CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863 FAX (831) 427-4877
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Th9

CENTRAL COAST DISTRICT (SANTA CRUZ) DEPUTY DIRECTOR'S REPORT

For the

April Meeting of the California Coastal Commission

MEMORANDUM Date: April 15, 2010

TO: Commissioners and Interested Parties
FROM: Charles Lester, Central Coast District Deputy Director
SUBJECT: ***Deputy Director's Report***

Following is a listing for the waivers, emergency permits, immaterial amendments and extensions issued by the Central Coast District Office for the April 15, 2010 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Central Coast District.

EMERGENCY PERMITS

1. 3-10-012-G Pebble Beach Company (Pebble Beach, Monterey County)
2. 3-10-015-G Caltrans, Attn: Gary Ruggerone (Big Sur, Monterey County)

TOTAL OF 2 ITEMS

DETAIL OF ATTACHED MATERIALS

REPORT OF EMERGENCY PERMITS

The Executive Director has determined that the following developments do not require a coastal development permit pursuant to Section 13142 of the California Code of Regulations because the devlopment is necessary to protect life and public property or to maintain public services.

Applicant	*Project Description*	*Project Location*
3-10-012-G Pebble Beach Company	Emergency permit to authorize repair of damaged roadway and placement of 232 tons of 3-6 rock at two locations, totaling approximately 50 square feet at one location and approximately 25 square feet at the other location.	17 Mile Drive @ Fanshell Beach (seaward side of 17 Mile Drive), Pebble Beach (Monterey County)
3-10-015-G Caltrans, Attn: Gary Ruggerone	Emergency repair of existing rock slope protection (RSP) to prevent failure and protect state highway. This location is south of the previous repair accomplished pursuant to ECDP 3-10-005-G.	Highway 1 (existing rock revetment, parallel to and approximately 150 ft. below seaward side of State Highway Route 1, south of Shale Point at P.M. 7.1-7.3, Los Padres National Forest), Big Sur (Monterey County)

California Coastal Commission

EMERGENCY COASTAL DEVELOPMENT PERMIT

Emergency CDP 3-10-012-G (PBC Fanshell Beach rip-rap)

Issue Date: March 29, 2010

This emergency coastal development permit (ECDP) authorizes emergency development consisting of repair of the damaged roadway and the placement of 220 tons of 3-6 ton rip-rap rock at two locations, including 185 tons at one location and 35 tons at the other location, on the seaward side of 17 Mile Drive at Fanshell Beach, as well as temporary staging, in the Del Monte Forest (all as more specifically described in the Commission's ECDP file).

Based on the materials presented by the Permittee (Pebble Beach Company), existing rock revetments below 17 Mile Drive at two locations at Fanshell Beach have failed due to a combination of high tides and large surf associated with storm activity of the 2009-2010 winter season, and is threatening 17 Mile Drive at these locations. The proposed emergency development is necessary to prevent the imminent loss of and/or further damage to 17 Mile Drive. Therefore, the Executive Director of the California Coastal Commission hereby finds that:

(a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this ECDP; and

(b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency development is hereby approved, subject to the conditions listed on the attached pages.

3/29/2010

Dan Carl, Central Coastal District Manager for Peter M. Douglas, Executive Director

Enclosures: (1) Emergency Coastal Development Permit Acceptance Form; (2) Regular Permit Application Form

cc: Laura Lawrence, Monterey County RMA - Planning Department
Deirdre Whalen, Monterey Bay National Marine Sanctuary

Conditions of Approval

1. The enclosed ECDP acceptance form must be signed by the applicant and returned to the California Coastal Commission's Central Coast District Office within 15 days of the date of this permit (i.e., by April 13, 2010). This ECDP is not valid unless and until the acceptance form has been received in the Central Coast District Office.

2. Only that emergency development specifically described in this ECDP is authorized. Any additional and/or different emergency and/or other development requires separate authorization from the Executive Director and/or the Coastal Commission.

3. The emergency development authorized by this ECDP must be completed within 30 days of the date of this permit (i.e., by April 28, 2010) unless extended for good cause by the Executive Director.

4. The emergency development authorized by this ECDP is only temporary, and shall be removed if it is not authorized by a regular CDP. Within 60 days of the date of this permit (i.e., by May 28, 2010), the Permittee shall submit a complete application for a regular CDP to have the emergency development be considered permanent or for a different type of shoreline protection at the project site. The Permittee is encouraged to submit an application that also requests regular CDP authorization to provide for future maintenance of any authorized shoreline protection. The application shall include photos showing the project site before the emergency (if available), during emergency project construction activities, and after the work authorized by this ECDP is complete. The emergency development shall be removed in its entirety within 150 days of the date of this permit (i.e., by August 26, 2010) and all areas affected by it restored to their original pre-emergency development condition unless before that time the California Coastal Commission has issued a regular CDP for the development authorized by this ECDP. The deadlines in this condition may be extended for good cause by the Executive Director.

5. In exercising this ECDP, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.

6. This ECDP does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., Monterey County, Monterey Bay National Marine Sanctuary, California State Lands Commission, etc.). The Permittee shall submit to the Executive Director copies of all such authorizations and/or permits upon their issuance.

7. All emergency development shall be limited in scale and scope to that specifically identified in the materials submitted by the applicant (dated received in the Coastal Commission's Central Coast District Office on March 11, 2010).

8. A licensed civil engineer with experience in coastal structures and processes shall oversee all construction activities and shall ensure that all emergency development is limited to the least amount necessary to abate the emergency.

9. All emergency construction activities shall limit impacts to coastal resources (including public recreational access, habitat areas, and the Pacific Ocean) to the maximum extent feasible including

by, at a minimum, adhering to the following construction requirements (which may be adjusted by the Executive Director if such adjustments: (1) are deemed necessary due to extenuating circumstances; and (2) will not adversely impact coastal resources):

a. All construction areas shall be minimized and shall allow through public access and protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

b. Construction work and equipment operations shall not be conducted seaward of the mean high water line unless tidal waters have receded from the authorized work areas.

c. Grading of intertidal waters is prohibited.

d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.

e. Any construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exceptions will be for: (1) erosion and sediment controls (e.g., a silt fence at the base of the construction area) as necessary to contain rock and/or sediments in the construction area, where such controls are placed as close to the tow of the bluff as possible , and are minimized in their extent; (2) storage of larger materials (i.e., soil nails, large forms, etc.) beyond the reach of tidal waters for which moving the materials each day would be extremely difficult. Any larger materials intended to be left on the beach overnight must be approved in advance by the Executive Director, and shall be subject to a contingency plan for moving said materials in the event of tidal/wave surge reaching them.

f. All construction areas shall be minimized and demarked by temporary fencing designed to allow through public access and protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

g. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep equipment covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).

h. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.

i. All accessways impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area that is impacted by construction shall be filtered as necessary to remove any construction debris.

j. All exposed slopes and soil surfaces in and/or adjacent to the construction area shall be stabilized with erosion control native seed mix, jute netting, straw mulch, or other applicable best management practices (for example, those identified in the California Storm Water Best Management Practice Handbooks (March, 1993)). The use of non-native invasive species (such as ice-plant) is prohibited.

k. All contractors shall ensure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment. Construction contracts shall contain appropriate penalty provisions sufficient to offset the cost of retrieval/clean up of foreign materials not properly contained and/or remediation to ensure compliance with this ECDP otherwise.

l. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office immediately upon completion of construction and required restoration activities. If planning staff should identify additional reasonable restoration measures, such measures shall be implemented immediately.

10. Copies of this ECDP shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it, prior to commencement of construction.

11. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

12. Within 30 days of completion of construction authorized by this ECDP, the Permittee shall submit site plans and cross sections prepared by a licensed civil engineer with experience in coastal structures and processes clearly identifying all development completed under this emergency authorization (comparing any previously permitted condition to both the emergency condition and to the post-work condition), and a narrative description of all emergency development activities undertaken pursuant to this emergency authorization.

13. This ECDP shall not constitute a waiver of any public rights which may exist on the property. The permittee shall not use this ECDP as evidence of a waiver of any public rights which may exist on

the property.

14. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.

15. The issuance of this ECDP does not constitute admission as to the legality of any development undertaken on the subject site without a CDP and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act.

As noted in Condition 4 above, the emergency development carried out under this ECDP is at the Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. If the Pebble Beach Company wishes to have the emergency development become permanent development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

California Coastal Commission

EMERGENCY COASTAL DEVELOPMENT PERMIT

Emergency CDP 3-10-015-G (Caltrans PM 1-MON-7.1-7.3 Shale Point)

Issue Date: April 6, 2010

This emergency coastal development permit (ECDP) authorizes emergency development consisting of the placement of 500 tons of 4-8 ton rock over a 70-foot long and 40-foot wide area approximately 150 feet below the highway at the toe of the slope (at the ocean interface) on an existing rock slope protection (RSP) structure at post mile 1-MON-7.1-7.3, Shale Point, Los Padres National Forest, on the Big Sur coast (all as more specifically described in the Commission's ECDP file). (This location is south of the previous repair accomplished pursuant to ECDP 3-10-005-G.)

Based on the materials presented by the Permittee (Caltrans), emergency repair of the existing RSP is necessary to prevent the imminent loss of and/or damage to Highway 1. Therefore, the Executive Director of the California Coastal Commission hereby finds that:

(a) An emergency exists that requires action more quickly than permitted by the procedures for administrative or ordinary coastal development permits (CDPs), and that the development can and will be completed within 30 days unless otherwise specified by the terms of this ECDP; and

(b) Public comment on the proposed emergency development has been reviewed if time allows.

The emergency development is hereby approved, subject to the conditions listed on the attached pages.

for Dan Carl

Dan Carl, Central Coastal District Manager for Peter M. Douglas, Executive Director

Linda Locklin

Enclosures: (1) Emergency Coastal Development Permit Acceptance Form; (2) Regular Permit Application Form

cc: Laura Lawrence, Monterey County RMA - Planning Department
Deirdre Whalen, Monterey Bay National Marine Sanctuary

Conditions of Approval

1. The enclosed ECDP acceptance form must be signed by the applicant and returned to the California Coastal Commission's Central Coast District Office within 15 days of the date of this permit (i.e., by April 21, 2010). This ECDP is not valid unless and until the acceptance form has been received in the Central Coast District Office.

2. Only that emergency development specifically described in this ECDP is authorized. Any additional and/or different emergency and/or other development requires separate authorization from the Executive Director and/or the Coastal Commission.

3. The emergency development authorized by this ECDP must be completed within 30 days of the date of this permit (i.e., by May 6, 2010) unless extended for good cause by the Executive Director.

4. The emergency development authorized by this ECDP is only temporary, and shall be removed if it is not authorized by a regular CDP. Within 60 days of the date of this permit (i.e., by June 5, 2010), the Permittee shall submit a complete application for a regular CDP to have the emergency development be considered permanent or for a different type of shoreline protection at the project site. The Permittee is encouraged to submit an application that also requests regular CDP authorization to provide for future maintenance of any authorized shoreline protection. The application shall include photos showing the project site before the emergency (if available), during emergency project construction activities, and after the work authorized by this ECDP is complete. The emergency development shall be removed in its entirety within 150 days of the date of this permit (i.e., by September 3, 2010) and all areas affected by it restored to their original pre-emergency development condition unless before that time the California Coastal Commission has issued a regular CDP for the development authorized by this ECDP. The deadlines in this condition may be extended for good cause by the Executive Director.

5. In exercising this ECDP, the Permittee agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.

6. This ECDP does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., Monterey County, U.S. Forest Service, Monterey Bay National Marine Sanctuary, California State Lands Commission, etc.). The Permittee shall submit to the Executive Director copies of all such authorizations and/or permits upon their issuance.

7. All emergency development shall be limited in scale and scope to that specifically identified in the email from Caltrans to Coastal Commission staff on March 2, 2010 (dated received in the Coastal Commission's Central Coast District Office on same day).

8. A licensed civil engineer with experience in coastal structures and processes shall oversee all construction activities and shall ensure that all emergency development is limited to the least amount necessary to abate the emergency.

9. All emergency construction activities shall limit impacts to coastal resources (including public

recreational access, habitat areas, and the Pacific Ocean) to the maximum extent feasible including by, at a minimum, adhering to the following construction requirements (which may be adjusted by the Executive Director if such adjustments: (1) are deemed necessary due to extenuating circumstances; and (2) will not adversely impact coastal resources):

a. All construction areas shall be minimized and shall allow through public access and protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

b. Construction work and equipment operations shall not be conducted seaward of the mean high water line unless tidal waters have receded from the authorized work areas.

c. Grading of intertidal waters is prohibited.

d. Any construction materials and equipment delivered to the beach area shall be delivered by rubber-tired construction vehicles. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.

e. Any construction materials and equipment placed on the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area by sunset each day that work occurs. The only exceptions will be for: (1) erosion and sediment controls (e.g., a silt fence at the base of the construction area) as necessary to contain rock and/or sediments in the construction area, where such controls are placed as close to the tow of the bluff as possible , and are minimized in their extent; (2) storage of larger materials (i.e., soil nails, large forms, etc.) beyond the reach of tidal waters for which moving the materials each day would be extremely difficult. Any larger materials intended to be left on the beach overnight must be approved in advance by the Executive Director, and shall be subject to a contingency plan for moving said materials in the event of tidal/wave surge reaching them.

f. All construction areas shall be minimized and demarked by temporary fencing designed to allow through public access and protect public safety to the maximum extent feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.

g. The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep equipment covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach; etc.).

h. All construction activities that result in discharge of materials, polluted runoff, or wastes to the beach or the adjacent marine environment are prohibited. Equipment washing, refueling, and/or servicing shall not take place on the beach. Any erosion and sediment controls used shall be in place prior to the commencement of construction as well as at the end of each work day.

i. All accessways impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area that is impacted by construction shall be filtered as necessary to remove any construction debris.

j. All exposed slopes and soil surfaces in and/or adjacent to the construction area shall be stabilized with erosion control native seed mix, jute netting, straw mulch, or other applicable best management practices (for example, those identified in the California Storm Water Best Management Practice Handbooks (March, 1993)). The use of non-native invasive species (such as ice-plant) is prohibited.

k. All contractors shall ensure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment. Construction contracts shall contain appropriate penalty provisions sufficient to offset the cost of retrieval/clean up of foreign materials not properly contained and/or remediation to ensure compliance with this ECDP otherwise.

l. The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office immediately upon completion of construction and required restoration activities. If planning staff should identify additional reasonable restoration measures, such measures shall be implemented immediately.

10. Copies of this ECDP shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it, prior to commencement of construction.

11. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

12. Within 30 days of completion of construction authorized by this ECDP, the Permittee shall submit site plans and cross sections prepared by a licensed civil engineer with experience in coastal structures and processes clearly identifying all development completed under this emergency authorization (comparing any previously permitted condition to both the emergency condition and to the post-work condition), and a narrative description of all emergency development activities undertaken pursuant to this emergency authorization.

13. This ECDP shall not constitute a waiver of any public rights which may exist on the property. The permittee shall not use this ECDP as evidence of a waiver of any public rights which may exist on

the property.

14. Failure to comply with the conditions of this approval may result in enforcement action under the provisions of Chapter 9 of the Coastal Act.

15. The issuance of this ECDP does not constitute admission as to the legality of any development undertaken on the subject site without a CDP and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Chapter 9 of the Coastal Act.

As noted in Condition 4 above, the emergency development carried out under this ECDP is at the Permittee's risk and is considered to be temporary work done in an emergency situation to abate an emergency. If Caltrans wishes to have the emergency development become permanent development, a regular CDP must be obtained. A regular CDP is subject to all of the provisions of the California Coastal Act and may be conditioned or denied accordingly.

If you have any questions about the provisions of this ECDP, please contact the Commission's Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060, (831) 427-4863.

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY

Arnold Schwarzenegger, *Governor*

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

April 14, 2010

To: Commissioners and Interested Parties

From: Charles Lester, Senior Deputy Director, Central Coast District

Re: Additional Information for Commission Meeting Thursday, April 15, 2010

Agenda Item	Applicant	Description	Page
Th11a, SLO-2-09 Part 1	San Luis Obispo County	Correspondence	1
Th12b, A-3-SLO-07-035	Stolo	Exparte	49
		Staff Report Addendum	54
		Correspondence including a separate enclosure	55,

Miscellaneous – Non-agenda item.

3/31/2010, Letter with attachment from Los Osos Sustainability Group – Re: Los Osos Wastewater Project. 59

Th 11a

RANCHO COLINA

RECREATIONAL VEHICLE PARK
MOBILEHOME COMMUNITY & SALES

1045 ATASCADERO ROAD • MORRO BAY, CALIFORNIA 93442 • PHONE (805) 772-3414
R.V. 772-8420

April 5, 2010

California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: S.L.O. County LCP Amend 2-09 [Item Th11a]
Opposed
Thursday, 15 Apr 2010, Ventura

Commissioners,

On behalf of myself and other San Luis Obispo County Mobilehome Parks Owners we would respectfully ask that your Commission **reject** San Luis Obispo County's Mobilehome Park Conversion Ordinance. The Ordinance is preempted by State Law and violates Sections 30005 and 30005.5 of the Coastal Act.

Your Staff has determined that the above referenced LCP Amendment by San Luis Obispo County is a "minor" amendment that would ". . . provide additional specificity with respect to the LCP steps required when the County considers a request to close or convert a mobile home park . . ."

What you have <u>not been told</u>, is that the wording of this amendment, as it affects conversions under Section 66427.5 of the Subdivision Map Act, is preempted by State Law.

As to Conversions, California Government Code Section 66427.5 states "The scope of the [Conversion] hearing shall be limited to the issue of compliance with this section". The Section requires a Tenant Impact Report and a Resident Survey, <u>period</u>. The "additional specificity" by the County is preempted by State Law. [Attachment 1]

In El Dorado Palm Springs, LTD v. City of Palm Springs, the Court of Appeal, Fourth District, Division Two, State of California [Filed 3/14/02] found that since ". . . the scope of the hearing is limited . . . " [as mentioned in the previous paragraph] that ". . . the City [local government] lacks authority to investigate or impose additional conditions . . ." [Attachment 2, p. 15]

In 2007, local governments appealed to the State Legislature to give them additional authority over conversions. The Analysis of AB 1542 given to the State Assembly in its summary section (3) specifically notes that the intent of the bill "Expands the scope of the hearing on the Map required prior to the conversion of a mobilehome park to resident ownership to issues other than compliance with Government Code Section 66427.5." Local governments and the State Legislature clearly knew that a change in the law was required to allow them to add "additional specificity". [Attachment 3]

AB 1542 passed the Legislature and was Vetoed by Governor Arnold Schwarzenegger. In his veto message, the Governor made the following observation: "I also recognize that compared to other housing issues there is a uniqueness regarding mobilehomes and all the varied manners of ownership,

leasing, affordability, and opportunity. **It is because of this uniqueness that laws were enacted to create statewide standards for mobilehome parks.**" [emphasis added][Attachment 4]

In a more recent case, Sequoia Park Associates v County of Sonoma, 2009 W. L. 2569244 (Cal. App. Aug. 21, 2009), the California Court of Appeal, First Appellate District, Division Two held that " **the ordinance is expressly preempted** because section 66427.5 states that the "scope of the hearing" for approval of the conversion application "shall be limited to the issue of compliance with this section." **"We further conclude that the ordinance is impliedly preempted because the Legislature**, which **has established a dominant role for the state** in regulating mobilehomes, **has indicated its intent to forestall local intrusion into the particular terrain of mobilehome conversions, declining to expand section 66427.5 in ways that would authorize local government to impose additional conditions or requirements for conversion approval**." (p. 1-2) [emphasis added] Also, on page 28: "We therefore conclude that what is currently subdivision (e) of **section 66427.5 continues to have the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park** from a rental to a resident-owner basis." [emphasis added] [Attachment 5]

And, last week, in an unpublished decision, the Appellate Court for the Second District of California, also held that the City of Carson was **preempted from imposing additional conditions on a conversion**. [**Carson Harbor Village, Ltd. v. City of Carson**][Attachment 6]

The proposed ordinance violates the Coastal Act.

Two provisions of the Coastal Act prohibit local governments from imposing conditions on any land use, where they are preempted by state law: [Attachment 7]

Section 30005 of the California Resources Code (Coastal Act) states that "No provision of this division is a limitations on any of the following: (a) **Except as otherwise limited by state law, on** the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with this act, **imposing further conditions, restrictions, or limitations with respect to any land** or water **use** . . ." [emphasis added]

Section 30005.5 of the Coastal Act also states that **"Nothing in this division shall be construed to authorize any local government, or to authorize the commission to require any local government, to exercise any power it does not already have under the** Constitution and **laws of this state** . . ." [emphasis added]

Three California Appellate Courts have found that local governments are preempted by state law from adding "additional specificity" to conversions under 66427.5, as the proposed ordinance before you today attempts to do. To allow the adoption of this conversion ordinance would be a violation of Sec. 30005 and Sec. 30005.5 of the Coastal Act. We again urge your rejection of the proposed Ordinance.

Respectfully,

Steve MacElvaine, Owner
805-772-9458

Attachments:

1. Subdivision Map Act Section 66427.5
2. El Dorado v. Palm Springs (pertinent pages)
3. Assembly Bill 1542 Analysis
4. Governor's Veto of AB 1542
5. Sequoia Associates v. Sonoma County
6. Carson Harbor Village v. City of Carson (pertinent pages)
7. Coastal Act Sections 30005 & 30005.5

CALIFORNIA GOVERNMENT CODE
Subdivision Map Act

66427.5. At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

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

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

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

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

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

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

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

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

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

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

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

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

(1)

Filed 3/14/02

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

EL DORADO PALM SPRINGS, LTD., Plaintiff and Appellant, v. CITY OF PALM SPRINGS et al., Defendants and Respondents; EL DORADO MOBILE COUNTRY CLUB HOMEOWNERS ASSOCIATION, Intervener and Respondent.	E029198 (Super.Ct.No. INC 019351) O P I N I O N

APPEAL from the Superior Court of Riverside County. Lawrence W. Fry, Judge. Reversed and remanded with directions.

O'Melveny & Myers, James W. Colbert, III and Matthew W. Close; Gilchrist & Rutter, Richard H. Close and Thomas W. Casparian for Plaintiff and Appellant.

The Gibbs Law Firm and Timothy J. Gibbs for Associates' Group for Affordable Housing, Inc., Cedarhill Estates Homeowners Association, Apache Mobilehome Park Association, and Glenview Mobile Lodge Owners Association as Amici Curiae on behalf of Plaintiff and Appellant.

could purchase a lifetime exemption from local rent control for the cost of filing a tentative map, even if park residents have no ability to purchase and even if local government disapproves the tentative map. Park residents could then be economically displaced by unregulated rent increases. This is the very circumstance section 66427.5 was enacted to prevent." (*Donohue v. Santa Paula West Mobile Home Park, supra,* 47 Cal.App.4th 1168, 1175.)

We are equally concerned about the use of the section to avoid local rent control, especially since the section does not state when the rent control phaseout in subdivision (d) becomes applicable, and it provides no time limits for the completion of the conversion. The City is also concerned that there could be an abuse of the conversion process: "Under the argument of *Amicus*, Appellant could simply purchase one of the newly created subdivided units, price of [*sic*] the remaining units at prohibitively expensive amounts, and obtain for himself a 'life time exemption' from Palm Springs Rent Control ordinances." The City argues that it imposed the date of conversion requirement because it did not believe that the sale of a single subdivided unit should allow the park owner to escape the requirements of its rent control ordinance.

At oral argument, the City argued that the three further conditions it imposed were designed to prevent an abuse of the conversion process by a developer who was engaged in a sham or fraudulent transaction which was intended to avoid the rent control ordinance. The problem with the argument is that section 66427.5, subdivision (d), provides that "The scope of the hearing shall be limited to the issue of compliance with this section." Thus, the City lacks authority to investigate or impose additional conditions to prevent sham or

fraudulent transactions at the time it approves the tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City's authority, it has not done so. We therefore agree with respondents that the argument that the Legislature should have done more to prevent partial conversions or sham transactions is a legislative issue, not a legal one. In any event, as noted blow, *Donohue* illustrates the point that the courts will not apply section 66427.5 to sham or failed transactions, or to avoid a local rent control ordinance.

We agree with *Donohue* that the rent control phaseout provisions of section 66427.5, subdivision (d) do not apply as soon as a tentative map application is filed. As *Donohue* states, subdivision (d) cannot apply to avoid the economic displacement of nonpurchasing residents before there are any such residents, nor would it make any sense to allow an increase from preconversion rents before there was a conversion. (*Donohue v. Santa Paula West Mobile Home Park, supra,* 47 Cal.App.4th 1168, 1175-1176.)

Section 66427.5 applies after a rental mobilehome park is converted to resident ownership. (*Donohue v. Santa Paula West Mobile Home Park, supra,* 47 Cal.App.4th 1168, 1173.) As discussed further below, conversion occurs on the date that the first subdivided unit is sold. If, as in *Donohue*, conversion fails and no units are ever sold, section 66427.5 cannot be used to evade a local rent control ordinance. We also agree with *Donohue* that the section may not be used to justify preemption of a local rent control

BILL ANALYSIS

ASSEMBLY

AB 1542

Page 1

GOVERNOR'S VETO
AB 1542 (Evans)
As Amended June 5, 2007
2/3 vote

HOUSING 5-2 LOCAL GOVERNMENT 4-2

Ayes:	Saldana, Bass, Hancock, Mullin, Swanson	Ayes:	Caballero, De La Torre, Lieber, Saldana
Nays:	Garcia, Sharon Runner	Nays:	Houston, Smyth

APPROPRIATIONS 10-5

Ayes:	Leno, Caballero, Davis, DeSaulnier, Huffman, Karnette, Krekorian, Lieu, Ma, Nava
Nays:	Walters Emmerson, La Malfa, Nakanishi, Sharon Runner

ASSEMBLY:	41-32	(June 7, 2007)	SENATE:	21-16	(September 11, 2007)

AB 1542

Page 2

SUMMARY : Adds requirements to the Subdivision Map Act (the Map) for a conversion of a mobilehome park by a subdivider to resident ownership including providing additional rent control protections to non-purchasing mobilehome park residents. Specifically, this bill :

1) Provides in the case of a jurisdiction that has a local rent control ordinance, those provisions will continue to apply to mobilehome spaces not purchased by a resident.

2) Provides in the absence of a local rent control ordinance the state rent control formula provided in Government Code Section 66427.5 will apply to mobilehome park spaces that residents do not purchase.

3) Expands the scope of the hearing on the Map required prior to the conversion of a mobilehome park to resident ownership to issues other than compliance with Government Code Section 66427.5.

EXISTING LAW establishes the following method for avoiding the economic displacement of non-purchasing residents:

(3)

BILL NUMBER: AB 1542
VETOED DATE: 10/12/2007

To the Members of the California State Assembly:

I am returning Assembly Bill 1542 without my signature.

I am greatly concerned about housing affordability and homeownership for all Californians. I understand the sanctity of the home and the importance of having stability in your living situation. This need for stability was eloquently expressed by the many seniors throughout California who have written to me on both sides of this bill.

I also recognize that compared to other housing issues there is a uniqueness regarding mobilehomes and all the varied manners of ownership, leasing, affordability, and opportunity. It is because of this uniqueness that laws were enacted to create statewide standards for mobilehome parks.

The intent of current state law is to provide an opportunity for home ownership to those mobilehome owners who desire to own both their home and the land it rests on. The law also offers protections for low-income individuals against unwarranted rent increases.

While the bill's intent is to preserve low-income housing, it also extends rent control in certain circumstances to mobilehome owners in much of the state no matter what their income level. It is unclear what state interest is served by the extension of rent control for those who do not have an economic disadvantage. In addition, establishing two statewide standards for rent control seems confusing and unnecessary.

It is clear that mobilehome issues require a comprehensive approach to ensure that low income individuals and families are protected, homeownership opportunities are afforded to those who choose them, and stability of the home and property is preserved.

I urge the Legislature over the coming year to find a solution that provides true balance for all the stakeholders involved in mobilehome issues.

Sincerely,

Arnold Schwarzenegger

(4)

Filed 8/21/09

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

SEQUOIA PARK ASSOCIATES, Plaintiff and Appellant, v. COUNTY OF SONOMA, Defendant and Respondent.	A120049 (Sonoma County Super. Ct. No. SCV240003)

One of the subjects covered by the Subdivision Map Act (Gov. Code, § 66410 et seq.) is the conversion of a mobilehome park from a rental to a resident ownership basis. One of the provisions on that subject is Government Code section 66427.5 (section 66427.5), which spells out certain steps that must be completed before the conversion application can be approved by the appropriate local body. Although it is not codified in the language of section 66427.5, the Legislature recorded its intent that by enacting section 66427.5 it was acting "to ensure that conversions . . . are bona fide resident conversions." (Stats. 2002, ch. 1143, § 2.)

The County of Sonoma (County) enacted an ordinance with the professed aim of "implementing" the state conversion statutes. It imposed additional obligations upon a subdivider submitting a conversion application to those required by section 66427.5. The ordinance also imposed criteria that had to be satisfied by the subdivider before the application would be presumed bona fide and thus could be approved.

A mobilehome park operator brought suit to halt enforcement of the ordinance on the ground that it was preempted by section 66427.5. The trial court declined to issue a writ of mandate, concluding that the ordinance was not preempted. As will be shown, we conclude that the ordinance is expressly preempted because section 66427.5 states that

(5) 10

the "scope of the hearing" for approval of the conversion application "shall be limited to the issue of compliance with this section." We further conclude that the ordinance is impliedly preempted because the Legislature, which has established a dominant role for the state in regulating mobilehomes, has indicated its intent to forestall local intrusion into the particular terrain of mobilehome conversions, declining to expand section 66427.5 in ways that would authorize local government to impose additional conditions or requirements for conversion approval. Moreover, the County's ordinance duplicates several features of state law, a redundancy that is an established litmus test for preemption. We therefore reverse the trial court's order and direct entry of a new order declaring the ordinance invalid.

BACKGROUND

On May 15, 2007, the County's Board of Supervisors unanimously enacted Ordinance No. 5725 (the Ordinance). Sequoia Park Associates (Sequoia) is a limited partnership that owns and operates a mobilehome park it desires to subdivide and convert from a rental to a resident-owner basis. Within a month of the enactment of the Ordinance, Sequoia sought to have it overturned as preempted by section 66427.5. Specifically, Sequoia combined a petition for a writ of mandate with causes of action for declaratory and injunctive relief, and damages for inverse condemnation of its property.

The matter of the Ordinance's validity was submitted on the basis of voluminous papers addressing Sequoia's motion for issuance of a writ of mandate. The court heard argument and filed a brief order denying Sequoia relief. The court concluded that section 66427.5 "largely does appear . . . by its own language" to impose limits on local authority to legislate on the subject of mobilehome conversions. "However, Ordinance 5725 seems merely to comply with, and give effect to, the requirements set forth in section 66427.5 rather than imposing additional requirements. This is certainly true for the language on bona fide conversions, tenant impact reports, and even general plan requirements. It is possibly less clear regarding health and safety, but even on this issue, the Ordinance does not appear to exceed [the County's] authority since, contrary to [Sequoia's] contention, it does not intrude on the [state Department of Housing and

Community Development's (HCD)] power in the area." This order is the subject of Sequoia's appeal.[1]

DISCUSSION

The parties agree that our review of the trial court's order is de novo because it involves a pure issue of law, namely, whether the Ordinance is preempted by Section 66427.5. (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 132; *Ruble Vista Associates v. Bacon* (2002) 97 Cal.App.4th 335, 339.) But the parties do not agree on how far our analysis may, or should, extend.

Sequoia argues we should restrict our inquiry to the current version of section 66427.5, in particular paying no attention to an uncodified expression of the Legislature's intent passed at the same time that version was enacted. At the same time Sequoia also argues that we should look to a provision in a version of an amendment to the statute that the Legislature rejected in 2002.

The County's approach is similarly compressed: noting that because Sequoia challenged the legality of the Ordinance on its face, the County argues that our analysis must be confined to the four corners of that enactment, and nothing else. Yet the County ranges far afield in marshalling the statutes which it incorporates in its arguments, and

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[1] It is typical of the generally high quality of the briefing that the experienced appellate counsel for Sequoia does not treat the requirement of California Rules of Court rule 8.204(a)(2)—which directs that the appellant "explain why the order appealed from is appealable"—as satisfied with a ministerial recital of boilerplate language. He devotes more than two full pages of his opening brief to a discussion establishing that, according to *Bettencourt v. City and County of San Francisco* (2007) 146 Cal.App.4th 1090, 1097-1098, "Although the [trial court's] order was couched as a denial of the mandate petition alone, its effect was a dismissal of Sequoia's entire action," and thus appealable as a final judgment. He also puts forward a fall-back position, based on an obvious knowledge of this court, that, if necessary, we "could also amend the order below as this division did in similar circumstances in *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 766, fn. 13, to specify the trial court's intent to dispose of the remaining causes of action." We conclude there is no need to amend the order because counsel's initial explanation is sound, and concurred in by the County. We mention this to note that this is the sort of attention to jurisdictional issues we would like to see, but seldom do.

tells us that section 66427.5 must be considered in the context of "entire continuum of state regulation of mobilehome park subdivisions." And the County has no hesitation in arguing that the substance of the uncodified provision actually works to the County's benefit.

Our view of our inquiry is that it is hardly as narrow as the parties believe. The authorities cited by the County involve situations where local ordinances were challenged on federal constitutional grounds (e.g., *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 [vagueness]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 679-680 [equal protection]), not that they were preempted by state law. As for Sequoia's approach, it would appear feasible only if the state statute has language stating the unambiguous intent by the Legislature expressly forbidding cities and counties from acting.

But for the great number of preemption issues—particularly if the emphasis is on implied preemption— the state and the local legislation must be considered together. Only by looking at both can a court know if the local law conflicts with, contradicts, or is inimical to the state law. As will now be shown, this is an established rule of preemption analysis.

Principles Of Preemption

In California, preemption of local legislation by state law is a constitutional principle. "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) The standards governing our inquiry are well established. According to our Supreme Court: "The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. [Citation.] We have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.' [Citations.] 'The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another, then

the presumption favors the validity of the local ordinance against an attack of state preemption.' [Citations.]

"Thus, when local government regulates in an area over which it traditionally has exercised control, such as . . . particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute. [Citation.] The presumption against preemption accords with our more general understanding that 'it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.' [Citations.]

"Moreover, the 'general principles governing state statutory preemption of local land use regulation are well settled. . . . " 'Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters an area fully occupied by general law, either expressly or by legislative implication [citations].' " ' [Citation.]"

"Local legislation is 'duplicative' of general law when it is coextensive therewith and 'contradictory' to general law when it is inimical thereto. Local legislation enters an area 'fully occupied' by general law when the Legislature has expressly manifested its intent to fully occupy the area or when it has impliedly done so in light of recognized indicia of intent." [Citation.] (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149-1150, fn. omitted (*Big Creek*).)

There are three "recognized indicia of intent": " '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that is has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to

the' locality [citations]." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 898.)

"With respect to the *implied* occupation of an area of law by the Legislature's full and complete coverage of it, this court recently had this to say: ' "Where the Legislature has adopted statutes governing a particular subject matter, its intent with regard to occupying the field to the exclusion of all local regulation is not to be measured alone by the language used but by the whole purpose and scope of the legislative scheme." ' [Citation.] We went on to say: ' "State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation." ' [Citation.] We thereafter observed: ' "Whenever the Legislature has seen fit to adopt a general scheme for the regulation of a particular subject, the entire control over whatever phases of the subject are covered by state legislation ceases as far as local legislation is concerned." ' [Citation.] When a local ordinance is identical to a state statute, it is clear that ' "the field sought to be covered by the ordinance has already been occupied" ' by state law. [Citation.]" (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068.)

To discern whether the local law has entered an area that has been "fully occupied" by state law according to the "recognized indicia of intent" requires an analysis that is based on an overview of the topic addressed by the two laws. " 'In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole . . . scope of the legislative scheme.' " (*Big Creek, supra*, 38 Cal.4th 1139, 1157, quoting *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485; accord, *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252, 1261; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 751.) Such an examination is made with the goal of " 'detect[ing] a patterned approach to the subject' " (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 707-708, quoting *Galvan v. Superior Court* (1969) 70 Cal.2d 851, 862), and whether the local law mandates what state law forbids, or forbids what state law mandates. (*Big Creek, supra*, 38 Cal.4th 1139, 1161; *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 866.)

Sequoia sees this as a case of express preemption, although it argues in the alternative that the Ordinance also falls to the concept of implied preemption. These contentions can only be evaluated with an appreciation of the sizable body of state legislation concerning mobilehome parks.

The Extent Of State Law In The Area Of Mobilehome Regulation

Section 66427.5 does not stand alone. If the Legislature ever did leave the field of mobilehome park legislation to local control, that day is long past.

Since 1979, the state has had the Mobilehome Residency Law, which comprises almost a hundred statutes governing numerous aspects of the business of operating a mobilehome park. (Civ. Code, §§ 798-799.10.) There are several provisions expressly ordering localities not to legislate in designated areas, such as the content of rental agreements (Civ. Code, § 798.17, subd. (a)(1)), and establishing specified exemptions from local rent control measures. (Civ. Code, §§ 798.21, subd. (a), 798.45.)[2] By this statutory scheme, the state has undertaken to "extensively regulate[] the landlord-tenant relationship between mobilehome park owners and residents." (*Greening v. Johnson* (1997) 53 Cal.App.4th 1223, 1226; accord, *SC Manufactured Homes, Inc. v. Canyon View Estates, Inc.* (2007) 148 Cal.App.4th 663, 673; *People ex rel. Kennedy v. Beaumont Investment, Ltd.* (2003) 111 Cal.App.4th 102, 109.)

Even earlier, in 1967, the state enacted the Mobilehome Parks Act (Health & Saf. Code, §§ 18200-18700), which regulates the construction and installation of mobilehome parks in the state. (See *County of Santa Cruz v. Waterhouse* (2005) 127 Cal.App.4th 1483, 1489-1490.) In this act, the Legislature expressly stated that it "supersedes any ordinance enacted by any city, county, or city and county, whether general law or

[2] The Mobilehome Residency Law has been construed as not otherwise preempting or precluding adoption of residential rent control. (See Civ. Code, § 1954.25; *Cacho v. Boudreau* (2007) 40 Cal.4th 341, 350 and decisions cited.)

chartered, applicable to this part." (Health & Saf. Code, § 18300, subd. (a).) The few exemptions from this prohibition are carefully delineated.[3]

Then there is the Mobilehomes—Manufactured Housing Act of 1980 (Health & Saf. §§ 18000-18153), which regulates the sale, licensing, registration, and titling of

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[3] "This part shall not prevent local authorities of any city, county, or city or county, within the reasonable exercise of their police powers, from doing any of the following:

"(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, senior mobilehome parks, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks.

"(2) From regulating the construction and use of equipment and facilities located outside of a manufactured home or mobilehome used to supply gas, water, or electricity thereto, except facilities owned, operated, and maintained by a public utility, or to dispose of sewage or other waste therefrom when the facilities are located outside a park for which a permit is required by this part or the regulations adopted thereto.

"(3) From requiring a permit to use a manufactured home or mobilehome outside a park for which a permit is required by this part or by regulations adopted pursuant thereto, and require a fee therefor by local ordinance commensurate with the cost of enforcing this part and local ordinance with reference to the use of manufactured homes and mobilehomes, which permit may be refused or revoked if the use violates this part or Part 2 (commencing with Section 18000), any regulations adopted pursuant thereto, or any local ordinance applicable to that use.

"(4) From requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park, under circumstances when this part or Part 2 (commencing with Section 18000) and the regulations adopted pursuant thereto do not require the issuance of a permit therefor by the department [i.e., the state Department of Housing and Community Development].

"(5) From prescribing and enforcing setback and separation requirements governing the installation of a manufactured home, mobilehome, or mobilehome accessory structure or building installed outside of a mobilehome park." (Health & Saf. Code, § 18300, subd. (g).)

mobilehomes. The Legislature declared that the provisions of this measure "apply in all parts of the state and supersede" any conflicting local ordinance. (Health & Saf. Code, § 18015.) The HCD is in charge of enforcement. (Health & Saf. Code, §§ 18020, 18022, 18058.)

These statutory schemes indicate that the state is clearly the dominant actor on this stage. Under the Mobilehome Parks Act, it is the HCD, a state agency, not localities, that was entrusted with the authority to formulate "specific requirements relating to construction, maintenance, occupancy, use, and design" of mobilehome parks (Health & Saf. Code, § 18253; see also Health & Saf. Code §§ 18552 [HCD to adopt "building standards" and "other regulations for . . . mobilehome accessory buildings or structures"], 18610 [HCD to "adopt regulations to govern the construction, use, occupancy, and maintenance of parks and lots within" mobilehome parks"], 18620 [HCD to adopt "regulations regarding the construction of buildings in parks that it determines are reasonably necessary for the protection of life and property"], 18630 [plumbing], 18640 ["toilet, shower, and laundry facilities in parks"], 18670 ["electrical wiring, fixtures, and equipment . . . that it determines are reasonably necessary for the protection of life and property"].)

At present, the HCD has promulgated hundreds of regulations that are collected in chapter 2 of title 25 of the California Code of Regulations. (Cal. Code Regs, tit. 25, §§ 1000-1758.) The regulations exhaustively deal with a myriad of issues, such as "Electrical Requirements" (*id.*, 25, §§ 1130-1190), "Plumbing Requirements" (*id.*, §§ 1240-1284), "Fire Protection Standards" (*id.*, §§ 1300-1319), "Permanent Buildings" (*id.*, §§ 1380-1400), and "Accessory Buildings and Structures" (*id.*, §§ 1420-1520). The regulations even deal with pet waste (*id.*, § 1114) and the prohibition of cooking facilities in cabanas (*id.*, § 1462).

Once adopted, HCD regulations "shall apply to all parts of the state." (Health & Saf. Code, § 18300, subd. (a).) Mobilehomes can only be occupied or maintained when they conform to the regulations. (Health & Saf. Code, §§ 18550, 18871.) Enforcement is shared between the HCD and local governments (Health & Saf. Code, § 18300, subd. (f),

18400, subd. (a)), with HCD given the power to "evaluate the enforcement" by units of local government. (Health & Saf. Code, § 18306, subd. (a).) A locality may decline responsibility for enforcement, but if assumed and not actually performed, its enforcement power may be taken away by the HCD. (Health & Saf. Code, § 18300, subds. (b)-(e).) Local initiative is restricted to traditional police powers of zoning, setback, permit requirements, and regulating construction of utilities. (Gov. Code, § 65852.7; Health & Saf. Code, § 18300, subd. (g), quoted at fn. 3, *ante*.)

It is the state that determines which events and actions in the construction and operation of a mobilehome park require permits. (Health & Saf. Code, §§ 18500, 18500.5, 18500.6, 18505; Cal. Code Regs, tit. 25, §§ 1006.5, 1010, 1014, 1018, 1038, 1306, 1324, 1374.5.) Even if the locality issues the annual permit for a park to operate, a copy must be sent to the HCD. (*Id.*, §§ 1006.5, 1012.) It is the state that fixes the fees to be charged for these permits and certifications (Health & Saf. Code, §§ 18502, 18503; Cal. Code Regs, tit. 25, §§ 1008, 1020.4, 1020.7, 1025), and sets the penalties to be imposed for noncompliance. (Health & Saf. Code §§ 18504, 18700; Cal. Code Regs, tit. 25, §§ 1009, 1050, 1370.4.) Sometimes, the state assumes exclusive responsibility for certain subjects, such as for earthquake-resistant bracing systems. (Cal. Code Regs, tit. 25, § 1370.4(a).)

Additional provisions respecting mobilehome parks are in the Government Code. Cities and counties cannot decide that a mobilehome park is not a permitted use "on all land planned and zoned for residential land use as designated by the applicable general plan," though the locality "may require a use permit." (Gov. Code, § 65852.7.) "[I]t is clear that the Legislature intended to limit local authority for zoning regulation to the specifically enumerated exceptions [in Health and Safety Code section 18300, subdivision (g), quoted at fn. 3, *ante*] of where a mobilehome park may be located, vehicle parking, and lot lines, not the structures within the parks." (*County of Santa Cruz v. Waterhouse*, *supra*, 127 Cal.App.4th 1483, 1493.) A city or county must accept installation of mobilehomes manufactured in conformity with federal standards. (Gov. Code, § 65852.3, subd. (a).) Their power to impose rent control on mobilehome parks is

restricted if the parks qualifies as "new construction." (Gov. Code, § 65852.11, subd. (a); cf. text accompanying fn. 2, *ante*.)

This survey demonstrates that the state has a long-standing involvement with mobilehome regulation, the extent of which involvement is, by any standard, considerable. Having outlined the size of the state's regulatory footprint, it is now time to examine the details of section 66427.5 and the Ordinance.

Section 66427.5

Section 66427.5 is a fairly straight-forward statute addressing the subject of how a subdivider shall demonstrate that a proposed mobilehome park conversion will avoid economic displacement of current tenants who do not choose to become a purchasing resident. In its entirety it provides as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

This is how section 66427.5 currently reads. But its antecedents are instructive.

The first version of section 66427.5, enacted in 1991, was no more than the first paragraph and subdivision (f) of the current version. (Stats. 1991, ch. 745, § 2.) The statute was substantially amended four years later with most of what is in the current version. The only significant variance is that the 1995 version did not contain what is

now subdivision (d), specifying that the subdivider is to provide a survey of support. (Stats. 1995, ch. 256, § 5.) The second version of section 66427.5 was the one considered by the Court of Appeal in *El Dorado Palm Springs, Ltd., v. City of Palm Springs* (2002) 96 Cal.App.4th 1153 (*El Dorado*).

At issue in *El Dorado* was a mobilehome park owner's application to convert its units from rental to resident-owned. The renters opposed the conversion, "contending that they do not have enough information to decide whether to purchase or not, and the proposed conversion is merely a sham to avoid [Palm Springs'] rent control ordinance." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1159.) The Palm Springs City Council approved the application, but made its approval subject to three conditions, requiring: "1) the use of a 'Map Act Rent Date,' defined as the date of the close of escrow of not less than 120 lots; (2) the use of a sale price established by a specified appraisal firm, the appraisal costs to be paid by [the owner-subdivider]; and (3) financial assistance to all residents in the park to facilitate their purchase of the lots underlying their mobilehomes." (*Id.* at pp. 1156-1157.)

The trial court denied the park owner's petition for a writ of administrative mandamus. The owner appealed, contending "that its application is governed by section 66427.5. It relies on subdivision (d) [now subdivision (e)] of that section, which states, in part, that the scope of the City Council's hearing is limited to the issue of compliance with the requirements of that section." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1157-1158.) Palm Springs took the position that the conditions were authorized by Government Code section 66427.4, subdivision (c),[4] which authorized the city council to " 'require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.' " (*Id.* at p. 1158.)

[4] Subsequent statutory references are to the Government Code unless otherwise indicated.

The Court of Appeal agreed with the owner and reversed. It rejected Palm Springs' argument about section 66427.4,[5] concluding that it applied only when the mobilehome park is being converted to another use: "[I]t would not apply to conversion of a mobilehome park when the property's use as a mobilehome park is unchanged. The section would only apply if the mobilehome park was being converted to a shopping center or another different use of the property. In that situation, there would be 'displaced mobilehome park residents' who would need to find 'adequate space in a mobilehome park' for their mobilehome and themselves." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1161.) The court also held the language of subdivision (e) of section 66427.4 dispositive on this point. (*Id.* at pp. 1161-1163.)

But, and as particularly apt here, the court sustained the park owner's argument about section 66427.5, subdivision (d), concluding that under it the city council "only had the power to determine if [the subdivider] had complied with the requirements of the section." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1163-1164.) Although the court did

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[5] At all relevant times, section 66427.4 has provided:

"(a) At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a mobilehome park to another use, the subdivider shall also file a report on the impact of the conversion upon the displaced residents of the mobilehome park to be converted. In determining the impact of the conversion on displaced mobilehome park residents, the report shall address the availability of adequate replacement space in mobilehome parks.

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

"(c) The legislative body, or an advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map, may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park.

"(d) This section establishes a minimum standard for local legislation of conversions of mobilehome parks into other uses and shall not prevent a local agency from enacting more stringent measures.

"(e) This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership."

appear concerned that the conversion process might be used for improper purposes—such as the bogus purchase of a single unit by the subdivider/owner to avoid local rent control—it believed the language of section 66427.5, subdivision (d), did not allow such considerations to be taken into account: "[T]he City lacks authority to investigate or impose additional conditions to prevent sham or fraudulent transactions at the time it approves tentative or parcel map. Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City's authority, it has not done so. We therefore agree with appellant that the argument that the Legislature should have done more to prevent partial conversions or sham transactions is a legislative issue, not a legal one."[6] (*Id.* at p. 1165.) And, the court later noted, "there is no evidence that [the owner's] filing of an application for approval of a tentative parcel map is not the beginning of a bona fide conversion to resident ownership." (*Id.* at p. 1174, fn. 17.)

One other point of *El Dorado* is significant. The court specifically rejected arguments that would require a numerical threshold before a conversion could proceed, there being no statutory support for the claim that conversion only occurred if more than 50 percent of the lots have been sold before a tentative or parcel map is filed. (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1172-1173) The court refused to require a subdivider to demonstrate that the proposed subdivision has the support of a majority of existing residents—fixed at either one-half or two-thirds—thus satisfying the local

[6] Nevertheless, the *El Dorado* court did seem to indicate that there was an available remedy for Palm Springs' fears concerning evasion of its rent control ordinance. Although local authorities could not themselves use section 66427.5 to halt "sham or failed transactions in which a single unit is sold, but no others," (*El Dorado, supra,* 96 Cal.App.4th at p. 1166, fn. 10) there was no such restriction on the judiciary. "[T]he courts will not apply section 66427.5 to sham or failed transactions," (*id.* at p. 1165) which the *El Dorado* court apparently equated with situations where "conversion fails" or "if the conversion is unsuccessful." (*Id.* at p. 1166.) The court also agreed with an earlier decision that held section 66427.5 does not apply unless there is an actual sale of at least one unit. (*Id.* at pp. 1166, 1177-1179, citing *Donohue v. Santa Paula West Mobile Home Park* (1996) 47 Cal.App.4th 1168.)

authority that this was not a "forced conversion."[7] (*Id.* at pp. 1181-1182.) The court concluded: "The legislative intent to encourage conversion of mobilehome parks to resident ownership would not be served by a requirement that a conversion could only be made with resident consent." (*Id.* at p. 1182.)

Following *El Dorado*, the continuing problem of mobilehome park conversion, and the phrase "bona fide," again engaged the Legislature's attention. That same year the Legislature amended section 66427.5 by adding what is now subdivision (d) and the requirement of a "survey of support of residents" whose results were to be filed with the tentative or parcel map. As it did so, the Legislature enacted the following language, but did not include it as part of section 66427.5: "It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in El Dorado Palm Springs, Ltd. V. City of Palm Springs (2002) 96 Cal.App.4th 1153. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent non-bona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act

[7] The 50 percent argument was based on Health and Safety Code section 50781, subdivision (m), which specifies that one of the definitions of "residential ownership" is "ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park." The argument was that "resident ownership of the park, and control of operations of the park, can occur only when the purchasing residents have the ability to control, manage and own the common facilities in the park, i.e., when 50 percent plus 1 of the lots have been purchased by the residents." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1172, 1181.) The two-thirds figure was taken from Government Code section 66428.1, which provides that "When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or a tentative and final map shall be waived," subject to specified exceptions.

to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions." (Stats. 2002, ch. 1143, § 2.)[8]

The Ordinance

The Ordinance has eight sections, but only three—sections I, II, and III—are pertinent to this appeal.[9]

Section I declares the purposes of the Ordinance. It opens with the supervisors' finding that "the adoption of this Ordinance is necessary and appropriate to implement certain policies and programs set forth within the adopted General Plan Housing Element, and to comply with state laws related to the conversion of mobile home parks to resident ownership. Specific purposes included: (1) "To implement state laws with regard to the conversion of mobile home parks to resident ownership;" (2) "To ensure that conversions of mobile home parks to resident ownership are bona fide resident conversions in accordance with state law;" (3) To implement the goals and policies of the General Plan Housing Element; (4) "To balance the need for increased homeownership opportunities with the need to protect existing rental housing opportunities;: (5) "To provide adequate

[8] This is what is known as "plus section," which our Supreme Court termed "a provision of a bill that is not intended to be a substantive part of the code section or general law that the bill enacts, but to express the Legislature's view on some aspect of the operation or effect of the bill. Common examples of 'plus sections' include severability clauses, savings clauses, statements of the fiscal consequences of the legislation, provisions giving the legislation immediate effect or a delayed operative date or a limited duration, and provisions declaring an intent to overrule a specific judicial decision or an intent not to change existing law." (*People v. Allen* (1999) 21 Cal.4th 846, 858-859, fn. 13.) The court subsequently explained that "statements of the intent of the enacting body . . . , while not conclusive, are entitled to consideration. [Citations.] Although such statements in an uncodified section do not confer power, determine rights, or enlarge the scope of a measure, they properly may be utilized as an aid in construing a statute." (*People v. Canty* (2004) 32 Cal.4th 1266, 1280.)

[9] Section IV of the Ordinance declares that the measure is "categorically exempt from environmental review" under the California Environmental Quality Act. Section V is a severability provision. Section VI establishes the effective date of the Ordinance as "30 days after the date of its passage." Section VII repeals an existing ordinance. Section VIII (mislabeled as "Section VI") provides for publication of the Ordinance in a specified newspaper of general circulation in the county.

disclosure to decision-makers and to prospective buyers prior to conversion of mobile home parks to resident ownership;" (6) "To ensure the public health and safety in converted parks; and" (7) "To conserve the County's affordable housing stock."

Section II deals with the "Applicability" of the Ordinance by declaring that "These provisions apply to all conversions of mobile home parks to resident ownership, except those conversions for which mapping requirements have been waived pursuant to Government Code [Section] 66428.1 These provisions do not apply to the conversion of a mobile home park to an alternate use, which conversions are regulated by Government Code Sections 65863.7 and 66427.4, and by Section 26-92-090 of Chapter 26 of the Sonoma County Code."

Section III opens by providing several definitions of terms used in the Ordinance and in Chapter 25 of the Sonoma County Code.

" '**Mobile Home Park Conversion to Resident Ownership** means the conversion of a mobile home park composed of rental spaces to a condominium or common interest development, as described in and/or regulated by Government Code Sections 66427.5 and/or 66428.1.' "

" '**Mobile Home Park Closure, Conversion or Change of Use** means changing the use of a mobile home park such that it no longer contains occupied mobile or manufactured homes, as described in and regulated by Government Code Section 66427.4.' "

" '**Subdivision**' means the division of any improved or unimproved land, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, financing, conveyance, transfer, or any other purpose, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. Subdivision includes a condominium project or common interest development, as defined in Section 1351 of the Civil Code or a community interest project, as defined in Section 11004 of the Business and Professions Code. Any conveyance of land to a

governmental agency, public entity or public utility shall not be considered a division of land for purposes of computing the number of parcels.' "

The heart of the Ordinance is subdivision (d) of Section III, which adds "a new Article IIIB" to Chapter 25 of the Sonoma County Code. Because of its importance, we quote it in full:

"Article IIIB. Mobile Home Park Conversions to Resident Ownership.

"25-39.7 (a). Applicability. The provisions of this Article XIIIB shall apply to all conversions of mobile home parks to resident ownership except those conversions for which mapping requirements have been waived pursuant to Government Code § 66428.1.

"25-39.7 (b). Application Materials Required.

"(1) In addition to any other information required by this Code and/or other applicable law, the following information is required at the time of filing of an application for conversion of a mobile home park to resident ownership:

"a) A survey of resident support conducted in compliance with subdivision (d) of Government Code Section 66427.5 The subdivider shall demonstrate that the survey was conducted in accordance with an agreement between the subdivider and an independent resident homeowners association, if any, was obtained pursuant to a written ballot, and was conducted so that each occupied mobile home space had one vote. The completed survey of resident support ballots shall be submitted with the application. In the event that more than one resident homeowners association purports to represent residents in the park, the agreement shall be with the resident homeowners association which represented the greatest number of resident homeowners in the park.

"b) A report on the impact of the proposed conversion on residents of the mobile home park. The tenant impact report shall, at a minimum include all of the following:

"i) Identification of the number of mobile home spaces in the park and the rental rate history for each such space over the four years prior to the filing of the application;

"ii) Identification of the anticipated method and timetable for compliance with Government Code Section 66427.5 (a), and, to the extent available, identification of

the number of existing tenant households expected to purchase their units within the first four (4) years after conversion;

"iii) Identification of the method and anticipated time table for determining the rents for non-purchasing residents pursuant to Government Code Section 66427.5 (f)(1), and, to the extent available, identification of tenant households likely to be subject to these provisions;

"iv) Identification of the method for determining and enforcing the controlled rents for non-purchasing households pursuant to Government Code Section 66427.5 (f)(2), and, to the extent available, identification of the number of tenant households likely to be subject to these provisions;

"v) Identification of the potential for non-purchasing residents to relocate their homes to other mobile home parks within Sonoma County, including the availability of sites and the estimated cost of home relocation;

"vi) An engineer's report on the type, size, current condition, adequacy and remaining useful life of common facilities located within the park, including but not limited to water systems, sanitary sewer, fire protection, storm water, streets, lighting, pools, playgrounds, community buildings and the like. A pest report shall be included for all common buildings and structures. 'Engineer' means a registered civil or structural engineer, or a licensed general engineering contractor;

"vii) If the useful life of any of the common facilities or infrastructure is less than thirty (30) years, a study estimating the cost of replacing such facilities over their useful life, and the subdivider's plan to provide funding for the same;

"viii) An estimate of the annual overhead and operating costs of maintaining the park, its common areas and landscaping, including replacement costs as necessary, over the next thirty (30) years, and the subdivider's plan to provide funding for the same.

"ix) Name and address of each resident, and household size.

"x) An estimate of the number of residents in the park who are seniors or disabled. An explanation of how the estimate was derived must be included.

"(c) A maintenance inspection report conducted on site by a qualified inspector within the previous twelve (12) calendar months demonstrating compliance with Title 25 of the California Code of Regulations ('Title 25 Report'). Proof of remediation of any Title 25 violations shall be confirmed in writing by the California Department of Housing and Community Development (HCD).

"25-39.7 (c) Criteria for Approval of Conversion Application.

"(1) An application for the conversion of a mobile home park to resident ownership shall be approved only if the decision maker finds that:

"a) A survey of resident support has been conducted and the results filed with the Department in accordance with the requirements of Government Code Section 66427.5 and this Chapter;

"b) A tenant impact report has been completed and filed with the Department in accordance with the requirements of Government Code Section 66427.5 and this Chapter;

"c) The conversion to resident ownership is consistent with the General Plan, any applicable Specific or Area Plan, and the provisions of the Sonoma County Code;

"d) The conversion is a bona-fide resident conversion;

"e) Appropriate provision has been made for the establishment and funding of an association or corporation adequate to ensure proper long-term management and maintenance of all common facilities and infrastructure; and

"f) There are no conditions existing in the mobile home park that are detrimental to public health or safety, provided, however, that if any such conditions exist, the application for conversion may be approved if: (1) all of the findings required under subsections (a) through (e) are made and (2) the subdivider has instituted corrective measures adequate to ensure prompt and continuing protection of the health and safety of park residents and the general public.

"(2) For purposes of determining whether a proposed conversion is a bona-fide resident conversion, the following criteria shall be used:

"a) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and this Chapter shows that more than 50 percent of resident households support the conversion to resident ownership, the conversion shall be presumed to be a bona-fide resident conversion.

"b) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and with this Chapter shows that at least 20 percent but not more than 50 percent of residents support the conversion to resident ownership, the subdivider shall have the burden of demonstrating that the proposed conversion is a bona-fide resident conversion. In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success as determined by the decision-maker, is in place to convey the majority of the lots to current residents of the park within a reasonable period of time.

"c) Where the survey of resident support conducted in accordance with Government Code Section 66427.5 and this Chapter shows that less than 20 percent of residents support the conversion to resident ownership, the conversion shall be presumed not to be a bona-fide resident conversion.

"25-39.7 (d) Tenant Notification. The following tenant notifications are required:

"(1) Tenant Impact Report. The subdivider shall give each resident household a copy of the impact report required by Government Code Section 66427.5 (b) within fifteen (15) days after completion of such report, but in no case less than fifteen (15) days prior to the public hearing on the application for conversion. The subdivider shall also provide a copy of the report to any new or prospective residents following the original distribution of the report.

"(2) Exclusive Right to Purchase. If the application for conversion is approved, the subdivider shall give each resident household written notice of its exclusive right to contract for the purchase of the dwelling unit or space it occupies at the same or more favorable terms and conditions than those on which such unit or space shall be initially offered to the general public. The right shall run for a period of not less than ninety (90) days from the issuance of the subdivision public report ('white paper') pursuant to

California Business and Professions Code § 11018.2, unless the subdivider received prior written notice of the resident's intention not to exercise such right.

"(3) Right to Continue Residency as Tenant. If the application for conversion is approved, the subdivider shall give each resident household written notice of its right to continue residency as a tenant in the park as required by Government Code Section 66427.5 (a)."

The Ordinance is Expressly Preempted by Section 66427.5

It is a given that regulation of the uses of land within its territorial jurisdiction is one of the traditional powers of local government. (E.g., *Big Creek, supra*, 38 Cal.4th 1139, 1151; *IT Corp. v. County of Solano* (1991) 1 Cal.4th 81, 85, 95, 99; *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (1999) 72 Cal.App.4th 366, 376.) We are also mindful that our Supreme Court has twice held, prior to enactment of section 66427.5, that the Subdivision Map Act did not preempt local authority to regulate residential condominium conversions. (*Griffin Development Co. v. City of Oxnard* (1985) 39 Cal.3d 256, 262-266; *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 868-869.) Given the presumption against preemption (*Big Creek, supra*, 38 Cal.4th 1139, 1149), we start by assuming that the Ordinance is valid.

However, this attitude does not long survive. The survey of state legislation already undertaken demonstrates that the state has taken for itself the commanding voice in mobilehome regulation. Localities are allowed little scope to improvise or deviate from the Legislature's script. The state's dominance was in place before the subject of mobilehome park conversion was introduced into the Subdivision Map Act in 1991. (See Stats. 1991, ch. 745, §§ 1-2, 4, adding §§ 66427.5, 66428.1, & amending § 66427.4 to cover mobilehome park conversions.) This was seven years after the State had declared itself in favor of converting mobilehome parks to resident ownership, and at the same time established the Mobilehome Park Purchase Fund from which the HCD could make loans to low-income residents and resident organizations to facilitate conversions. (Stats. 1984, ch. 1692, § 2, adding Health & Saf. Code, §§ 50780-50786.)

Although the Court of Appeal in *El Dorado* did not explicitly hold that section 66427.5 was an instance of express preemption, that is clearly how it read the statute. And although there is nothing in the text of section 66427.5 that at first glance looks unambiguously like a stay-away order from the Legislature to cities and counties,[10] there is no doubt that the *El Dorado* court construed the operative language as precluding addition by cities or counties. That operative language reads: "The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the [tentative or parcel] map. *The scope of the hearing shall be limited to the issue of compliance with this section.*" (§ 66427.5, subd. (e), italics added.) The italicized language is, in its own way, comprehensive. But the contrasting constructions the parties give it could not be more starkly divergent.

According to Sequoia, section 66427.5 has an almost ministerial operation. The words of the statute "communicate unambiguously that local agencies must approve a mobilehome park subdivision map if the applicant complies with 'this section' alone." The County and supporting amici argue that section 66427.5 and *El Dorado* are not dispositive here. Indeed, they almost argue that the statute and the decision are not relevant. As they see it, section 66427.5—both before and after *El Dorado*—is a statute of very modest scope, addressing itself only to the issue of avoiding and mitigating the economic displacement of residents who will not be purchasing units when the mobilehome park is converted. All the Ordinance does, they maintain, is "implement" and flesh out the details of the Legislature's directive in a wholly appropriate fashion, leaving unimpaired the traditional local authority over land uses. As the amici state it: "Ordinance No. 5725 does not purport to impose any additional economic restrictions to preserve affordability or to avoid displacement."

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[10] Such as the provision of the Mobilehome Parks Act directing that "This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part." (Health & Saf. Code, § 18300, subd. (a).)

We admit that there is no little attraction to the County's approach. Beginning with the presumption against preemption in the area of land use, it is more than a little difficult to see the Legislature as accepting that approval of a conversion plan is dependent only on the issues of resident support and the subdivider's efforts at avoiding economic displacement of nonpurchasing residents. Section 66427.5 does employ language that seems to accept, if not invite, supplementary local action.[11] For example, a subdivider is required to "file a report on the impact of the conversion upon residents," but the Legislature made no effort to spell out the contents of such a report. And there is some force to the rhetorical inquiry posed by amici: "Surely, the Legislature intended that the report have substantive content . . . . [¶] . . . [¶] If there can be no assurance as to the contents of the [report], it may become a meaningless exercise."

However, a careful examination of the relevant statutes extracts much of the appeal in the County's approach. There are three such statutes—sections 66247.4, 66247.5, and 66428.1. And if they are considered as a unit—which they are, as the three mobilehome conversion statutes in the Subdivision Map Act[12]—a coherent logic begins to emerge.

It must be recalled that the predicate of the statutory examination is a functioning park with existing tenants with all necessary permits and inspections needed for current operation. As Sequoia points out: "Mobilehome parks being converted under section 66427.5 have already been mapped out, plotted out, approved under zoning and general plans, and subjected to applicable health and safety regulations." Moreover, the park has

[11] The County and supporting amici note our Supreme Court stating that the Subdivision Map Act "sets suitability, design, improvement and procedural requirements [citations] and allows local governments to impose *supplemental requirements of the same kind.*" (*The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 659, italics added.) It must be emphasized, however, that the court's comments were made in the context of a local tax—and a decade before the subject of mobilehome park conversion began appearing in the Subdivision Map Act.

[12] Because sections 66427.4, 66427.5, and 66428.1 all deal with the subject of mobilehome park conversions, it is appropriate to consider them together. (E.g., *Walker v. Superior Court* (1988) 47 Cal.3d 112, 124, fn. 4; *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639; *In re Washer* (1927) 200 Cal. 599, 606.)

been inspected and relicensed on an annual basis. But the owner has decided to change. If the change is to close the park and devote the land to a different use, section 66427.4 governs. If the change is a more modest switch to residential conversion, sections 66427.5 and 66428.1 are applicable.

These statutes form a rough continuum. If the owner is planning a new use, that is, leaving the business of operating a mobilehome park, section 66427.4 (quoted in full at fn. 5, *ante*) directs the owner to prepare a report on the impact of the change to tenants or residents. (Subd. (a).) The relevant local authority "may require the subdivider to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park" as a condition of approving or conditionally approving the change. (Subd. (c).) But in this situation—where the land use question is essentially reopened de novo—section 66427.4 explicitly authorizes local input: "This section establishes *a minimum standard for local regulation* of conversions of mobilehome parks into other uses *and shall not prevent a local agency from enacting more stringent measures*." (Subd. (d), italics added.)

At the other end of the continuum is the situation covered by section 66428.1, subdivision (a) of which provides: "When at least two-thirds of the owners of mobilehomes who are tenants in the mobilehome park sign a petition indicating their intent to purchase the mobilehome park for purposes of converting it to resident ownership, and a field survey is performed, the requirement for a parcel map or a tentative and final map shall be waived unless any of the following conditions exist: [¶] (1) There are design or improvement requirements necessitated by significant health or safety concerns. [¶] (2) The local agency determines that there is an exterior boundary discrepancy that requires recordation of a new parcel or tentative and final map. [¶] (3) The existing parcels which exist prior to the proposed conversion were not created by a recorded parcel or final map. [¶] (4) The conversion would result in the creation of more condominium units or interests than the number of tenant lots or spaces that exist prior to conversion."

So, if the conversion essentially maintains an acceptable status quo, the conversion is approved by operation of law. And the locality has no opportunity or power to stop it, or impose conditions for its continued operation.

Section 66427.5 occupies the midway point on the continuum. It deals with the situation where the mobilehome park will continue to operate as such, merely transitioning from a rental to an ownership basis, and there is not two-thirds tenant support for the change—in other words, conversions that enjoy a level of tenant concurrence that does not activate the free ride authorized by section 66428.1 In those situations, the local authority enjoys less power than granted by section 66427.4, but more than conversions governed by 66428.1. It is not surprising that in this middle situation that the Legislature would see fit to grant local authorities some power, but circumscribe the extent of that power. That it what section 66427.5 does. It says in effect: Local authority, you have this power, but no more.

As previously mentioned, the Legislature amended section 66427.5 in the wake of *El Dorado*. Two features of that amendment are notable. First, the Legislature added what is now the requirement in subdivision (d) of a survey of tenant support for the conversion, when the level of that support does not reach the two-thirds mark at which point section 66428.1 kicks in. But the Legislature did not address the point noted in *El Dorado* that there is no minimum amount of tenant support required for a conversion to be approved. (See *El Dorado*, *supra*, 96 Cal.App.4th 1153, 1172-1173.) As this was the only addition to the statute, if follows that it was deemed sufficient to address the problem of "bona fide" conversions mentioned in the unmodified portion of the enactment that accompanied the amendment.

Second, and even more significant for our purposes, the *El Dorado* court expressly read section 66427.5 as not permitting a local authority to inject any other consideration into its decision whether to approve a subdivision conversion.[13] (*El Dorado*, *supra*,

[13] *El Dorado* is also authority for rejecting the County's attempt to narrow the scope of the section 66427.5 hearing to just the issue of tenant displacement, thereby presumably leaving other issues or concerns of the conversion application to be addressed at a different hearing. The *El Dorado* court treated the section 66427.5 hearing as the

96 Cal.App.4th 1153, 1163-1164, 1166, 1182.) And when it amended section 66427.5, the Legislature did nothing to overturn the *El Dorado* court's reading of the extent of local power to step beyond the four corners of that statute. This is particularly telling: " '[W]hen the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware and to have acquiesced in the previous judicial construction. Accordingly, reenacted portions of the statute are given the same construction they received before the amendment.' " (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1156, quoting *Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734; accord, *People v. Meloney* (2003) 30 Cal.4th 1145, 1161; *People v. Ledesma* (1997) 16 Cal.4th 90, 100-101.)

The foregoing analysis convinces us that the *El Dorado* construction of section 66427.5 has stood the test of time and received the tacit approval of the Legislature. We therefore conclude that what is currently subdivision (e) of section 66427.5 continues to have the effect of an express preemption of the power of local authorities to inject other factors when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis.

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equivalent of "El Dorado's application for approval of the tentative subdivision map." (*El Dorado*, *supra*, 96 Cal.App.4th 1153, 1163-1164; see also *id.*, at pp. 1174 ["section 66427.5 applies to El Dorado's application for tentative map approval"], 1182 [absence of majority tenant support for conversion not dispositive because "The owner can still subdivide his property by following . . . section 66427.5"; judgment reversed "with directions to require the City Council to promptly determine the sole issue of whether El Dorado's application for approval of a tentative parcel map complies with section 66427.5"].) Even more germane is that, to judge from the language used in the uncodified provision enacted with the amendment of section 66427.5, the Legislature clearly appeared to equate compliance with section 66427.5 with the conversion approval process.

The Ordinance is Impliedly Preempted

As previously shown, local law is invalid if it enters a field fully occupied by state law, or if it duplicates, contradicts, or is inimical, to state law. (*O'Connell v. City of Stockton*, *supra*, 41 Cal.4th 1061, 1068; *Big Creek*, *supra*, 38 Cal.4th 1139, 1150.) The three tests for implied preemption are: (1) has the issue been so completely covered by state law as to indicate that the issue is now exclusively a state concern; (2) the issue has been only partially covered by state law, but the language of the state law indicates that the state interest will not tolerate additional local input; and (3) the issue has been only partially covered by state law, but the negative impact of local legislation on the state interest is greater than whatever local benefits derive from the local legislation. (*O'Connell v. City of Stockton*, *supra*, at p. 1150; *Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th 725, 751; *People ex rel. Deukmejian v. County of Mendocino*, *supra*, 36 Cal.3d 476, 485.) We conclude that the County's Ordinance is also vulnerable to two of the tests for implied preemption.

The overview of the regulatory schemes touching mobilehomes undertaken earlier in this opinion demonstrates that the state's involvement is extensive and comprehensive. Grants of power to cities and counties are few in number, guarded in language, and invariably qualified in scope. Nevertheless, those grants do exist. Section 66427.5 shows that the state is willing to allow some local participation in some aspects of mobilehome conversion; and section 66427.4 shows that in one setting—when a mobilehome park is converted to a different use—it is virtually expected that the state role will be secondary. The first test for implied preemption cannot be established.

But the three-statute continuum discussed earlier in connection with express preemption also shows that the second and third tests for implied preemption are.

For 25 years, the state has had the policy "to encourage and facilitate the conversion of mobilehome parks to resident ownership." (Health & Saf. Code, § 50780, subd. (b).) The state is even willing to use public dollars to promote this policy. (Health & Saf. Code, § 50782 [establishing the Mobilehome Park Purchase Fund].) The

state clearly has an interest in mobilehome park conversions, but is willing to have local governments occupy some role in the process. The extent of local involvement is calibrated to the situation. However, when the subject is narrowed to conversions that merely affect the change from rental to residential ownership, local involvement is strictly limited. If the proposed conversion has the support of two-thirds or more of the park tenants, section 66428.1 prevents the city or county from interfering except in four very specific situations. If the tenant support is less than two-thirds, section 66427.5 directs that the role of local government "shall be limited to the issue of compliance with this section." (§ 66427.5, subd. (e).)

In sum, the fact that the situations where localities could involve themselves in conversions have been so carefully delineated shows that the Legislature viewed the subject as one where the state concern would not be advanced if parochial interests were allowed to intrude. Accordingly, we conclude that the second and third tests for implied preemption are present.

There is more. "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates . . . general law . . . ." (*Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807-808; accord, *Big Creek*, *supra*, 38 Cal.4th 1139, 1150; *Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th 725, 747.) The Ordinance is plainly duplicative of section 66427.5 in several respects, as the County candidly admits: the Ordinance "sets forth minimum . . . requirements" for the conversion application, "including: (a) submission of a survey of resident support *in compliance with section 66427.5*; (b) submission of a report on the impact of the proposed conversion on park residents *as required by section 66427.5*; and (c) submission of a copy of the annual maintenance inspection report *already required by Title 25 of the California Code of Regulations*." (Italics added.) The Ordinance also purports to require the subdivider to provide residents of the park "written notice of [the] right to continue residency as a tenant in the park as required by Government Code § 66427.5(a)" and "a copy of the impact report required by Government Code § 66427.5(b)." (Sonoma County Code, § 25-39.7(d), subs. 1, 3.)

And still more. A local ordinance is impliedly preempted if it mandates what state law forbids. (*Big Creek*, *supra*, 38 Cal.4th 1139, 1161; *Great Western Shows, Inc. v. County of Los Angeles*, *supra*, 27 Cal.4th 853, 866.) As already established, section 66427.5 strictly prohibits localities from deviating from the state-mandated criteria for approving a mobilehome park conversion application. Yet the Ordinance directs that the application shall be approved "only if the decision maker finds that," in addition to satisfying the survey and tenant impact report requirements imposed by section 66247.5, the application (1) "is consistent with the General Plan" and other local land and zoning use regulations; (2) demonstrates that "appropriate" financial provision has been made to underwrite and "ensure proper long-term management and maintenance of all common facilities and infrastructure"; (3) the applicant shows that there are "no conditions existing in the mobile home park that are detrimental to public health or safety"; and (4) the proposed conversion "is a bona fide resident conversion" as measured against the percentage-based presumptions established by the Ordinance.[14] (Sonoma County Code, § 25.39-7(c), subs. 1(c)-1(f), 2.) The Ordinance also requires that, following approval of the conversion application, the subdivider "shall give each resident household written notice of its exclusive right to contract for the purchase of the dwelling unit or space it occupies at the same or more favorable terms and conditions than those on which such unit or space shall be initially offered to the general public," for a period of 90 days "from the issuance of the subdivision public report . . . pursuant to California Business and Professions Code § 11018.2." (*Id.*, § 25-39.7(d), subd. 2.)

However commendable or well-intentioned these additions may be, they are improper additions to the exclusive statutory requirements of section 66427.5. The matter of just what constitutes a "bona fide conversion" according to the Ordinance appears to authorize—if not actually invite—a purely subjective inquiry, one which is not

[14] Although it is not discussed in the briefs, a recent decision by Division Three of this district suggests these provisions might also be vulnerable to the claim that they amount to a burden of proof presumption that would be preempted by Evidence Code section 500. (See *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 751, fn. 5, 754-758.)

truly reduced by reference to the Ordinance's presumptions.[15] And although the Ordinance employs the mandatory "shall," it does not establish whether the presumptions are conclusive or merely rebuttable. This uncertainty is only compounded when other criteria are scrutinized. What is the financial provision that will be deemed "appropriate" to "ensure proper long-term management and maintenance"? Such imprecision stands in stark contrast with the clear directives in section 66427.5.

The County, ably supported by an impressive array of amici, stoutly defends its corner with a number of arguments as to why the Ordinance should be allowed to operate. The County lays particular emphasis on the need for ensuring that the conversion must comport with the General Plan, especially its housing element, because that is where the economic dislocation will be manifest, by reducing the inventory of low-cost housing. (See Health & Saf. Code, § 50780, subds. (a)(1) & (a)(3).) In this sense, however, section 66427.5 has a broader reach than the County perhaps appreciates, as it does make provision in subdivision (f) for helping non-purchasing lower income households to remain. In any event, we cannot read section 66427.5 as granting localities the same powers expressly enumerated in section 66427.4 that are so conspicuously absent from the plain language of section 66427.5.

We assume the County was motivated by the laudable purposes stated in the first section of the Ordinance. And we have acknowledged that the County's construction of the section 66427.5 can find some plausibility from the statutory language. Nevertheless, and after a most careful consideration of the arguments presented, we have concluded that the Ordinance crosses the line established by the Legislature as marking territory reserved for the state. As we recently stated in a different statutory context: "There are

[15] That uncertainty may be illustrated by how Sequoia perceives one part of the Ordinance. With respect to instances where tenant support for conversion is between 20 percent and 50 percent, the Ordinance provides: "In such cases, the subdivider shall demonstrate, at a minimum, that a viable plan, with a reasonable likelihood of success . . . is in place to convey the majority of the lots to current residents of the park within a reasonable period of time." (Sonoma County Code, § 25-39.7(c)(2)(b).) Sequoia treats this as a requirement that the subdivider come forth with "financial assistance" to assist tenants to purchase their units.

weighty arguments and worthy goals arrayed on each side. . . . [and] . . . issues of high public policy. To choose between them, or to strike a balance between them, is the essential function of the Legislature, not a court." (*State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 324.) Of course, if the Legislature disagrees with our conclusion, or if it wishes to grant cities and counties a greater measure of power, it can amend the language of section 66427.5.

DISPOSITION

The order is reversed, and the cause is remanded to the trial court with directions to enter a new order or judgment consistent with this opinion. Sequoia shall recover its costs.

Richman J.

We concur:

Haerle, Acting P.J.

Lambden, J.

A120049, *Sequoia Park Associates v. County of Sonoma*

Trial Court:	Superior Court of Sonoma County
Trial Judge:	Temporary Judge Raymond J. Giordano (Pursuant to Cal. Const., art. VI, § 21.)
Attorney for Plaintiff and Appellant:	Bien & Summers, Elliot L. Bien and Catherine Meulemans
Attorney for Amici Curiae Rancho Sonoma Partners, Eden Gardens, Sundance Estates and Capistrano Shores on behalf of Plaintiff and Appellant.	The Loftin Firm, L. Sue Loftin and Michael Stump
Attorneys for Defendant and Respondent:	Steven M. Woodside, County Counsel, Sue A. Gallagher and Debbie F. Latham, Deputy County Counsel
Attorney for Amici Curiae The California State Association of Counties, The League of California Cities, The City of Carson and The City of Los Angeles on behalf of Defendant and Respondent:	Aleshire & Wyndner, William W. Wynder and Sunny K. Soltani

Filed 3/30/10 Carson Harbor Village v. City of Carson CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CARSON HARBOR VILLAGE, LTD., Plaintiff and Respondent, v. CITY OF CARSON, Defendant and Appellant.	B211777 (Los Angeles County Super. Ct. No. BS112239)

APPEAL from a judgment of the Superior Court of Los Angeles County. James Chalfant, Judge. Reversed and remanded.

Aleshire & Wynder, William W. Wynder, Sunny K. Soltani and Jeff M. Malawy, for Defendant and Appellant.

Gilchrist & Rutter, Richard H. Close, Thomas W. Casparian, and Yen N. Hope; The Loftin Firm and L. Sue Loftin, for Plaintiff and Respondent.

Bien & Summers, Elliot L. Bien, for Amicus Curiae, Western Manufactured Housing Communities Association.

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(6)

to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section." Respondent further asserts the Legislature intended state law to completely occupy the arena of mobilehome park conversions, and thus preempt all local ordinances and regulations. The city disagrees, asserting that the state's regulation of mobilehome park conversions does not interfere with a local government's traditional police and zoning powers.

The recent decision in *Sequoia, supra,* 176 Cal.App.4th 1270 is dispositive in establishing respondent is correct. The *Sequoia* court closely examined the question of whether section 66427.5 preempted a local government's attempt to impose additional requirements on a mobilehome park conversion beyond those requirements the statute identified. (*Id.* at p. 1274.) In *Sequoia*, the county had adopted an ordinance that had several provisions governing the county's approval of a conversion, including the conversion's effect on the county's general plan of preserving affordable housing and maintaining open common areas within the mobilehome park. (*Id.* at pp. 1274-1275, 1288, 1290.) The *Sequoia* court engaged in a detailed and well-reasoned analysis of preemption principles. (*Id.* at pp. 1277-1282.) From its analysis, the court held section 66427.5 preempted the county's attempt to regulate the conversion process or to impose additional requirements beyond compliance with section 66427.5. (*Id.* at pp. 1274-1275.) Citing subdivision (e) of the statute, the court stated: "[W]e conclude that the ordinance is expressly preempted because section 66427.5 states that the 'scope of the hearing' for approval of the conversion application 'shall be limited to the issue of compliance with this section.' " (*Id.* at p. 1275; see also *El Dorado, supra,* 96 Cal.App.4th at pp. 1163-1165 [same].)

We find *Sequoia's* analysis persuasive. Its analysis supports its conclusion that "the state has taken for itself the commanding voice in mobilehome regulation" and that "[l]ocalities are allowed little scope to improvise or deviate from the Legislature's script." (*Sequoia, supra,* 176 Cal.App.4th at p. 1293.) Accordingly, we see no purpose in rehashing its discussion here and instead adopt its holding that section 66427.5

"express[ly] preempt[s] the power of local authorities to inject other factors [besides those the statute identifies] when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis." (*Id.* at p. 1297.) Hence, we agree with the trial court that the city cannot reject the application for conversion because the conversion conflicts with the city's general plan.[11]

7. Adequacy of Tenant Impact Report

The city also disapproved the application for conversion because the city found the statutorily required tenant impact report was inadequate. Section 66427.5, subdivision (b) states the park owner "shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest." On appeal, the city focuses on two purported sets of broad inadequacies in the application: the report's failure to address the conversion's effect on wetlands that were a substantial part of the city's open space, and its failure to adequately address economic displacement of tenants from the conversion. As for the wetlands, the city found the tenant impact report did not include information concerning (1) the "extraordinary measures needed to meet the requirements of the California Department of Fish and Game . . . [and] the unreasonable liability and maintenance responsibilities that will be borne by the resident owners following the date of conversion" and (2) "the significant remediation costs should the park be determined responsible for contamination within the wetlands." As for tenant displacement, the city found the report did not include information about: (1) "the impact of the conversion upon displaced residents;" (2) "the availability of adequate replacement space in mobilehome parks;" (3) "the impact of rent increases on the continued financial viability of non-low income non-purchasing residents remaining as park renters;" (4) "the likely increase in rental rates on non-low income non-purchasing residents [and] the impact of such rental adjustments on available

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[11] In its supplemental brief, the city concedes that *Sequoia* holds that section 66427.5 preempts local mobilehome ordinances. The city urges us not to follow *Sequoia.*

CALIFORNIA CODES
PUBLIC **RESOURCES CODE**

30000. This division shall be known and may be cited as the California Coastal Act of 1976.

30005. No provision of this division is a limitation on any of the following:

(a) Except as otherwise limited by state law, on the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with this act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the **resources** of the coastal zone.

(b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances.

(c) On the power of the Attorney General to bring an action in the name of the people of the state to enjoin any waste or pollution of the **resources** of the coastal zone or any nuisance.

(d) On the right of any person to maintain an appropriate action for relief against a private nuisance or for any other private relief.

30005.5. Nothing in this division shall be construed to authorize any local government, or to authorize the commission to require any local government, to exercise any power it does not already have under the Constitution and laws of this state or that is not specifically delegated pursuant to Section 30519.

(7)

Th12b

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APR 12 2010

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	April 9, 2010, 9am
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Commissioner Neely's Eureka Office
Person(s) initiating communication:	Maggy Herbelin, Local ORCA Representative
Person(s) receiving communication:	Commissioner Bonnie Neely
Name or description of project:	Th 12b. **Appeal No. A-3-SLO-07-35 (Stolo, San Luis Obispo Co.)** Appeal by Commissioners Kruer and Shallenberger, Kirsten Fiscalini, Landwatch San Luis Obispo County, and Greenspace-The Cambria Land Trust of San Luis Obispo County decision granting permit with conditions to Don and Charlene Stolo to allow phased development of winery, tasting facility, and related development at 3770 Santa Rosa Creek Road (approximately 1.5 miles east of Main Street) in Cambria, San Luis Obispo County. (JB-SC)

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

Ms Herbelin said that members of Landwatch and GreensSpace (appellants) organization are asking for support of Substantial Issue as both organizations felt all issues were addressed in the staff report except for the effluent discharge from wine waste into the Santa Rosa Creek.

Date: April 9, 2010

Bonnie Neely, Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

Th12b

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	April 5, 2010 – 11:00 a.m.
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Conf Call
Person(s) initiating communication:	Dave Neish, DB Neish Inc.
Person(s) receiving communication:	Commissioner Bonnie Neely
Name or description of project:	April Agenda Item Th12b –Stolo Phased Development Appeal, Cambria, San Luis Obispo County.

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APR 06 2010
CALIFORNIA COASTAL COMMISSION

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material.)

Applicant's representative presented background information regarding this project. Applicant has concerns with the special condition prohibiting the wine tasting room. Dos not agree with staff's analysis on this issue.

Date: April 5, 2010.

Bonnie Neely, Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

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CENTRAL COAST AREA

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LCP, etc.: A-3-SLO-07-35 (Stolo Winery)

Date and time of receipt of communication: March 8, 2010

Location of communication: La Jolla, CA

Type of communication (letter, facsimile, etc.) Meeting

Person(s) initiating communication: Dave Neish

Person(s) receiving communication: Pat Kruer

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Rep. explained that applicant was in agreement with all CCC Staff Special Conditions except the prohibition of the tasting room (Special Cond. #8).

We discussed the characteristics of the Winery, small 9600 cases/year at ultimate build-out, small amount of traffic that would be generated (15 daily trips on week-days & 80 trips on week-end, and the need for the tasting room for economic reasons. It would allow the applicant the revenue to complete the 100' riparian corridor that CCC Staff has requested.

4/9/10
Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

Th 12b

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LCP, etc.:	Th.12b Appeal No. A-3-SLO-07-35 (Stolo, San Louis Obispo County)
Date and time of receipt of communication:	4/1/10, 1:00 pm
Location of communication:	Board of Supervisor's Offices, Santa Cruz, California
Type of communication:	In person meeting
Person(s) initiating communication:	David B. Neish David J. Neish
Person(s) receiving communication:	Mark Stone

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

They represent the property owners. They gave me a history of the project and said that they are in agreement with the staff's recommendation except that the property owner needs the tasting room to generate revenue sufficient to make all of the restoration possible. They said that the issue is that the LCP says that tasting rooms must be within one mile of a collector road. The road in question is not mapped as a collector at this location but is mapped as a collector over the rest of its 17 miles. The County public works sent a letter saying that this mapping is in error and will be corrected in the next update. The owner is willing to limit the events that neighbors are concerned would take place there, but they feel that having this kind of public access and contact is the only way to make the entire project work.

Date: 4/1/10 Signature of Commissioner: Mark Stone

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred within seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meting, other means of delivery should be used; such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

Th12b

FORM FOR DISCLOSURE OF EX-PARTE COMMUNICATIONS

Name or description of the project: Agenda Item **Th.12.b**

b. **Appeal No. A-3-SLO-07-35 (Stolo, San Luis Obispo Co.)** Appeal by Commissioners Kruer and Shallenberger, Kirsten Fiscalini, Landwatch San Luis Obispo County, and Greenspace-The Cambria Land Trust of San Luis Obispo County decision granting permit with conditions to Don and Charlene Stolo to allow phased development of winery, tasting facility, and related development at 3770 Santa Rosa Creek Road (approximately 1.5 miles east of Main Street) in Cambria, San Luis Obispo County. (JB-SC)

Time/Date of communication: Friday, March 9, 2010, 9:00 am

Location of communication: Coast Law Group, Encinitas

Person(s) initiating communication: Dave Grubb, Marco Gonzalez, for Landwatch and the Cambria Land Trust

Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

Support the staff recommendation to find substantial issue.

The County-approved project is inconsistent with certified LCP policies and ordinances requiring the
protection of coastal stream and riparian ESHA resources, agriculture, and water quality.

Date: March 9, 2010

Patrick Kruer

CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV

Th12b

Prepared April 13, 2010 (for April 15, 2010 hearing)

To: Commissioners and Interested Persons

From: Dan Carl, District Manager DCarl
Jonathan Bishop, Coastal Planner JB

Subject: **STAFF REPORT ADDENDUM for Th12b**
Appeal Number A-3-SLO-07-035 (Stolo Winery)

The purpose of this addendum is to modify the staff recommendation for the above-referenced item to add an indemnification condition to address the costs associated with a potential legal challenge to the Commission's decision. Specifically, the staff report is modified as follows:

1. **Add new Subsection E just prior to Section 7 on page 32 of the staff report as follows:**

E. Liability for Costs and Attorneys Fees

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications.[1] Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition 10 requiring reimbursement for any costs and attorneys fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit.

2. **Add new Special Condition 10 on page 40 of the Staff Report as follows:**

10. Liability for Costs and Attorneys Fees. The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, or successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

[1] See also California Code of Regulations Title 14 Section 13055(g).

Th12b

TREVITI
STOLO FAMILY VINEYARD
one elite vineyard, one unique location, one passionate family

RECEIVED
APR 12 2010
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

April 6, 2010

Jonathan Bishop
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, California 95060

Re: Stolo Winery Project: Appeal Number A-3-SLO-07-035

Mr. Bishop,

My name is Maria Stolo Bennetti and I am the General Manager of TreViti Wines, the small artisan wine label that was created by the Stolo Family. We source our grapes from our nine acre Stolo Family Vineyard located in Cambria on the Central Coast. I am responsible for the sales and marketing of our wine. I am writing to you to provide you with a bit of background information as to why a tasting room, specifically a tasting room onsite, is essential for an artisan winery like ourselves.

In order for a small premium winery to be viable it is necessary for their sales model to consist of 70% retail sales (direct to consumer) and 30% wholesale. We make approximately 300 cases a year (3600 bottles)- it is virtually impossible to sell 2500 bottles (70%) over the internet, which is our only option right now to sell direct to consumer. A customer facing brick & mortar establishment is absolutely necessary. Also viable to the small business is a growing wine club. Having a place where consumers can try the wine and sign-up is most ideal. Studies have shown that approximately 30% of visitors to a tasting room will sign-up for the wine club given the right environment and proper education.

Presently, our model consists of 30% retail, 70% wholesale because we don't have a physical means for reaching the consumer. We are getting slammed- wholesale wine sales are down, meaning that buyers are only interested in big name wines (recognizable labels) at low prices. Most buyers will only consider a label if the wholesale price is $10 or below, especially an unknown label. It costs us approx. $11 to produce a bottle, because of our size and quality of wine. The margins for selling wholesale are non-existent for us. But, in order to maintain our inventory, we have been forced to meet these requirements.

Our wine club is really the one thing that is keeping us going. Our goal at this point is to try to expand our wine club as much as possible. This has been difficult, again, because we do not have a constant presence for the consumer. We have been soliciting wine enthusiasts at wine tasting events, and even sponsoring our own small events off-site, which are costly with very little return.

I cannot stress how important it is to connect the consumer or wine enthusiast with place. Wine is as much about taste as it is about experience and memory. Visitors enjoy the wine but purchase the bottle because of the unique experience in a beautiful environment. They want to take that bottle home to remember and share. Having a tasting room on the property will give the consumer that complete experience.

Thank you for your time,

Maria Stolo Bennetti

Th 12b

Jonathan Bishop

From: debbie soto [dsototravel@yahoo.com]
Sent: Thursday, April 08, 2010 10:28 AM
To: Jonathan Bishop
Subject: Stolo Appeal A-3-SLO-07-035

Hi Jonathan,

We will not be able to attend the meeting next week on April 15. Many of the residents and ranchers who live and work along the Santa Rosa Creek valley have expressed opposition to the Stolo wine processing factory and grape crushing plant, wine shop, and wine events throught phone calls and letters. We ask that these concerns, letters, and phone calls be taken very seriously and we would like to ask for an Environmental Impact Report (EIR) be required before allowing this commercial endeavor to be placed on agriculture zoned land.

Ranches, farms, and homes above and below this winery project have and are experiencing water problems. We live upstream of this vineyard and have several springs which have never dried up until the last few years.

The Stolo vineyard parcel is one of 8 small ranch parcels which historically were only 2 ranches that were dry farmed and grazing land only. Some of these 7 additional parcels are now for sale and list as possible land for vineyards and wineries.

We thank the Coastal Commission Board and staff and ask that an EIR be required for this proposal.

Sincerely,
Debbie Soto

Th12b

Jonathan Bishop

From: Doug Buckmaster [bkmstr@cox.net]
Sent: Saturday, March 06, 2010 12:38 PM
To: Jonathan Bishop
Subject: Stolo Winery Appeal

5360 Calle Real, #C
Santa Barbara, CA 93111

Honorable Commissioners:

re: Stolo Winery, Cambria

It is encouraging to see that the several appeals to this proposed commercial venture in agricultural land near Cambria have resulted in some reduced impacts. However, there remain several important problems with a much too ambitious project.

First, it is disturbing to learn that there has been no consideration of the waste which will result from the winery itself. There would be inappropriate agricultural runoff into Santa Rosa Creek, inevitable contamination of the aquifer, and there apparently would be no control over "foreign" grapes that would be trucked into the facility with unknown pathogens.

Second, I am disturbed that any new threat to the already endangered steelhead and Southwestern pond turtle in Santa Rosa Creek would be ignored by the applicant or tolerated by the California Department of Fish and Game.

Third, bringing a new facility of the size and activities proposed is not appropriate for an agricultural area. It also is disturbing to consider the traffic generated by events that are proposed by the applicant. Santa Rosa Creek Road is too narrow and two rural to have streams of automobiles going back and forth, particularly when drivers most likely will have had too much to drink before getting back on the road. They also will be passing a public high school and a Headstart program.

In summary, I believe that too many negatives are attached to the proposed Stolo Winery to allow it to proceed. Please deny this application.

Sincerely,

Doug Buckmaster

Th12b

Land Watch
San Luis Obispo County

P.O. Box 174 Cambria, California 93428

www.LandWatchSloCo.org LandWatchSloCo@yahoo.com

Jonathon Bishop
California Coastal Commission
725 Front St., Ste. 300
Santa Cruz, CA 95060

(831) 427-4863
FAX (831) 427-4877

February 18, 2010

RE: Winery Effluent from proposed Stolo Winery, Cambria, CA

Dear Mr. Bishop:

LandWatch San Luis Obispo County is concerned that grapes imported form other growing areas outside the Santa Rosa Creek Watershed to the proposed grape crushing and bottling plant on Santa Rosa Creek Road will result in an industrial operation and is not agriculture nor is the bottling plant consistent with the land use policies that prohibit industrial uses on agriculture lands. Further, the amount of effluent produced from crushing imported grapes will create hazardous conditions for aquatic life in Santa Rosa Creek.

Also, the waste stream created by this industrial operation needs to be taken to an off-site facility for processing and not allowed to enter the water table or migrate into Santa Rosa Creek. This is an entirely artificially created waste stream and constitutes an industrial bottling operation. The reach of creek adjacent to the proposed crushing and bottling plant happens to be the most productive reach for rearing steelhead trout in the watershed and has populations of California Red-legged frog. Both species have federal and state status under the Endangered Species Act. Constituents entering the water table and creek have the capacity to deplete oxygen resulting in potential death to listed species.

It is important to protect agriculture from industrial operations and to process harmful waste in sewage facilities designed to remove and purify the waste water to equal to or better conditions then the original resource.

We would appreciate your including our comments into the public record of the CCC on this matter.

Sincerely,

Anne Winburn, Secretary
LandWatch

Th12b

Appeal Number……A-3-SLO-07-035, Stolo Winery

Applicant……Don and Charlene Stolo

Appellant……Kirsten Fiscalini

Local Government……San Luis Obispo County

Sources

Books:

1. Understanding Wine Technology by David Bird, Chartered Chemist & Master of Wine
2. Winery Technology & Operations, A Handbook for Small Wineries by Dr. Yair Margalit, The Wine Appreciation Guild-San Francisco
3. Principles and Practices of Winemaking by Roger B. Boultion, Vernon L. Singletion, Linda F. Bisson & Ralph E. Kunkee all of University of California, Davis

Newspapers and Magazines

1. The Water Information Program-www.waterinfo.org/resourses/water-facts
2. Wine Business Monthly-Industry Roundtable: Water in the Vineyard by Lance & Water Use in the Winery by Paul Franson
3. New Times News, San Luis Obispo-Wastewater to Wine? By Kathy Johonston & 2/8/2010 by Renee Haines
4. Sunset Magazine- March 2007
5. Starting Your own Winery by Lisa Shea-www.wineintro.com/making/winery
6. San Jose Mercury News 2/10/2008-Santa Barbara CHP grant targets drunken drivers
7. We All Live Downstream-www.gualariver.org/vineyards/downstream.html
8. Wine Water News-Maximizing Wine Grape Water Use: Paso Robles Case History by Harry Cline

Water

The State Water Resources Control Board states under Riparian Rights # 8 'The riparian owner is subject to the doctrine of reasonable use, which limits all rights to the use of water to, that quantity reasonably required of beneficial use and prohibits waste or unreasonable methods of use or diversion.'

Vineyard (Which is not in dispute) water usage

Planted vines 400-800 vines (considered dry farming) to 2000 vines per acre

Vine water usage 40 to 150 gallons per vine per year

400
400 vines per acre @ 40 gallons per vine
1 acre uses 16,000 gallons per year
8 acres uses 128,000 gallons per year
40 acres uses 640,000 gallons per year

400 vines per acre @ 150 gallons per vine
1 acre uses 60,000 gallons per year
8 acres uses 128,000 gallons per year
40 acres uses 640,000 gallons per year

2000
2000 vines per acre @ 40 gallons per vine
1 acre uses 80,000 gallons per year
8 acres uses 640,000 gallons per year
40 acres uses 3,200,000 gallons per year

2000 vines per acre @ 150 gallons per vine
1 acre uses 300,000 gallons per year
8 acres uses 2,400,000 gallons per year
40 acres uses 12,000,000 gallons per year

The medium of this is 800 vines per acre & 95 gallons per vine per year
(This is still considered dry farming)

1 acre uses 76,000 gallons per year
8 acres uses 608,000 gallons per year
40 acres uses 3,040,000 gallons per year

This is to establish what level of water usage is and could be for the vineyard. The domestic usage of water is reported to be 176 gallons per person per day.

Please note that there are 4 other land parcels adjacent to Stolo property for sale that is at present open grazing land with no buildings. 2 examples show to be advertised as possible vineyard sites. See attached.

These sites as well as other undeveloped sites on Santa Rosa Creek are relevant because all who live in this area rely on the same water source. All these facts must be considered for present and future agriculture of Santa Rosa Creek.

The assumption that the Stolo's wells are presumed percolation groundwater and somehow do not affect others or change the aquifer levels is irresponsible. The aquifer is recharged by this water and is in direct relationship to others water supplies, wells and springs. Which results in drilling deeper for water at a high cost of $5,000.00 to $40,000.00 per drill site. There are 100 + residents, 3 schools (Coast Union High School, Lefingwell and Head Start Day School) plus the town of Cambria in times of drought that pull from Santa Rosa water supply.

All of us on Santa Rosa Creek will have to tighten up on water just because of the enormous use of water by the vineyard.

Winery

Wine Business Monthly reports that "A general rule of thumb is 6 gallons of water to one gallon of wine. But can go as high as 20 gallons of water to one gallon of wine" This can change rapidly if there is contamination of winery equipment or facilities. Other factors are types of equipment used, methods of cleaning and facilities.

Wineries must be spotless, otherwise bacterial problems can happen and shut down the operation. Also each time the variety of grape is change an entire breakdown of equipment and facilities must be cleaned. Both, Wine Business Monthly and Wine Technology & Operations discuss the on

going problems of contamination and the shutting down of bottle lines and processing equipment.

So 6 gallons of water usage on the average per case is in a perfect world, which does not exist in wine processing. A more realistic figure would be closer to 13 gallons a case, which is the average between 6 and 20 gallons.

Other consideration such as the cleaning of building and the cleaning and storage of wine barrels is not factored in. There is no way of estimating how much water would be used to clean floors, walls, pipelines, hoses etc. Principle & Practices of Winemaking reports, which the cleaning of barrels is close to the volume of the barrel for soaking and rinsing treatments.

50 gallon barrel=50 gallons of water

13 x 10,000 cases of wine = 130,000 gallons of water + number of wine barrels + the unknown gallons of water used to clean the facilities.

The methods used are hot water, steam, high-pressure sprays, cold rinse, soaking and chemically treated water solutions.

This is a commercial use of agriculture water for the purpose of processing and bottling a retail product.

Wineries in Napa, Mendocino, Sonoma, Santa Maria and other areas are now taking their operations where they are connected to the sewer systems. The water is treated and reclaimed without the concern of contaminating or depleting agriculture water. This is a trend in the industry and by all reports appears to be a win, win for all concerned.

Are the lowball estimates of water usage by Stolo winery to be believed? The water extracted from their wells is unregulated and once approved Stolo's can pump as much water as possible, regardless of what the original estimates were. No one checks!

Why is it that families both up and down stream with several decades, or more than a century of experience in agriculture are against this winery. We know the difference between fantasy and reality you need only to look at Paso Robles, Templeton and Atascadero. **Do not let the voices of long term, experienced agriculturist fall on deaf ears?** Ranchers down stream of the Stolo property are <u>now</u> experiencing water problems. What will the future bring?

For these reasons we ask that the winery be denied.

Wine Tasting, Tours, Events and Retail Store

San Jose Mercury News reports that the Santa Barbara Area CHP received a $658,000.00 grant to crack down on the increase of drinking and driving for the 90 San Ynez Valley vineyard wine tasting rooms. 2/1/2008
(This is an increase no mention of cost prior to the grant)

Santa Rosa Creek Road is an unimproved rural road, **not a collector road.** With no soft shoulders, no turn outs, several sever blind corners (5 between high school & and Stolo's), barbed wire livestock fences right next to the road, tributaries water ways 2 feet or less with no guards running along side, numerous location where the pavement has broken off, decayed or all together gone and areas where it is so narrow its only safe for one car to pass. Residents of Santa Rosa Creek Road take special care during rain, fog or night time driving because of the dangerous conditions such as flooding, fallen rocks or trees, livestock or deer on the road.
(Please see attached photos)

During events signs would be posted 'No Parking' along Stolo property, what about properties west and east. There is not adequate parking for as many as 400 guests. This is fatal for both guest and drivers. It was said that most of the patrons would visit during the summer months therefore it was not a danger to student because school is out. It's clear that Stolo's do not live here. Coast Union High School summer roaster is packed with field and gym activities e.g. Football 1 a day and 2 a days practices, adult and league soccer practices & games, adult and Little League baseball practice and games, volleyball practice and tournaments, pee wee football practice and games, tennis and Summer School classes.

Stolo's is not within 1-mile limit set by the county.

Request denial of Tasting, Tours & Events Center

Mr. Stolo stated in The Cambrian "that this was his dream". What he failed to add was 'regardless if he has to bend or twist the truth or break laws governing his project or how it effects the other generational agricultural families or residents of Santa Rosa Creek'.

Thank you for all your hard work, time and considerations with this matter. All of us on Santa Rosa Creek Road and the peoples of Cambria appreciate your work.

Sincerely,

Kristen Fiscalini

Attachments

The first 2 pages are Listings of adjoining properties.

Pages 3 to 15 are photos of Santa Rosa Creek Road.
26 photos total

Photo #1 is just before Coast Union High School

All photos labeled West are between Coast Union and Stolo property
(Please note that is less than ¾ of a miles distance)

All photos labeled East boarder or are within a 50 yards distance to Stolo property

Photo #2 is tributary that runs along the south side of Santa Rosa Creek Road on the Stolo property.

Photo #3 is the blind sharp turn just before the Stolo's house that sits on the north side of Santa Rosa Creek Road.

Photo #4 is just after #3 photos turn showing an other sharp blind turn and Stolo's house

Photos #5 show road conditions along Stolo's property on south and north sides of the road.
(Please note the decayed and broken pavement and that the tributary is along the road)

Photo # 6 shows where the pavement is undercut

These photos were taken when there was less than 1-inch rain fall in a 48 hour time period.

Santa Rosa Creek Road conditions continue to decay as you travel east.

A picture is worth a thousand words

Client Detail with Addl Pics Report

Listings as of 07/17/07 at 1:55pm

Active 12/19/05 | **Listing # 110183** | **Santa Rosa Creek Cambria, CA 93428** | **Listing Price: $1,500,000**
County: San Luis Obispo | **Cross St: Main Street** | **Map: 324, J7**

Prop Type	Lots and Land	**Prop Subtype(s)**	Agricultural
Area	Cambria/San Simeon	**Sub-area**	Cambria Rural
		Price/Acre	38,216.56
APN	013-081-069	**Lot Sq Ft (approx)**	1709730 ((Tax Records))
		Lot Acres (approx)	39.250
DOM/CDOM	575/575		







Public Remark Great ocean, valley and mountain views from this 39.25 + or - acres of agricultural property. If you've been looking for property On Santa Rosa Creek Road look no further. Whether your desire is a vineyard, Avocados, cattle, horses or a place to build that dream home, here it is.

Listing Information
Listing Detail None

General Information
Utilities Well Individual, Electricity, Telephone
Lot Characteristics Mountain, Level, Upslope, Downslope, Rural Setting, Private/Easement Rd
Wait List Type None

Additional Information
Gallons Per Minute 15.00
Well Information Cased and Capped, See Remarks

Lot Desc/Dimensions Great ocean view
Association No
View Ocean, City, Valley, Panoramic, Wooded
Well Installed Yes

Presented By: **Richard Breen**
Primary: 805-927-4966
Secondary:
Other:
E-mail:
Web Page:

Breen Realty
768 Main St
Cambria, CA 93428
805-927-4966
Fax 805-927-4967
See our listings online:
http://www.breenrealty.com

July 2007

Client Detail with Addl Pics Report

Listings as of 07/17/07 at 1:49pm

Pending 06/10/07 | **Listing # 131050** 4344 Dos Cruces Cambria, CA 93428 | **Listing Price: $1,595,000**
County: San Luis Obispo **Cross St: Santa Rosa Ck Rd** | **Map: 528, J6**

Prop Type	Lots and Land	**Prop Subtype(s)**	Agricultural
Area	Cambria/San Simeon	**Sub-area**	Cambria Rural
		Price/Acre	75,235.85
APN	013-081-055	**Lot Sq Ft (approx)**	923472 ((Tax Records))
		Lot Acres (approx)	21.200
DOM/CDOM	16/16		









Public Remark Gated Grand Home Site, With Ocean And Mountain Views On Paved Dos Cruces Road, With Utility on Site. Geo, Soils Test Available. 2 Miles Out Santa Road from Cambria. 2 wells. Excellent microclimate for vineyard, oranges, avocados.

Listing Information
- **Listing Detail** None

General Information
- **Utilities** Well Individual, Electricity
- **Association** Unknown
- **Wait List Type** None

Additional Information
- **Gallons Per Minute** 5.00
- **Well Information** Cased and Capped

- **Lot Characteristics** Greenbelt
- **Site Improvements** Paved Streets
- **View** Ocean, Greenbelt, Hill/Peak/Mnt, Panoramic
- **Well Installed** Yes

Presented By: **Richard Breen**
Primary: 805-927-4966
Secondary:
Other:
E-mail:
Web Page:

Breen Realty
768 Main St
Cambria, CA 93428
805-927-4966
Fax : 805-927-4967
See our listings online:
http://www.breenrealty.com

July 2007

#1

West

West

West

West

West

West

West

West

West

#2

#3

#3

#4

east

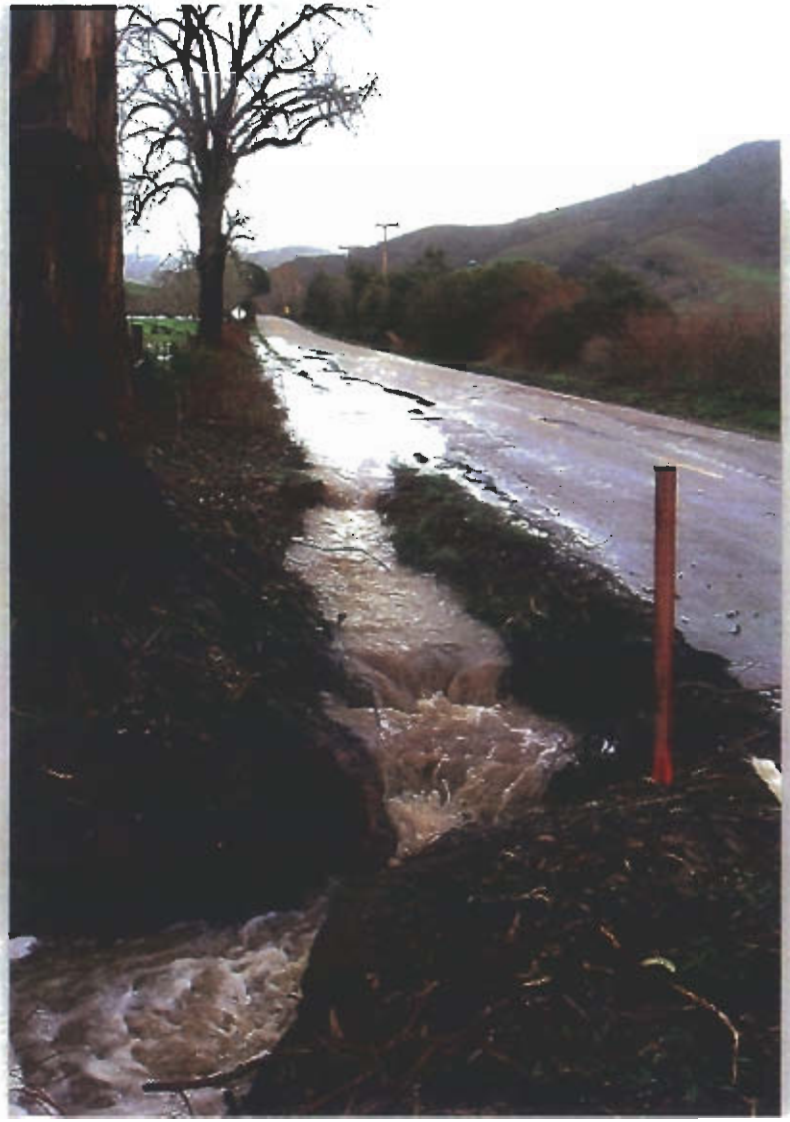
#5

#5

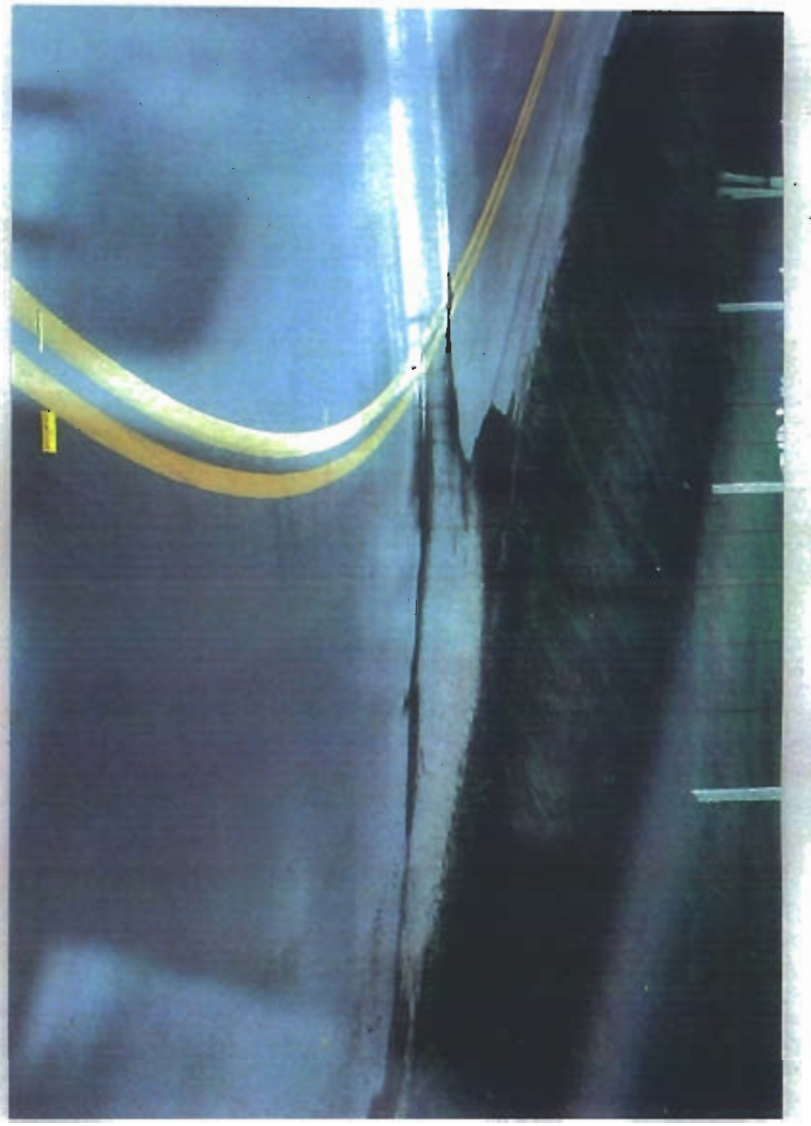
#5

east

east



West



east

east

east

#6

March 31, 2010
California Coastal Commission
San Francisco, CA

Subject: Release of information for the Los Osos Wastewater Project (LOWWP) *de novo* hearing

Dear Commissioner:

We are writing to request that you encourage the release of the following information and assure that the *de novo* hearing for the LOWWP does not occur until at least 45 days after its release:

- The current seawater intrusion assessment of the Los Osos Valley Water Basin
- A peer review of the most recent hydrologic technical reports on the basin (i.e., Technical Memoranda by Cleath-Harris Geologists, Inc., July 2009)
- The purveyor basin management plan

SLO County officials and water purveyors in Los Osos have declared these documents will not be released to the public until May or June 2010. We were informed that consultants completed the first two documents in January of this year, and Paavo Ogren, Public Works Director, informed the public at the Board of Supervisors' project appeal hearing on September 29, 2009, that the completion date for the basin management plan was January 1, 2010.

In order for the public to provide informed input on the LOWWP, we (and your staff) must have these documents at least 45 days in advance of the LOWWP *De Novo* for the following reasons:

1. A current assessment of the very serious seawater intrusion problem in Los Osos Valley Water Basin (and other hydrologic data and analyses contained in these reports) is essential to addressing the substantial issues your Commission identified on January 14, 2010 (e.g., related to potential project impacts on seawater intrusion and environmentally sensitive habitat).
2. Key elements of the CDP, including Condition 97 (relating to reuse of recycled water) and Condition 99 (relating to conservation), require successful integration with a basin management plan.
3. A second successful 218 assessment on undeveloped properties in Los Osos and full funding of the project require establishing a sustainable basin and water supply.
4. The complex and technical nature of basin studies and reviews requires adequate time to review, understand, evaluate—and, if necessary, have professionals evaluate—the reports for consistency, accuracy, and completeness.

We've attached a 2009 water quality test showing chlorides from seawater intrusion increasing almost 50 mg/l in one year at the Palisades well, a main supply well near the middle of Los Osos. Last year at your July meeting in San Luis Obispo, Keith Wimer provided you data showing 250 mg/l of chlorides at the Palisades well. By the time he presented the data (as we now know) it was a year old, and chloride levels had gone up to 294 mg/l. That was almost a year ago. Water is undrinkable at 500 mg/l of chlorides.

We're also very concerned that the study, on which purveyors are basing their basin management plan, has serious flaws. That is why we'd like to see the peer review. When we had the study looked at by an expert, he found that it had underestimated the rate of seawater intrusion by 12 x's. We presented our review to your Commission at the substantial issue hearing, and recently re-submitted it to your Regional Office in Santa Cruz. Gus Yates, the author of our review, is also the author of a key study in the LOWWP DEIR.

We know you'll agree it is essential for the public and your Commission to have the above information as soon as possible to enable a timely *de novo* and effective solutions. We believe 45 days will allow us to adequately review the reports and incorporate the findings into our presentation.

Thank you for your immediate attention to this matter. We continue to look forward to working with you and your staff to assure the LOWWP protects and maintains vital coastal resources.

Sincerely, Marty Goldin, Elaine Watson, Keith Wimer, and Piper Reilly—Los Osos Sustainability Group

Water Quality Data For Los Osos (2009)

8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 9:30	REQUIRED	Cadmium	< 0.50	ug/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Cadmium	< 0.50	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 11:40	REQUIRED	Calcium	45	mg/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Calcium	22	mg/L
SOUTH BAY WELL - 1991	9/8/2009 10:30	REQUIRED	Calcium	23	mg/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 11:40	REQUIRED	Calculated Aggressiveness Index	11.9	
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Calculated Aggressiveness Index	10.3	
SOUTH BAY WELL - 1991	9/8/2009 10:30	REQUIRED	Calculated Aggressiveness Index	11.1	
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 11:40	REQUIRED	Calculated Langelier Index	-0.04	
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Calculated Langelier Index	-1.69	
SOUTH BAY WELL - 1991	9/8/2009 10:30	REQUIRED	Calculated Langelier Index	-0.82	
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 9:30	REQUIRED	Carbaryl	< 0.5	ug/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Carbaryl	< 0.5	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 9:30	REQUIRED	Carbofuran (Furadan)	< 0.5	ug/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Carbofuran (Furadan)	< 0.5	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 11:40	REQUIRED	Carbonate as CaCO3	0	mg/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Carbonate as CaCO3	0	mg/L
SOUTH BAY WELL - 1991	9/8/2009 10:30	REQUIRED	Carbonate as CaCO3	0	mg/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 9:30	REQUIRED	Chlordane	< 0.1	ug/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Chlordane	< 0.1	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 11:40	REQUIRED	Chloride	86.5	mg/L
Palisades Well - Raw	6/2/2009 8:50	OPERATIONAL	Chloride	294	mg/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Chloride	58.8	mg/L
SOUTH BAY WELL - 1991	9/8/2009 10:30	REQUIRED	Chloride	47.1	mg/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 9:30	REQUIRED	Chromium	1.9	ug/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Chromium	5.7	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 11:40	REQUIRED	Copper	<25	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 9:30	REQUIRED	Copper	< 2.0	ug/L
South Bay Upper Aquifer Well	3/3/2009 10:00	REQUIRED	Copper	5.3	ug/L
SOUTH BAY WELL - 1991	9/8/2009 10:30	REQUIRED	Copper	<5	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	2/3/2009 9:30	REQUIRED	Cyanide	< 25	ug/L

Water Quality Data for Los Osos (2008)

Sample Site	Collected Date/Time	Analysis Full Name	Result	Reporting Units
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Apparent Color	<1	CU
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Apparent Color	<1	CU
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Apparent Color	<1	CU
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Bicarbonate as CaCO3	220	mg/L
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Bicarbonate as CaCO3	210	mg/L
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Bicarbonate as CaCO3	61	mg/L
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Calcium	78	mg/L
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Calcium	32	mg/L
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Calcium	14	mg/L
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Calculated Aggressiveness I	12.1	
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Calculated Aggressiveness I	11.6	
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Calculated Aggressiveness I	10.9	
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Calculated Langelier Index	0.06	
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Calculated Langelier Index	-0.35	
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Calculated Langelier Index	-1.1	
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Carbonate as CaCO3	0	mg/L
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Carbonate as CaCO3	0	mg/L
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Carbonate as CaCO3	0	mg/L
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Chloride	250	mg/L
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Chloride	37	mg/L
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Chloride	34	mg/L
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Copper	13	ug/L
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Copper	<5	ug/L
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Copper	<5	ug/L
8TH ST WELL 02 (EL MORRO Well) - (1986)	1/8/2008 8:35	E. coli Presence/Absence	Absent	
8TH ST WELL 02 (EL MORRO Well) - (1986)	4/7/2008 8:00	E. coli Presence/Absence	Absent	
8TH ST WELL 02 (EL MORRO Well) - (1986)	10/6/2008 11:50	E. coli Presence/Absence	Absent	
8th Street Well - Raw	7/9/2008 12:35	E. coli Presence/Absence	Absent	
Palisades Well	12/22/2008 8:25	E. coli Presence/Absence	Absent	
PALISADES WELL 01 (PALISADES WELL)	1/8/2008 9:05	E. coli Presence/Absence	Absent	
PALISADES WELL 01 (PALISADES WELL)	4/7/2008 8:15	E. coli Presence/Absence	Absent	
PALISADES WELL 01 (PALISADES WELL)	7/7/2008 8:10	E. coli Presence/Absence	Absent	
SOUTH BAY BLVD WELL (Raw)	10/1/2008 14:00	E. coli Presence/Absence	Absent	
SOUTH BAY WELL - 1991	10/14/2008 12:45	E. coli Presence/Absence	Absent	
TENTH ST WELL 02 (LOS OLIVOS) - 1991	1/8/2008 8:55	E. coli Presence/Absence	Absent	
TENTH ST WELL 02 (LOS OLIVOS) - 1991	4/7/2008 8:35	E. coli Presence/Absence	Absent	
TENTH ST WELL 02 (LOS OLIVOS) - 1991	7/7/2008 8:25	E. coli Presence/Absence	Absent	
TENTH ST WELL 02 (LOS OLIVOS) - 1991	10/6/2008 10:00	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	1/8/2008 8:15	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	2/4/2008 8:00	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	3/3/2008 8:20	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	4/7/2008 8:55	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	6/2/2008 10:00	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	7/7/2008 9:25	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	8/4/2008 8:50	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	9/2/2008 9:55	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	10/5/2008 11:30	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	11/3/2008 8:55	E. coli Presence/Absence	Absent	
THIRD ST (BAYSIDE) WELL	12/1/2008 8:30	E. coli Presence/Absence	Absent	
PALISADES WELL 01 (PALISADES WELL)	5/5/2008 8:00	Electrical Conductivity or Spe	1200	umhos/cm
TENTH ST WELL 02 (LOS OLIVOS) - 1991	5/5/2008 8:30	Electrical Conductivity or Spe	560	umhos/cm
THIRD ST (BAYSIDE) WELL	5/5/2008 8:50	Electrical Conductivity or Spe	290	umhos/cm
8TH ST WELL 02 (EL MORRO Well) - (1986)	10/6/2008 11:50	Free Chlorine Residual (mea	0.01	mg/L
8th Street Well Filter Treated	1/8/2008 8:45	Free Chlorine Residual (mea	0.73	mg/L
8th Street Well Filter Treated	2/4/2008 12:35	Free Chlorine Residual (mea	0.68	mg/L
8th Street Well Filter Treated	3/3/2008 12:45	Free Chlorine Residual (mea	0.66	mg/L
8th Street Well Filter Treated	4/7/2008 7:50	Free Chlorine Residual (mea	0.91	mg/L
8th Street Well Filter Treated	8/4/2008 8:25	Free Chlorine Residual (mea	0.78	mg/L
8th Street Well Filter Treated	9/2/2008 8:40	Free Chlorine Residual (mea	0.97	mg/L
8th Street Well Filter Treated	10/6/2008 12:00	Free Chlorine Residual (mea	0.7	mg/L