the project providing the credits is located.

EXHIBIT (3) (2 of 3)

f) units located outside the Coastal Zone may be utilized as credits for projects conditionally approved by the Commission containing affordable housing requirements, where the Executive Director of the Commission determines that the units are within reasonable walking distance of the Coastal Zone area in which the approved project is located. In no case should credits be allowed where they are located more than ½ mile outside the Coastal Zone or where their construction has been subsidized by government funding.

g) applicants should not be required to possess credits prior to presenting their application for a coastal permit before the Commission. However, prior to issuance of a permit applicants must:

1) have been granted an approval with conditions by the Commission allowing the off-site provision of affordable housing; and

2) provide to the Executive Director of the Commission, prior to issuance of the permit, notification from the owner of the credit that the credit has been transferred to the applicant. This notification should state that an interest in land, in the form of an affordable housing credit, has been transferred to the applicant and should specify how many credits are transferred; how many credits the owner possessed; the project from which these credits originate; how many credits still remain unused from that project; and the consideration involved.

EXHIBIT (3) (3 of 3)

COMMITTEES
CHAIR, BUDGET AND FISCAL REVIEW
VICE CHAIR, AGRICULTURE
CHAIR, JOINT LEGISLATIVE BUDGET
JOINT LEGISLATIVE AUDIT

California State Senate
SENATOR
DENISE MORENO DUCHENY
FORTIETH SENATE DISTRICT

SELECT COMMITTEES
CHAIR, CALIFORNIA-MEXICO COOPERATION
CHAIR, COLORADO RIVER
CHAIR, OVERSIGHT OF THE UC ENERGY LABS
BOARDS
CALIFORNIA WORKFORCE INVESTMENT
STATE PUBLIC WORKS

September 5, 2007

Patrick Kruer, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 91405-2219

Re: SB 619 (2003) and Coastal Act sections 30604(f) and (g)

Dear Chairman Kruer:

It has come to my attention that, during the Commission's consideration of development projects in the coastal zone, some Commission staff recommendations have relied, in part, on two sections of the Coastal Act, sections 30604(f) and (g), and the specific intent of the legislature in enacting them in 2003 as part of my bill, SB 619. This letter is written to clarify my intent in adding those provisions to the Coastal Act.

As you know, in the 1980's the Legislature removed language from the Coastal Act that provided the Commission with a policy to protect, encourage, and, where feasible promote, affordable housing, and transferred the authority over affordable housing in the coastal zone to local government.

In authoring SB 619, my broad intent was to streamline processes for permitting housing, especially affordable housing. I wished to encourage state agencies, including the Coastal Commission, to facilitate affordable housing statewide, including in the coastal zone where the development was consistent with local coastal plans, by streamlining the land use approval process to permit higher density residential development with an affordable housing component. SB 619 was intended to encourage the approval of developments with affordable housing units but was not intended to affect any authority the Commission may or may not have to require affordable housing in all developments. To harmonize affordable housing development with coastal resource protection, Sections 30604(f) and (g) were added to the Coastal Act to require that the Commission or local governments, *before* reducing the density of a project below that allowed by local zoning and the state density bonus law, make a finding supported by substantial evidence that the density cannot be accommodated on the site without negatively affecting coastal resources.

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ATTACHMENT

I hope this letter will assist you in your review of development projects proposed in the coastal zone.

Sincerely,

Denise Moreno Ducheny

DENISE MORENO DUCHENY
State Senator, 40th District

cc: Peter Douglas, Ex. Dir., California Coastal Commission
Members, Coastal Commission