Resident Surveys, General Plans and Police Powers-Recent Developments in Mobilehome Park Conversion Litigation

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RESIDENT SURVEYS, GENERAL PLANS & POLICE POWERS

RECENT DEVELOPMENTS IN MOBILEHOME PARK CONVERSION LITIGATION

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I. INTRODUCTION

Government Code § 66427.5 contains state-mandated procedures for "converting" a mobilehome park from a "landlord-tenant" form of ownership to "resident" ownership. It requires, among other things, that the parties seeking conversion to resident ownership obtain a "survey of support of residents of the mobilehome park" and submit the results of the survey to the local planning agency "to be considered as part of the subdivision map hearing . . . ." (§ 66427.5, subd. (d)(1) & (5).) The statute also provides that the subdivision map hearing "shall be limited to the issue of compliance with this section." (*Id.*, subd. (e).)

The "tug of war" this survey has created between the landowner-subdivider and mobilehome park residents has spun a whole cottage industry of lawyers who spend their waking hours finding ways to conduct surveys, but give them no meaning, and city attorneys, who must advise their City Councils about how to deal with a chamber full of angry and unhappy residents who "just say no" to mobilehome park conversions.

This "tug of war" is due, in substantial part, to a poorly written state statute, which is the "poster child" for legislation that ends up looking a lot like sausage. No fewer that three (3) appellate courts have politely reminded the State Legislature that the statute is broken and needs fixing. Those cases, and a pending legislative "fix," will be reviewed in this paper.

However, the "tug of war" is also due, in material part, to a fundamental weakness in the entire conversion scheme. Park owner lawyers have taken the position that their clients either need not disclose, or are prohibited from disclosing (in the Tenant Impact Report or otherwise at or prior to conducting the resident survey of support), the most important piece of information that residents want and need to know in order to determine whether they would support conversion of their parks to resident ownership -- ***how much will it cost*** the "coach" owner to purchase the condominium space below her manufactured home.[1]

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[1] Park owner lawyers repeatedly argue that California law (often they refer to it as "**D**epartment of **R**eal **E**state regulations") prohibits their clients from disclosing tentative condominium space prices at the time that a resident support survey is being conducted and the conversion application is being prepared for submission to the local planning agency. The controlling statute is Business & Professions Code § 11010.9(a).

However, a careful reading of Business & Professions Code § 11010.9(a) leads the authors to conclude that state law does not prevent ***or*** prohibit the "subdivider" from ***either*** discussing or disclosing tentative condominium space prices prior to filing the required "notice of intention" with the DRE. Instead, Business & Professions Code § 11010.9(a) only prohibits the making an "offer to sell or lease, [to actually] sell or lease, or accept money for the sale or lease of subdivided interests in the park" prior to the issuance of the notice of intent.

The section imposes a deadline for tentative sales price disclosure, but is silent on when that tentative condominium space prices may ***first*** be shared or discussed with park residents. In

This critically missing piece of information most often results in overwhelming resident opposition to park conversion applications. The exception to this general rule is those circumstances where it is the park residents themselves who initiate the conversion process (the primary reason the conversion statute was adopted in the first instance) and have marshalled resident support ***prior*** to the filing of the required map application with a municipality.

Moreover, in light of the *El Dorado* decision, holding that the legal fiction of "conversion" occurs upon the sale of a single condominium space within a mobilehome park, the "date of conversion" also becomes the triggering event for a massive wealth transfer -- as soon as residents can no longer sell their manufactured homes independent of the subdivided air space condominium, the value of their existing coaches is dramatically reduced -- and that value is transferred to the subdivider as the owner of the underlying condominium space.

This paper attempts to address the recent developments in the case law interpreting Government Code § 66427.5, the state conversion statute, as well briefly reviewing the latest legislative initiative(s) to "fix" this broken law. In writing, we desire to alert municipal lawyers to the very real potential for costly and protracted litigation

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short, nothing in Business & Professions Code § 11010.9(a) "prohibits" a subdivider from disclosing tentative condominium space prices well in advance of filing the "notice of intention" with the DRE.

Park owner lawyers also argue that *El Dorado* holds (or at least confirms) that a subdivider is prohibited from disclosing tentative condominium space prices until the same are submitted to the DRE. Again, a careful reading of *El Dorado* indicates only that ***a planning agency cannot require such disclosure*** at the time of filing of the required map in connection with a conversion application. "[W]e harmonize it [the Business & Professions Code] with section 66427.5 by finding that the tentative purchase price must be disclosed at the time specified in Business and Professions Code section 11010.9, *i.e.*, at ***some time prior to the filing of the notice of intention to sell, but that the disclosure need not be made at the time of filing of the application for approval of the tentative map***." See, *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1180 (emphasis added).

In response to the *El Dorado* decision, AB 930 enacted the resident support survey requirement. And, while *El Dorado* does stand for the proposition that a planning agency cannot ***require*** a subdivider to disclose tentative condominium space prices at the time of filing the required map application, it is not fair to conclude that a park owner is ***prohibited*** from disclosing or negotiating those tentative purchase prices to and with its residents in order to gain their support in the required resident survey.

Indeed, it is the authors' views that if planning agencies are afforded meaningful oversight of conversion applications, and if the courts continue to give weight to the results of the required resident survey in terms of allowing planning agencies to actually "consider" whether to "approve, conditionally approve, or deny" a conversion application, the direct result will be an early disclosure and negotiation of tentative condominium space prices as a meaningful way to garner the needed resident support for conversion.

involving denied or failed park conversions, and well as to sensitize practitioners to the significant political and socioeconomic ramifications of processing these conversion applications.

II. THE UNIQUE MOBILEHOME PARKOWNER / RESIDENT HOMEOWNER RELATIONSHIP

Because they do not own the land on which their homes are located, mobilehome owners (*i.e.* mobilehome park residents) are subject to a severe risk of economic exploitation by the owners of the land underlying their coaches. Approximately one hundred jurisdictions in California that have adopted ordinances regulating the rents of mobilehome park spaces. The widespread adoption of mobilehome park space rent control is the direct result of the recognition of the "special relationship" that exists between mobilehome park owners and resident mobilehome owners within those parks.

The park residents own their "mobilehomes" but rent the spaces on which their homes sit. "The term 'mobile home' is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved." (*Yee v. City of Escondido*, 503 U.S. 519, 523 (1992).

Unlike traditional apartment landlords, mobilehome parkowners can price gouge due to their residents' immobility. Both the United States and California Supreme Courts have recognized this "special relationship" reflected in the ***dual property*** ownership ***rights*** involved in mobilehome parks. In 2001, for example, the California Supreme Court explained:

> Thus, unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances - typically a greater investment in his or her space than the mobilehome park owner. [cite omitted.] The immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an ***economic imbalance of power in favor of mobilehome park owners.*** (*Galland v. Clovis* (2001) 24 Cal.4th 1003, 1009-10.) (Emphasis added.)

This dual economic relationship has resulted in the regulation of mobilehome space rents to prevent "excessive rent increases" on captive residents (whose homes are neither mobile, nor are their housing options plentiful) while at the same time assuring the owners of the underlying real property a "fair return" on their investment. This is the very reason mobilehome rent control was expressly exempted from the Costa-Hawkins Act that eliminated most apartment rent control and all vacancy control in California in 1995. (*See*, Civil Code § 1954.51(b).)

Both the federal and state courts have upheld mobilehome rent control ordinances as constitutional. The rent stabilization ordinance in the City of Carson, for example, has

been upheld at least three times against constitutional attacks. (*Carson Mobilehome Park Owners Ass'n. v. City of Carson* (1983) 35 Cal.3d 184; *Carson Harbor Village, Ltd. v. City of Carson* (1994) 37 F.3d 468; *Colony Cove Properties, LLC v. City of Carson, et al.* (9th Cir. 2011) ___ F.3d ____, 9th Cir. Case No. 09-57039, 2011 WL 1108226.)

III. MOBILEHOME PARK CONVERSIONS UNDER SECTION 66427.5 OF THE GOVERNMENT CODE

"Conversion" of a mobilehome park to resident ownership is the process by which a park is subdivided so that the ground underneath and the air above and around each coach may be purchased, together with an undivided fractional interest in all the common areas of a mobilehome park. The conversion of mobilehome parks to resident ownership is governed by the Subdivision Map Act ("SMA", "Map Act" or "Act") (Gov. Code §§ 66410 *et seq*.).

The Map Act contains three provisions regulating the subdivision of mobilehome parks: (1) Section 66427.4 gives local agencies broad authority over conversions of mobile home parks ***to other uses***; (2) Section 66427.5 governs the conversion of a park to ***resident ownership***, and (3) Section 66428.1 governs ***conversions to resident ownership that have the support and commitment of two-thirds of the residents of the park.*** These statutes form what the courts have characterized as a continuum.

If the park owner is converting a mobilehome park to a completely different use other than as a mobilehome residential facility, then Section 66427.4 requires the owner to prepare a report on the impact of the change to tenants or residents. In this circumstance, the planning agency "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." Section 66427.4 explicitly authorizes: "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***."

At the other end of this continuum is Section 66428.1(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."

Section 66427.5 occupies the middle ground on this continuum. It deals with the situation where the mobilehome park will continue to operate as such, but transitioning

from a rental park to one owned by the residents themselves, ***and*** there is not two-thirds resident support for the conversion. It is this "middle ground" circumstance where the courts have wrestled with understanding and defining the extent of the authority of local planning agencies to "consider" the conversion application.

Conversion to resident ownership under Government Code § 66427.5 is the section of the code that park owners have ***almost exclusively utilized*** in seeking these conversions. This section reads in full as follows:

"**§ 66427.5. Displacement of nonpurchasing residents**

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

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

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

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

(d)

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

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

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

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

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

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

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

(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."

The position advanced by park owner lawyers is that Section 66427.5 is a "formality" driven statute. Their argument is that, provided the required Tenant Impact Report is prepared and submitted to the planning agency, and provided further that the resident survey is jointly prepared, conducted, and the results reported to the planning agency, those acts, standing along, ***require*** the planning agency to approve the conversion map without further "consideration." Of course, the legal effect of this argument is to reduce municipal oversight of the conversion application to even less that that afforded when there is super-majority resident support of and initiation of a park conversion under Section 66428.1.

Given this position of park owner lawyers, no subdivider would ever bother to utilize Section 66428.1 as a basis for conversion, because even then the local planning agency has at least the authority to conditionally approve or deny a conversion application based upon "significant health or safety concerns." In short, accepting the notion that Section 66427.5 is the middle ground in a continuum, the required Tenant Impact Report and resident survey must be afforded substantive meaning and must confer upon the planning agency real authority to "consider" the same in determining whether to "approve, conditionally approve, or deny" the conversion map.

One of the most significant legal "consequences" that flows from park conversion (aside from the opportunity to own a condominium interest) is that, upon the sale of the

very first condominium space, local municipal rent control is no longer applicable and is replaced by Section 66427.5(f), or state-law rent de-control. (*El Dorado Palm Springs v. City of Palm Springs* (2002) 96 Cal.App.4th 1163, 1165.) At that moment, the protections of local rent control cease for all park residents, which may prove to be a significant economic challenge for those residents who do not or cannot purchase the condominium space upon which the coach is placed.

IV. THE SO-CALLED "REVERSE-ROBINHOOD" EFFECT OF PARK CONVERSIONS

Many of California's rent control ordinances have vacancy control. Under a city's rent control ordinance, rents cannot be raised beyond that established by local law even when a coach is transferred to a new owner. Whereas, upon "the date of conversion," under Section 66427.5, local rent control is eliminated and replaced with a modified and arguably weaker state rent de-control. The provisions of Section 66427.5(f) do not provide for vacancy control. This creates what has been characterized by some as a "reverse-Robinhood" effect.

Upon conversion, resident mobilehome owners who purchased their manufactured homes under vacancy control ***lose substantial equity in the value of their coaches***. This occurs because, when the initial coach purchase was negotiated and closed, the existence of rent control and the right to future controlled rents, was factored into the purchase price. When residents lose the ability to "sell a protected rent structure" along with their manufactured homes, the value of their coaches is, thereby, reduced.

At the same time, parkowners who purchased their park subject to vacancy control are enriched by park conversions. The courts have repeatedly held that parkowners paid a "deflated price" for a mobilehome park due to the existence of rent control. Upon conversion, rent control is eliminated and the value of the park increases to values far higher than are reflected in the purchase price and at the expense of the owners of the manufactured homes located in a park.

An *en banc* panel of the Ninth Circuit has recently recognized this effect in *Guggenheim v. City of Goleta* (9th Cir. 2010) __ F.3d ____, Case No. 06-56306, 2010 U.S. App. LEXIS 25981, pp. 28-29:

> "***Ending rent control would be a windfall to the [parkowner], and a disaster for tenants*** who bought their mobile homes after rent control was imposed in the 70's and 80's. Tenants come and go, and even though rent control transfers wealth to "the tenants," after a while, it is likely to affect different tenants from those who benefitted from the transfer. The present tenants lost nothing on account of the City's reinstitution of the County ordinance. But they would lose, on average, over $100,000 each if the rent control ordinance were repealed. ***The tenants who purchased during the rent control regime have invested an average of over $100,000 each in reliance on the stability of government policy. Leaving the ordinance in place impairs no investment-backed expectations of the [parkowner], but***

nullifying it would destroy the value these tenants thought they were buying." (Emphasis added.)

Attorneys for parkowners have been quoted in their discussion of conversion strategy claiming that, following the date of conversion, park owners stand to gain nearly $200,000 per space from park conversions. One such prominent attorney is quoted as having told an audience of parkowners, at the 26th Annual Real Property Retreat a few years ago the following:

> "A normal price nowadays for a mobilehome park is maybe $75,000, $80,000 because they're being purchased based upon their cash flow, based upon their net operating income. So, an owner either buys a park or owns a park that's own-, that's worth $75,000 a space. If they can convert the property to a subdivision and sell the lots, what we're seeing is, in nice areas, that the spaces are worth between $200,000 and $250,000 a space.
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> So, let's assume that the average mobilehome park is 200 spaces, so its worth say $70,000 a space as a rental park, that's $14,000,000. Let's assume it's worth $200,000 as a subdivided park, times 200, that's $40,000,000. So, the difference between the $40,000,000 and the $14,000,000 is $26,000,000. So . . . [audible laugh by the speaker followed by responsive laughter from the audience] . . . do I have your attention?"

Utilization of the conversion statutes by park owners, particularly where there is substantial resident opposition to park conversions, may very well threaten the efforts of local governments to provide and protect local supplies of affordable housing in their counties or cities. Hence the need for local governments to meaningfully review these conversion applications is essential to protecting the interests of local communities, the interests of the park resident constituents, whose lives will be so dramatically impacted by the loss of local rent control protections, and the interests of the parkowner-subdividers.

HISTORY

V. THE LEGISLATIVE HISTORY OF SECTION 66427.5 PRE-2002[2]

A. Section 66427.5 as Originally Enacted

Section 66427.5 is part of the Subdivision Map Act (§ 66410 et seq.; "SMA"). "The [SMA] is 'the primary regulatory control' governing the subdivision of real property in California." (*Gardner v. County of Sonoma* (2003) 29 Cal.4th 990, 996–997.) "The [SMA] vests the '[r]egulation and control of the design and improvement of

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[2] This section and some of the following sections of this paper are adapted from the Second Appellate District's opinion in *Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal. App. 4th 1487, 1497-504.

subdivisions' in the legislative bodies of local agencies. (§ 66411.) Ordinarily, subdivision under the [SMA] may be lawfully accomplished only by obtaining local approval and recordation of a tentative and final map pursuant to section 66426, when five or more parcels are involved, or a parcel map pursuant to section 66428 when four or fewer parcels are involved." (*Gardner,* at p. 997.)

In 1991, when the Legislature added section 66427.5 to the Government Code, it was applicable only to "filing a tentative or parcel map for a subdivision to be created using financing or funds provided pursuant to Chapter 11 (commencing with Section 50780) of Part 2 of Division 31 of the Health and Safety Code." (Former § 66427.5.)[3] It required the subdivider to "avoid the economic displacement of all nonpurchasing residents" by ensuring that statutorily defined low-income residents who decided not to purchase would be protected by section 66427.5's mandated rent control as long as they resided at the park, and that non-low-income residents who decided not to purchase would be protected by a phased out limitation on raising rents to market level. (Stats. 1991, ch. 745, § 2, p. 3324.)

Conversions that did not require the use of public financing under Health & Safety Code § 50780 were governed by Section 66427.4, which required the subdivider to apply to the city, county or local agency empowered to approve subdivision maps, and which permitted the entity or agency 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." (Stats. 1991, ch. 745, § 1, pp. 3323–3324.) Subdivision (d) of Section 66427.4 made clear that its provisions "establishe[d] a minimum standard for local regulation of conversions of mobilehome parks into other uses" and did not "prevent a local agency from enacting more stringent measures." (Stats. 1991, ch. 745, § 1, p. 3324.)[4]

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[3] Health & Safety Code § 50780, enacted in 1984, states that "it is the intent of the Legislature, in enacting this chapter, to encourage and facilitate the conversion of mobilehome parks to resident ownership or ownership by qualified nonprofit housing sponsors or by local public entities . . . ." (Health & Saf. Code, § 50780, subd. (b).)

[4] The 1991 act also provided a simplified method for gaining approval of a proposed conversion where "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." (Section 66428.1, subd. (a).) It did so by adding Section 66428.1, permitting a conversion to resident ownership without obtaining approval of a parcel, tentative or final map unless there were "design or improvement requirements necessitated by significant health or safety concerns," an exterior boundary discrepancy required "recordation of a new parcel or tentative and final map," the existing parcels "were not created by a recorded parcel or final map," or the conversion would result in more units than existed prior to the conversion. (Stats. 1991, ch. 745, § 4, pp. 3325–3326.) Section 66428.1 has remained unchanged since its enactment.

B. The 1995 Overhaul

In 1995, the Legislature amended Government Code §§ 66427.4 and 66427.5 to widen the applicability of the latter and limit the applicability of the former. The amendment to Section 66427.4 provided in relevant part: "This section shall not be applicable to a subdivision which is created from the conversion of a rental mobilehome park to resident ownership." (Stats. 1995, ch. 256, § 4, pp. 882, 883.)

The reference to "a subdivision to be created using financing or funds provided pursuant to [the Health & Safety Code]" was deleted from former Section 66427.5, so that the provision applied generally to "a subdivision to be created from the conversion of a rental mobilehome park to resident ownership." (Stats. 1995, ch. 256, § 5, p. 883.) The 1995 version of Section 66427.5 limited postconversion rent increases in the same manner as the original version of the statute, affording greater protection to low-income than non-low-income residents.

In addition, it added provisions intended to "avoid the economic displacement of all nonpurchasing residents" by requiring subdividers to (1) offer all residents the option to purchase their units or to continue residency as a tenant, and (2) file a report on the impact of the conversion and make a copy of the report available to each resident. (Stats. 1995, ch. 256, § 5, p. 883.)

New language placed in what was then subdivision (d) provided: "The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section." (Stats. 1995, ch. 256, § 5, p. 883.)

VI. THE 2002 *EL DORADO vs. PALM SPRINGS* DECISION

In *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, the court held that the 1995 amendments strictly limited the power of cities, counties and local agencies to impose conditions during the subdivision map approval process. The City of Palm Springs, purporting to rely on the language in Section 66427.4 permitting local authorities to "enact[] more stringent measures," sought to impose three conditions on a mobilehome park owner seeking conversion: (1) that the sale price for the lots be determined by a specified appraisal firm; (2) that the owner provide financial assistance to residents of the park to facilitate their purchase of lots; and (3) that local rent control provisions continue to apply until a specified number of lots were sold. (96 Cal.App.4th at pp. 1161 n. 5 & 1163.)

The court concluded that Palm Springs could not rely on Section 66427.4 to justify its imposition of the conditions because, by its terms, that statute applied only when a mobilehome park was converted to uses other than as a mobilehome park. (96 Cal.App.4th at pp. 1161–62.) Nor, the court held, could Palm Springs rely on Section 66427.5 -- which after 1995 applied to all mobilehome park conversions to resident

ownership, whether initiated by the residents or the owner -- to support imposition of the proposed conditions.

The court concluded that the language of the subdivision limiting the scope of the hearing before the local entity or agency to "the issue of compliance with this section" meant that "the City Council, in acting on [the owner's] application for approval of the tentative subdivision map, only had the power to determine if [the owner] had complied with the requirements of [section 66427.5]." (*Id.* at 1163–64.) Examining the legislative history of the 1995 amendments, the court further concluded that by including this language, the Legislature intended that no entity or agency be permitted to enact more stringent measures pertaining to the conversion of mobilehome parks to residential ownership than those specified in the statute. (*Id.* at 1170–71.)

Palm Springs, joined by the residents' homeowners association, argued that owners of mobilehome parks would use Section 66427.5 to circumvent local rent control provisions by obtaining a subdivision map for a conversion and thereafter continuing to rent out the spaces, selling no lots or only a few lots.[5] While sympathetic to the city's concerns, the court concluded that the language of section 66427.5 limiting the scope of the hearing "to the issue of compliance with this section" deprived Palm Springs of authority to "impose additional conditions to prevent sham or fraudulent transactions at the time it approves the tentative or parcel map." (*Id.* at 1165.)

Acknowledging the possibility of "legislative oversight" and recognizing that "it might be desirable for the Legislature to broaden the City's authority," the court declared the matter "a legislative issue, not a legal one." (*Ibid*.) The trial court ruling was reversed and remanded with directions requiring the Palm Springs City Council "to promptly determine the sole issue . . . whether [the owner's] application for approval of a tentative parcel map complie[d] with section 66427.5" and "[i]f so, [to] approve the application." (96 Cal.App.4th at 1182.)

VII. THE LEGISLATIVE RESPONSE TO *EL DORADO* -- THE REQUIRED SURVEY OF RESIDENT SUPPORT

Nearly immediately after the decision in *El Dorado*, the Legislature enacted the current version of Section 66427.5, amending the statute by adding a new subdivision (d), containing the following language:

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

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[5] This had occurred in *Donohue v. Santa Paula West Mobile Home Par*k (1996) 47 Cal.App.4th 1168. There, residents had initiated the filing of a tentative map, but no lots were ever sold because the residents could not obtain the financing to purchase the park. The court held that the rent control provision of Section 66427.5 did not supersede local rent control ordinances where the attempt to convert failed. (*Donohue*, 47 Cal.App.4th at 1174–76.)

(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).”***

The Legislature moved former subdivision (d) to subdivision (e), which continued to provide: “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***.” (§ 66427.5, subd. (e) [emphasis added].)

When enacting the 2002 amendments, the Legislature provided the following uncodified statement of legislative intent for the changes it had enacted:

> “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*]. The court in [*El Dorado*] concluded that the subdivision map approval process specified in [section 66427.5] 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 to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions***.” (Stats. 2002, ch. 1143, § 2 [emphasis added].)

During the course of the debates on AB 930, the Legislature had considered and rejected a proposal that would have changed the language of former subdivision (d) (now subd. (e)) to provide: “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 and any additional conditions of approval that the local legislative body or advisory agency determines are necessary to preserve affordability or to protect nonpurchasing residents from economic displacement.” (Sen. Amends. to Assem. Bill No. 930 (2001–2002 Reg. Sess.) as amended June 26, 2002, and Aug. 13, 2002, § 1.)

The Assembly floor analysis of the final version of the 2002 bill stated that “[t]he fact that a majority of the residents do not support the conversion is not . . . an

appropriate means for determining the legitimacy of a conversion. The law is not intended to allow park residents to block a request to subdivide." (Assem. Floor Analysis, Conc. in Sen. Amends. to Assem. Bill No. 930 (2001–2002 Reg. Sess.) as amended Aug. 26, 2002, p. 5.)

The statute requires a survey to be conducted, the votes tallied, and the results considered by the local legislative body at the hearing on the map. But what authority do those words grant to local planning agencies to deny conversions based on lack of resident support?

RECENT LITIGATION

VIII. GENERAL PLAN CONSISTENCY, POLICE POWER REGULATIONS, AND OTHER LOCAL REGULATION OF CONVERSIONS OUTSIDE THE REQUIREMENTS OF 66427.5 – THE *SEQUOIA vs. COUNTY OF SONOMA* DECISION

The Subdivision Map Act generally requires all subdividers of property to design their subdivisions in conformity with applicable general and specific plans and to comply with all of the conditions of applicable local ordinances. (*Gardner v. County of Sonoma*, *supra*, at p. 997.)

In *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, the court reviewed an ordinance enacted by the County of Sonoma. The professed aim of the ordinance was to "'implement[]'" revised Section 66427.5 and "'[t]o ensure that conversions of mobile home parks to resident ownership are bona fide resident conversions in accordance with state law.'" (176 Cal.App.4th at 1274, 1288.)

The ordinance required that any conversion be "'a *bona fide* resident conversion'" and set forth criteria for determining whether an application was bona fide: where more than 50 percent of residents supported the conversion, it would be presumed bona fide; where less than 20 percent of residents supported the conversion, it would be presumed not to be bona fide; and where between 20 and 50 percent of residents supported the conversion, the subdivider would be required to demonstrate the conversion was bona fide by presenting a viable plan to convey the majority of the lots to current residents. (*Id*. at 1291–92.) The ordinance further required the conversion to be consistent with the County's General Plan, and added other requirements the County had adopted pursuant to its police powers.

The operator of a mobilehome park who sought to convert it to resident ownership petitioned for a writ of mandate to halt enforcement of the ordinance on the ground it was preempted by Section 66427.5. The trial court denied the petition, finding the ordinance merely gave effect to the requirements set forth in Section 66427.5.

The Court of Appeal reversed, finding that the ordinance was expressly and impliedly pre-empted because it entered an area fully occupied by state law. (*Id.* at 1277–79 & 1292–98.) The court further held that the ordinance conflicted with Section

66427.5 because it "deviat[ed] from the state-mandated criteria for approving a mobilehome park conversion application" and set forth "improper additions to the exclusive statutory requirements of section 66427.5." (*Id.* at 1299.)

The court noted that in revising Section 66427.5, the Legislature did not disturb the language of former subdivision (d), now subdivision (e), which continued to state that "[t]he scope of the hearing shall be limited to the issue of compliance with this section." Referring to this language, the court stated: "[W]hen [the Legislature] amended section 66427.5, [it] 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." (*Id.* at 1297.)

Noting that the ordinance imposed requirements in addition to those listed in section 66427.5, including the requirement that the conversion application be shown to be bona fide "as measured against the percentage-based presumptions" set forth in the ordinance, the court concluded that the ordinance directly conflicted with the statutory language. (*Id.* at 1299.) And since Section 66427.5 contains no General Plan consistency requirement, that portion of the County's ordinance was preempted by Section 66427.5(e) as well.

Thus, *Sequoia* limits a local agency to applying only the express statutory requirements of Section 66427.5 when considering a conversion application.[6]

IX. PLANNING AGENCIES MUST NOW APPLY ONLY THE STATUTE ITSELF -- BUT WHEN DOING SO, WHAT AUTHORITY DO THESE AGENCIES HAVE WHEN THERE IS A LACK OF RESIDENT SUPPORT FOR PARK CONVERSION?

Parkowners often use the *Sequoia* decision to argue that local agencies may *never* deny a conversion application for lack of resident support. But that argument clearly misconstrued the *Sequoia* holding. *Sequoia* simply holds that local agencies may only apply the statutory provisions of Section 66427.5, and may not apply any other locally-adopted regulations.

As detailed above, subdivision (d) of Section 66427.5 was added in 2002 to require a survey of resident support, and require that "[t]he ***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)." (Emphasis added.) In other words, the statute itself expressly requires the local

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[6] *Sequoia* holds that ***only*** Section 66427.5 may be applied. The court failed to consider or address the applicability of other requirements of the Subdivision Map Act (like the general plan consistency requirement in Section 66474), which raises interesting issues that have never been addressed by any court. For instance, what about the general standards regarding what must be depicted on the subdivision map? Section 66427.5 requires that the subdivider file a "map," but contains no standards for what it must depict. Taking the *Sequoia* holding to its logical extreme, a subdivider presumably could submit a map of the United States and still comply with the statute.

legislative body to consider (*i.e.* "weigh," "evaluate," "pass judgment upon," or "balance") the "results" of the resident survey in deciding whether to "approve, conditionally approve, or disapprove" the map necessary for the conversion application to proceed forward before the state Department of Real Estate.

Sequoia fails to address what discretion this language grants to local legislative bodies. The Second Appellate District has recently agreed: "Notably, the [*Sequoia*] court did not address what meaning should be ascribed to the language of section 66427.5, subdivision (d) requiring that "'[t]he results of the survey . . . be considered as part of the subdivision map hearing prescribed by subdivision (e).' Rather, it concluded that because the ordinance imposed conditions that clearly went beyond those set forth in section 66427.5, it violated subdivision (e)'s requirement that the scope of the hearing 'be limited to the issue of compliance with this section.'" (*Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal. App. 4th 1487, 1504.)

A. The Unpublished *Carson Harbor Village* & *Palm Springs Investment Co.* Appellate Opinions

After *Sequoia*, two conflicting unpublished opinions were issued in early 2010 regarding the discretion the statute grants to local planning agencies to deny a conversion application for lack of resident support. In *Palm Springs Investment Co. v. City of Palm Springs*, 4th Appellate Dist. Case No. E047460, February 19, 2010, the city denied a conversion for lack of resident support in the survey, based not on any local ordinance by solely on Section 66427.5 itself. In an unpublished opinion, the Fourth Appellate District, Division 2, essentially adopted the reading of *Sequoia* as described above, and held the city could not consider the survey results as part of its decision.

Just over a month later, the opinion in *Carson Harbor Village, Ltd. v. City of Carson*, 2nd Appellate Dist. Case No. B211777, March 30, 2010, although unpublished, became the *first* Court of Appeal decision to hold that ***a city has both the discretion and the authority to deny a mobilehome park conversion if it determines the application is not bona fide***. The City of Carson had denied a parkowner's conversion application for, among other reasons, lack of support in the survey based solely on Section 66427.5 – not any local implementing ordinance.

The Court of Appeal held a city has the authority under Section 66427.5 to deny a conversion application if it is not "*bona fide*." Whether a conversion is *bona fide*, the court held, depends on the "state of mind" of the park owner rather than the level of resident support in the survey.

"[A] *bona fide* conversion is one that the park owner *expects* to in fact produce a change in the estate interest of a significant percentage of the mobilehome lots from tenancy to ownership" and "the absence of intent to avoid rent control." The Court held that while a lack of resident support is circumstantial evidence of a non-*bona fide* conversion, the results of the survey, standing alone, cannot be the ***sole*** basis upon which a city council determines to deny a conversion application.

The *CHV* Court reached this conclusion after delving into the legislative history of the statute, which it interpreted as using the word "bona fide" to describe a legitimate conversion rather than one simply designed to escape rent control. However, a reading of the "plus section" the Legislature included in the text of the AB 930 bill, in our opinion, leads to a different conclusion – that *bona fide* refers to resident-supported conversion.

B. The Published *Colony Cove* Decision

Later in 2010, an appellate court finally issued a ***published*** opinion that addresses what discretion the statute itself grants to local agencies to deny a conversion application for lack of resident support is *Colony Cove Properties, LLC v. City of Carson* (Aug. 31, 2010) 187 Cal. App. 4th 1487. In *Colony Cove*, the parkowner was successful in persuading the trial court that the city had a ministerial duty to approve the conversion under Section 66427.5 without considering the results of the resident survey – i.e. that the City had no discretion with respect to the survey results. (*Colony Cove*, 187 Cal. App. 4th at 1491, 1495.)

However, the Court of Appeal rejected that position. The Court of Appeal held:

> "Colony Cove urges that we follow the example of *Sequoia Park* by holding that the state fully occupies the area of mobilehome park conversion and that local regulation is wholly preempted. ***That construction would, as the trial court ruled, preclude the City from considering the contents of the survey of support*** during the subdivision map hearing process and limit it to purely ministerial duties—determining whether the survey had been prepared and filed in accordance with section 66427.5. ***The problem with this approach is that it fails to satisfactorily reconcile the language of the 2002 amendments with the stated intent of the Legislature***. We instead begin our analysis of the ordinance's validity with the language of the statute itself and, in particular, the 2002 amendments.
>
> When the Legislature amended former section 66427.5 in 2002, it did not change the language now contained in subdivision (e), which continues to state that '[t]he scope of the [subdivision map] hearing shall be limited to the issue of compliance with this section.' However, the phrase 'limited to the issue of compliance with this section' must be interpreted in light of the new language of the preceding subdivision (d). That subdivision requires applicants to obtain a survey of support of the residents of the mobilehome park, conducted in accordance with specific procedures, and to submit '[t]he results' to the entity or agency 'authorized by local ordinance to approve, conditionally approve, or disapprove the [subdivision] map.' ***This language alone suggests that the contents of the survey, as opposed to its mere existence, are relevant to the approval process***. By thereafter specifically stating that the results are 'to be considered as part of the subdivision map hearing prescribed by subdivision (e),' the Legislature made that intention explicit. ***Construing***

> ***the statute to eliminate the power of local entities and agencies to consider the results of the survey when processing a conversion application would consign the 'to be considered' language of subdivision (d)(5) to surplusage***."

(*Id.* at 1505-06 [emphasis added].)

But the *Colony Cove* court also urged the Legislature to clarify the statute.

> "We recognize that our conclusion—that section 66427.5 permits consideration of the results of the survey of support but not the promulgation of an ordinance requiring specific levels of resident support—does not resolve the manner in which the City and other local agencies are to approach conversion applications. The uncertainty derives from the statute itself, which requires local agencies to consider resident survey results but provides no guidance as to how the results may be used. It is our hope that the Legislature will recognize the dilemma faced by local agencies illustrated by this case and another case decided today, *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, *supra*, 187 Cal.App.4th 1461, and act to clarify the scope of their authority and responsibilities."

(*Id*. at 1508 n 18.)

C. Other Pending Cases That May Provide A More Definite Answer

Other cases currently pending, or soon to be pending, before the Courts of Appeal may provide more definite answers to the numerous unresolved issues regarding the scope of municipal oversight of conversion applications under Section 66427.5. At least one trial court has followed *Colony Cove* and upheld a conversion denial for lack of resident support.

Last September, in *Paul Goldstone Trust v. County of Santa Cruz*, Santa Cruz County Case No. CV 164458, the Santa Cruz County trial judge stated at oral argument, "I believe Colony Cove Properties . . . is the appropriate law in this area and I have cited it." "The survey verified that the residents overwhelmingly opposed the conversion and the County was exercising its appropriate discretion in denying this application." The case is currently being briefed on appeal in the Sixth Appellate District, Case No. H036273.

The trial court judge in *Chino MHC v. City of Chino* came to the opposite conclusion in January 2011. On the same facts, the trial court held the statute only permits the local agency to "consider" the survey results, but the lack of resident support or even the results of the required survey cannot be used as the basis to deny a conversion application. (San Bernardino County Case No. 10007615, January 21, 2011.) This case will likely be appealed to the Fourth Appellate District, Division 2.

Three more conversions in Carson will likely lead to more litigation this year as well. The Carson City Council has denied the conversion of the Imperial Avalon park and the Park Granada park, both based on lack of resident support, among other reasons. In response to the unpublished *CHV* opinion, the subdividers in both of these parks have purported to offer extra-statutory "sweeteners" to their conversion applications – sweeteners like delayed "date of conversion" and early purchase "discounts," all in an effort to demonstrate "that the park owner ***expects to*** in fact ***produce a change in the estate interest of a significant percentage of the mobilehome lots from tenancy to ownership***" as required by the unpublished *CHV* opinion.

The Park Granada conversion denial will prove most interesting for judicial resolution. During the hearing on this conversion application there was a substantial dispute over whether the resident survey had been agreed upon in the manner required by Section 66427.5. At the time of this hearing, the subdivider's attorney stipulated, on the record that, to avoid a dispute over whether the survey had been properly prepared, there was unanimous opposition to the conversion by every resident in this park. Accordingly, the Park Granada litigation will squarely present before the courts the question of whether a city can deny a conversion application where the residents are unanimously in opposition to the conversion.

Finally, the Carson City Council is to rehear the Carson Harbor Village conversion application, as ordered by the Court of Appeal, likely sometime this year. This will present for the courts the interesting juxtaposition of the unpublished *CHV* opinion with the later published opinion in *Colony Cove*, and will again pose the question whether a city can deny a conversion based upon a lack of *bona fide* resident support, as well as address the questions of what a subdivider must do to demonstrate its subjective intent "***to*** in fact ***produce a change in the estate interest of a significant percentage of the mobilehome lots from tenancy to ownership***."

X. *PACIFIC PALISADES BOWL* – A SEPARATE ISSUE – WHAT IF OTHER STATE LAWS APPLY TO MHP CONVERSIONS

A case that the Second Appellate District decided on the same day as *Colony Cove* discusses what happens when two state statutory schemes apply to the same mobilehome park conversion application. The Mello Act, specifically Government Code § 65590(b), forbids local agencies from approving any conversion or demolition of existing affordable housing within the coastal zone unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income, which replacement units are to be located within the coastal zone if feasible.

Thus, Section 65590(b) imposes a mandatory duty on local governments to require replacement housing as a condition of granting a permit to demolish or convert housing units which are occupied by low or moderate income persons or families. The Mello Act defines "conversion" as "a change of a residential dwelling, including a mobilehome . . . or a mobilehome lot in a mobilehome park . . . to a condominium, cooperative, or similar form of ownership."

The Coastal Act requires a coastal development permit, either from the Coastal Commission or a local government or both, for any development in the coastal zone. (Public Resources Code § 30600(a).) The Coastal Act defines "development" as "change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits . . ." (Pub. Res. Code § 30106.)

In the Pacific Palisades area of Los Angeles, a mobilehome park owner applied to the city to convert the Pacific Palisades Bowl Mobile Estates mobilehome park. The park is in the coastal zone, so presumably all of Section 66427.5, the Mello Act, and the Coastal Act would apply. But Section 66427.5(e) and *Sequoia* state that only Section 66427.5 applies.

The Court of Appeal considered case law regarding applying the more specific statute, but determined that the Mello Act and Coastal Act are more specific than 66427.5 because they apply only in the coastal zone, but that 66427.5 is more specific because it applies only to protect against economic displacement of residents facing mobilehome park conversions. Faced with this conundrum, the court looked to which statute was adopted for more paramount policy concerns, and held that the Coastal Act and Mello Act are to be applied to the conversion, as well as the requirements of Section 66427.5.

From this decision, it is possible to formulate the following rule of law from the Court of Appeal's decision: Local agencies may apply only Section 66427.5 to applications for conversion of a mobilehome park to resident ownership, unless there is another more specific state statute that deals with a topic other than economic displacement of non-purchasing residents. If equally specific, the other statute can be applied if the policy reasons behind it are of more paramount concern than those which resulted in the enactment of Section 66427.5.

The California Supreme Court granted review in this case, which is now in the briefing stages. The Supreme Court issued the following statement of two issues that it will consider on review:

> (1) Do the Mello Act (Gov. Code, 65590, 65590.1) and the California Coastal Act of 1976 (Pub. Resources Code, ? 30000 et seq.) apply to the conversion of a mobilehome park to resident ownership if the park is located within the coastal zone?
>
> (2) Do the limits imposed by Government Code section 66427.5 on the scope of a hearing on an application for conversion of such a mobilehome park to resident ownership prohibit the local authority from requiring compliance with the Mello Act and the California Coastal Act when the mobilehome park is located within the coastal zone?

/ / /

/ / /

XI. LEGISLATIVE SOLUTIONS – SB 444

Several cities and counties are supporting a bill in the Legislature this year designed to remedy the uncertain local authority granted by Section 66427.5. The bill aims at both the uncertainty regarding the discretion to consider the results of the resident survey as identified in *Colony Cove*, and the uncertainty regarding whether other state statutes apply to conversions as identified in *Pacific Palisades Bowl*.

Senate Bill 444 amends Section 66427.5(d)(5) to clarify that a local agency "may disapprove the map if it finds that the results of the survey have not demonstrated adequate resident support."

> (d)(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)~~ *in the agency's decision as to whether to approve, conditionally approve, or disapprove the map, and the agency may disapprove the map if it finds that the results of the survey have not demonstrated adequate resident support*.

The bill would also amend subdivision (e) to make clear that other applicable state laws apply to conversions, and that Section 66427.5 only preempted local authority to regulate with respect to mitigation of economic displacement of nonpurchasing residents.

> (e) The subdivider shall be subject to a hearing by a legislative body or advisory agency ~~, which~~ *that* is authorized by local ordinance to approve, conditionally approve, or disapprove the map. ~~The~~ *With respect to mitigation of economic displacement of all nonpurchasing residents, the* scope of the hearing shall be limited to the issue of compliance with this section. *Nothing in this section shall be construed to relieve the subdivider or the local agency from complying with other applicable state ~~l~~laws.*

Attached to this paper is a copy of SB 444 (with a possible further amendment highlighted in yellow) in its current iteration as well as a copy of the position paper that has been prepared by the City of Carson in support of the legislation. The bill is set for hearing on May 3, 2011 before the Senate Transportation and Housing Committee.

BILL NUMBER: SB 444 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Evans
(Principal coauthor: Assembly Member Williams)
(Coauthors: Assembly Members Allen and Furutani)

FEBRUARY 16, 2011

An act to amend Section 66427.5 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 444, as introduced, Evans. Land use: subdivisions: rental mobilehome park conversion.

The Subdivision Map Act requires a subdivider, 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, to avoid the economic displacement of all nonpurchasing residents by following specified requirements relating to the conversion, including the requirement that the subdivider obtain a survey of support of residents of the mobilehome park for the proposed conversion, the requirement that the results of the survey be submitted to the local agency for consideration, as specified, and the requirement that the subdivider be subject to a hearing by the legislative body or advisory agency that is authorized to approve, conditionally approve, or disapprove the map.

This bill would clarify that the local agency is required to consider the results of the survey in making its decision to approve, conditionally approve, or disapprove the map; that the agency is authorized to disapprove the map if it finds that the results of the survey have not demonstrated adequate resident support; and that, with respect to mitigation of economic displacement of all nonpurchasing residents, the scope of the hearing is limited to compliance with these provisions of the act.

This bill would find and declare that the changes made by this act

do not constitute a change in, and are declaratory of, existing law, and would state the intent of the Legislature to clarify the intent of certain provisions of the subdivision map.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 66427.5 of the Government Code is amended to read:

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)~~ *in the agency's decision as to whether to approve, conditionally approve, or disapprove the map, and*

the agency may disapprove the map if it finds that the results of the survey have not demonstrated adequate resident support .

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency ~~, which~~ *that* is authorized by local ordinance to approve, conditionally approve, or disapprove the map. ~~The~~ *With respect to mitigation of economic displacement of all nonpurchasing residents, the* scope of the hearing shall be limited to the issue of compliance with this section. *Nothing in this section shall be construed to relieve the subdivider or the local agency from complying with other applicable state* ~~*or local*~~ *laws,* ~~*including, but not limited to, Chapter 4 (commencing with Section 66473) of this division.*~~

(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.

SEC. 2. (a) The Legislature finds and declares that the amendments to Section 66427.5 of the Government Code made by this act do not constitute a change in, but rather are declaratory of, existing law.

(b) It is the intent of the Legislature to do both of the following:

(1) Clarify that the legislative intent underpinning paragraphs (1) and (5) of subdivision (d) of Section 66427.5 of the Government

Code has been, and continues to be, to require a local agency to consider, in making the decision to approve, conditionally approve, or disapprove the tentative or parcel map, the level of resident support for the proposed conversion, and that those provisions authorize the agency, at its discretion, to disapprove the map, if it finds that the results of the survey have not demonstrated adequate resident support.

(2) Clarify that subdivision (e) of Section 66427.5 of the Government Code is not intended to relieve the subdivider or the local agency from the requirement of complying with other applicable state ~~or local~~ laws~~, including, but not limited to, Chapter 4 (commencing with Section 66473) of Division 2 of Title 7 of the Government Code~~.

The City of Carson Urges Passage of SB 444 (Evans)

SB 444 restores fairness and balance to the process of converting a "mobilehome" park from rental to condominium ownership. It will give manufactured-home owners a "seat at the table" when a park owner proposes to convert a rental park and clarifies local government's oversight regarding this important land use decision.

WHY LOCAL GOVERNMENTS NEED SB 444

Right now, California's conversion statue is broken. The current law was originally enacted to provide park ***residents*** with a vehicle for converting their parks from rental to resident ownership. However, park ***owners*** have discovered a "loophole" in this law and are now exploiting the conversion statute to force their parks to convert without meaningful government oversight and despite vehement objections from park residents.

Background: Government Code § 66427.5

Over a decade ago, in an effort to streamline the process for ***resident***-initiated park conversions, California adopted a special provision of the Subdivision Map Act. This provision – codified at Government Code § 66427.5 – limited the oversight of local governments to condition or regulate park conversions. The rationale was that, if residents were demonstrating their support for conversion by initiating the process, then the legislature wanted to streamline the process for them (given their limited financial resources).

However, some park owners saw this "streamlining" as an opportunity for them to convert the parks without government oversight and notwithstanding any objections from their park residents. In other words, the very law intended to make it easier for residents to initiate park conversions has been hijacked by park owners to force park conversions and displace tenants without the support of their parks' homeowners or local governments, and at lot prices that most homeowners cannot afford.

The Current Conversion Law is Devastating to Homeowners

Forced conversions have several devastating impacts on residents:

- Upon conversion (meaning on the sale of a single lot), ***local rent control laws are eliminated throughout the entire park***.
- ***Blight is created*** because conversion limits the park owner's obligation to make repairs and upgrades normally mandated by law.
- The homeowners' investments in their "coaches" are often devastated by the high prices demanded for their lots. Since neither the current homeowner nor prospective purchasers of their homes are willing to pay the inflated prices, these ***homeowners often lose their homes, sometimes being forced to simply abandon them***.

The Current Law Encourages Applications to "Escape" From Local Rent Control

Park owners are boasting to land speculators that they can make quick millions by using California's broken conversion law to purchase mobilehome parks for "$75,000 per lot" and then immediately subdivide the parks and force low-income homeowners to purchase those lots for "$200,000 to $250,000."[1]

At a conference of the Property Rights Foundation of America, a conversion proponent gave a speech entitled "Hope for People Fighting Rent Control" which detailed the process of using litigation to escape from local rent control:

> "Make it expensive. ***Litigation is a strategy that works especially when cities are strapped for money***. That often brings them to the table. It has worked for us. It has worked even in places like New Jersey where we have challenged rent control. ***In essence, what happens is that the cities just get tired of fighting litigation***. They can't afford to protect the small group's interest and bust the budget."[2]

An Important Case Study: El Dorado – A "Failed" Conversion

The landmark case of *El Dorado v. Palm Springs* demonstrates the disastrous effects of carrying out a forced "bad faith" park conversion. In *El Dorado*, the owner of a manufactured-home park in Palm Springs filed a tentative subdivision map with the City to convert his park.

All evidence suggested that this was a "bad faith" or "sham" conversion – i.e. that the owner wished to convert his park for the sole purpose of avoiding local rent control laws and displacing tenants who could not afford to purchase their lots (at artificially increased prices). In addition, the conversion was met with nearly unanimous resident objection. As such, the City imposed conditions on the approval of El Dorado's map, and the owner sued the City.

Although the City won at the trial level, the Fourth District Court of Appeals ruled that, as written, Section 66427.5 mandated that the conversion be approved because it did not provide the council with the authority to deny or limit the process in order to protect residents. However, ***in so holding, the Court described this statutory issue as a "legislative oversight" and noted that "they too were concerned about a sham conversion."***

The aftermath of this forced conversion was devastating. Many residents were forced to move out and "abandon" their homes because they could not afford to move their home or continue living in the park. As recently as a year ago, as many as 50 lots remained completely empty when, prior to conversion, this park was completely full of coaches.

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[1] This information was included in a speech delivered at the 26th Annual Real Property Retreat regarding the politics of conversions. The full message was as follows: "***A normal price nowadays for a mobilehome park is maybe $75,000, $80,000*** because they're being purchased based upon their cash flow, based upon their net operating income. ***If they can convert the property to a subdivision and sell the lots, what we're seeing is, in nice areas, that the spaces are worth between $200,000 and $250,000 a space.*** So, let's assume that the average mobilehome park is 200 spaces, so it's worth say $70,000 a space as a rental park, that's $14,000,000. ***Let's assume it's worth $200,000 as a subdivided park, times 200, that's $40,000,000.*** So . . . do I have your attention?"

[2] On Monday, March 28, 2011, the Ninth Circuit delivered a stinging rebuke to those who use litigation as a tactic to escape from local rent control. In *Colony Cove v. City of Carson* (9th Cir. 2011) Case No 09-57039, the federal court held that a 2008 challenge to the 1979 Carson rent control ordinance was "time barred" and not properly brought in a federal court.

WHAT SB 444 WILL CLARIFY IN THE CURRENT CONVERSION LAW

Clarification #1: Survey of Support

In direct response to *El Dorado*, in 2002, the Legislature amended Section 66427.5 in an attempt to protect park residents from forced conversions. The 2002 amendment added a requirement that a conversion applicant prepare a "survey of support" measuring resident support for the proposed conversion and then file the same with their conversion application.[3]

However, this amendment was plagued by yet another "legislative oversight": it did not expressly require majority support of the residents for the conversion. Rather, the statute now requires that the applicant "obtain a survey of support," but does not clarify what happens when the survey shows residents oppose conversion of their parks.

Park owners argue that local governments have ***no*** discretion to deny a conversion application, even when the requisite survey of support shows little or no resident support for such a conversion. They argue that, even though the park owner must survey the residents and provide the results to the local government, local government must simply put the survey aside and ignore its results when considering the conversion application. The result: there has been an explosion of litigation by park owners against local governments who dare to deny conversion applications that have no resident support.

In one of these cases, *Colony Cove, LLC v. City of Carson*, ***the courts directly requested clarification of this "survey of support" issue by the Legislature.*** In both *Colony Cove*, and the companion *Pacific Palisades* case, the Second District Court of Appeals agreed with local governments and held that the resident support survey ***can*** be considered in deciding whether to grant a conversion application. In so holding, the Court noted that the law needs clarification and pleaded with the Legislature to fix the statute:

> "The uncertainty derives from the statute itself, which requires local agencies to consider resident survey results but provides no guidance as to how the results may be used. ***It is our hope that the Legislature will recognize the dilemma faced by local agencies . . . and act to clarify the scope of their authority and responsibilities.***"

Clarification #2: State Law Preemption

In the complementary case of *Pacific Palisades Bowl Mobile Estates v. City of Los Angeles*, the Court of Appeals requested clarification of a second issue plaguing Section 66427.5. In *Pacific Palisades*, the court was faced with the question of whether the local government could, in considering the map, require the conversion application to comply with other state statutes (in this case, the Coastal Act and the Mello Act).

The park owner argued that Section 66427.5 supersedes any and all conflicting provisions of state law. Even where a proposed conversion conflicts with state law, the park owner argued that Section 66427.5 mandated that the local government ***must ignore conflicting state law*** and approve the conversion.

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[3] Cal. Gov. Code § 66427.5(d)(1). The legislative intent of this amendment states: "It is the intent of the legislature to address the conversion of a mobile home park to resident ownership that is not a *bona fide* resident conversion . . . . ***Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent non-bona fide resident conversions***. . . . It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions."

The Court of Appeals in *Pacific Palisades* disagreed. It held that: "Section 66427.5 does ***not*** preclude the City from imposing conditions and requirements mandated by [state law] on a subdivider seeking to convert to resident ownership a park located in the coastal zone." It is critical, therefore, that the Legislature clarifies the meaning of Section 66427.5 and ensures that other important state statutes are harmonized with, not superseded by, the conversion statute.

HOW SB 444 WILL CLARIFY THE CURRENT CONVERSION LAW

First, SB 444 ***clarifies*** the original intent of Section 66427.5 by making clear that local governments ***can*** consider the resident survey of support when deciding whether or not to approve a conversion application. SB 444 will give meaning and validity to the survey of support that is already required by law, but otherwise leaves intact existing law. It will allow the voices of park residents, whose lives will be so dramatically impacted by a park conversion, a "place at the table" as the 2002 amendment originally intended.

Second, SB 444 ***clarifies*** that Section 66427.5 does not supersede all other state laws which may apply to conversions. SB 444 will make it clear that local governments must also consider whether a proposed conversion is consistent with other relevant state laws such as the Coastal Act, the Mello Act or other important state policies which have an impact on conversion (just as they are currently required to do when considering any other development application).

A few things to note about these proposed clarifications:

- ***SB 444 is proposed in direct response to appellate court decisions requesting legislative guidance in interpreting this statute.*** As detailed above, these revisions address inconsistencies identified by the Court of Appeals in *Colony Cove* and *Pacific Palisades* and clarify the statute in the manner requested by the Court of Appeals.
- ***SB 444 will not change the conversion law.*** This bill will simply clarify Section 64427.5 to comport with the original intention behind the statute. (This will allow local governments to apply the law retroactively in cases currently pending before the courts.)
- ***SB 444 will not impact most conversion applications.*** Currently, most park conversions are supported by park residents (and the survey of support demonstrates a majority of support). This bill only addresses park owner initiated/resident opposed conversions and helps in making Section 66427.5 a "self-governing" statute by encouraging cooperation and agreement by both sides in a situation where property interests are inapposite.
- ***SB 444 will put an end to expensive litigation.*** Currently, nearly every denial or conditional approval of a conversion application by a local government is met with expensive and protracted litigation. These simple clarifications will put an end to this multi-mullion dollar litigation which is clogging up our courts.

The City of Carson, with 21 mobilehome parks in our community, respectfully urges your support for this important measure.