

**S 187243**

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

PACIFIC PALISADES BOWL MOBILE  
ESTATES, LLC,

Plaintiff, Respondent, and  
Cross-Appellant,

v.

CITY OF LOS ANGELES,

Defendant, Appellant, and  
Cross-Respondent.

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S \_\_\_\_\_

Second Appellate District  
Case no. B216515

Los Angeles County Superior  
Court case no. BS112956

Honorable James G. Chalfant,  
Judge of the Superior Court.

**SUPREME COURT  
FILED**

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Deputy

**PETITION FOR REVIEW**

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TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF CALIFORNIA, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Plaintiff and respondent, Pacific Palisades Bowl Mobile Estates, LLC ("Palisades Bowl"), respectfully petitions for review of Part B of the published decision in this matter issued on August 31, 2010, by the California Court of Appeal, Second Appellate District, Division Four. The Westlaw version of the opinion is appended. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2010) 187 Cal.App.4th 1461 [114 Cal.Rptr.3d 838])

As this petition will demonstrate, the case well warrants review under Rule of Court 8.500(b)(1). It presents a direct conflict of published authority and a questionable expansion of California's coastal legislation.

### **QUESTIONS PRESENTED FOR REVIEW**

**1.**

Did the Legislature intend to subject a much-litigated type of mobilehome park subdivision to the exclusive control of Government Code § 66427.5, as held in *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270 (*review denied*) and other

published opinions; or, as held below, did the Legislature intend to permit deviations from § 66427.5 whenever a local agency can cite some other state statute as *sub silentio* authority for the deviation?

2.

Did the Court of Appeal correctly hold that the California Coastal Act of 1976 (Pub. Resources Code § 30000 *et seq.*) and the Mello Act (Gov.Code § 65590 *et seq.*) even *apply* to the type of subdivision covered by § 66427.5 — which changes nothing but the legal structure of an existing park to permit resident ownership of existing spaces — when by definition this does not “change . . . the density or intensity of use of land” (Coastal Act § 30106) and does not displace low-income residents within the meaning of the Mello Act?

**INTRODUCTION**

Government Code § 66427.5 (hereafter, “§ 66427.5”) applies to the technical subdivision or “conversion” of an existing and occupied mobilehome park for one purpose alone: to permit at least some residents to purchase their space rather than continue renting it. (*See generally, Sequoia Park Associates, supra*, 176 Cal.App.4th 1270.) As stated in Govt. Code § 50780, subd. (a)(1): “mobilehome parks provide a significant source of homeownership for California residents. . . .” Indeed, the Legislature has long supported such homeownership

opportunities with funding. (*See, El Dorado Palm Springs, Ltd., v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1159, citing “the . . . Mobilehome Park Purchase Fund [which] provide[s] supplemental funding to encourage and assist mobilehome park residents to purchase the mobilehome parks and convert them to resident ownership. (Health & Saf.Code, § 50780, subd. (a)).”)

In 1995, however, the Legislature took forceful action to protect the foregoing policy from local interference. As the sponsor of the relevant bill complained, “[s]ome local governments have imposed a virtual roadblock to park conversion . . . .” (Appellant’s Appendix Vol. 4 [“4 AA”] at 750 (quoting Senator William A. Craven, sponsor of SB 310) Thus, the Legislature adopted a preemptive set of statewide criteria for the approval of this type of subdivision. (*Sequoia Park Associates, supra*, 176 Cal.App.4th at 1282-1287)

The contours of the preemption have continued to engender debate, litigation, and legislative activity. Section 66427.5 was amended again in 2002, and the opinion below is the fourth published decision on this subject since 2002. (*El Dorado Palm Springs, Ltd., supra*; *Sequoia Park, supra*; and *Colony Cove Properties, LLC v. City of Carson* (2010) 187 Cal.App.4th 1487 [114 Cal.Rptr.3d 822]) The controversy has also spawned several recent unpublished decisions.

Until now, however, at least one fundamental point appeared settled. While some differences remain as to the intent and ramifications of § 66427.5 itself, a consensus had emerged that § 66427.5 is the *only* state statute governing this specialized and sensitive form of subdivision. So all the players — local agencies, park residents, and park owners — at least knew the basic rules and could govern themselves accordingly.

Not any more. The opinion below blesses criteria for this type of subdivision that have no colorable grounding in any language of § 66427.5. The opinion holds that local agencies like the appellant, City of Los Angeles, have free rein to block § 66427.5 subdivisions by citing *other* state statutes. In this case it was the Coastal Act and Mello Act. But the reasoning below — in direct conflict with the *Sequoia Park* line of cases — extends a wide invitation to similar reasoning and results. This Court should settle the conflict and restore a modicum of certainty to this important issue of continuing statewide concern.

In the process, the Court should also settle an important point about the Coastal Act and Mello Act, statutes governing a huge area of the State. While the Legislature carefully limited the reach of those statutes to avoid conflicts with other ones, the opinion below brushes those limitations aside and upsets the intended balance. In significant

part, moreover, it follows uncritically a poorly reasoned holding never followed before (*California Coastal Commission v. Quanta Inv. Corp.* (1980) 113 Cal.App.3d 579). Accordingly, this Court should disapprove *Quanta's* holding as well, or at least confine it to its facts, and restore the balance deliberately established by the Legislature.

### SUMMARY OF THE CASE

The basic facts and proceedings material to this petition can be summarized briefly. The Palisades Bowl Mobilehome Park is located at 16321 Pacific Coast Highway, across the street from Will Rogers State Beach. (9 AA at 1952) On April 23, 2007, Palisades Bowl commenced discussions with city officials to determine what information should be included in its proposed application to convert its 170+ unit mobilehome park to resident ownership. (9 AA 1952) But when Palisades Bowl first attempted to submit its application, on June 21, 2007, city officials claimed they were not "ready" for it because the city had no checklist of required items. (*Id.*) As a result, Palisades Bowl spent the next five months trying to work with the City to develop such a checklist. (*Id.*)

Finally, Palisades Bowl attempted in vain to file its application on November 13, 2007, in the hope of at least obtaining an authoritative decision as to completeness or incompleteness of its application. (9 AA

1952) But all it received was an e-mail on November 20, 2007, attempting to explain why the application had been rejected. (9 AA 1953) The e-mail also listed five items “you need to file [with] your application. . .” (2 AA 235, 9 AA 1953) They included: (1) apply for a general plan amendment and zoning change, (2) apply for Mello Act clearance, (3) apply for a coastal development permit, (4) submit a parcel map application, and (5) submit a new tenant impact report. (9 AA 1957) However, the city subsequently narrowed its position to only two of those requirements: the Mello Act clearance and the coastal development permit. (9 AA 1957)

After the city refused to accept the application of November 13, 2007 (AA 2:236), Palisades Bowl filed its original petition in the superior court for a writ of mandate on January 17, 2008. (1 AA 8 *et seq.*) Palisades Bowl brought causes of action for traditional mandamus and declaratory and injunctive relief.

Following amendments, briefing, and argument, Palisades Bowl prevailed on its contention that § 66427.5 preempted the city’s attempt to impose criteria for a subdivision application that were not enumerated in that statute. Los Angeles Superior Court Judge James C. Chalfant issued an extraordinarily detailed analysis of the various statutes involved. (9 AA 1951-1960) Judgment followed on April 13, 2009 (9

AA 1998-2002) and a peremptory writ on May 7, 2009. (*Id.* at 2010-2013)

The city timely appealed as to the preemption issues, and Palisades Bowl pursued a cross-appeal from the denial of its claims under the Permit Streamlining Act (Govt. Code § 65920 *et seq.*) However, it does not seek review of Part A of the opinion below on the latter subject.

## LEGAL ANALYSIS

### I.

#### REVIEW IS WARRANTED TO RESOLVE A CONFLICT IN PUBLISHED AUTHORITY WHETHER THE LEGISLATURE INTENDED TO ADOPT ONLY ONE SET OF CRITERIA FOR A SENSITIVE TYPE OF MOBILEHOME PARK SUBDIVISION

### A.

#### THE TEXT OF § 66427.5

There is no need to repeat *Sequoia Park's* thorough explanation why § 66427.5, both before and after its amendment in 2002, was intended as the sole authority over conversion applications through its uniform statewide criteria. While that opinion focuses on state versus

local authority, its whole premise is that § 66427.5 was intended as the *exclusive* statewide authority over this type of subdivision.

Nevertheless, the opinion below finds a legislative intent to permit additional criteria if credibly founded on other state statutes. That holding cannot survive scrutiny, and the first reason is textual. There is a tried and true way to make statutes nonexclusive. The Legislature says so. And here it did not.

One familiar way to make a statute nonexclusive is to insert the proviso: "except as otherwise provided by statute." An eminent domain statute, for example, provides: "[e]xcept as otherwise provided by statute, all improvements pertaining to the realty shall be taken into account in determining compensation." (Code Civ. Proc. § 1263.210, subd. (a)) In that case, the Legislature plainly contemplated a role for other statutes. But no such language appears in § 66427.5.

Nor are there words to that effect in the key provision cited by *Sequoia Park* and its predecessor, *El Dorado Palm Springs, Ltd.*, as evidence of a strong preemptive intent. The provision reads:

[t]he scope of the hearing shall be limited to the issue of compliance with this section. (Subd. (e))

“This section” means § 66427.5. Period. Had the Legislature contemplated a role for any other statutes in the application process, whether directly or through local implementation, this would have been a logical place to say so. The Legislature could have modified the passage to conclude: “compliance with this section *or any other applicable statute.*” Or, perhaps: “*any other applicable statute or its local implementation.*” But no such language appears.

It is also telling, finally, that Govt. Code § 66427.4, immediately preceding § 66427.5, expressly allows supplemental criteria for a different kind of park conversion, one designed to close the park and convert the land “to another use.” (§ 66427.4, subd. (a)) On that subject, the Legislature provided: “[t]his 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.”

The absence of such a proviso in § 66427.5, or any similar language, is compelling evidence of an intent to make its enumerated criteria exclusive of *any* local criteria — whether or not other state statutes could be cited in their defense. Nor should the courts effectively insert a proposition into a statute so plainly at odds with its text. As this Court stated in *Regents of the Univ. of California v.*

*Superior Court* (1999) 20 Cal.4th 509, 531: “[w]hat [the Legislature] did not speak we should not claim to hear.”

**B.**

**A “STATE STATUTE” EXCEPTION WOULD  
GUT THE INTENDED PREEMPTION**

The same conclusion follows from the consequences of the holding below. The broad sweep of the proposed “state statute” exception would decimate the preemptive force of § 66427.5. *Innumerable* local ordinances and policies rest on state law to one extent or another.

In *Sequoia Park*, for example, Sonoma County had deviated from § 66427.5 by requiring applicants to document compliance with “the goals and policies of the General Plan Housing Element. . . .” (Quoted at 176 Cal.App.4th 1288) But such housing elements are directly compelled by one state statute (Govt. Code § 65302, subd. (c)) and heavily influenced by others. (Govt. Code §§ 65580 *et seq.*) Accordingly, the “state statute” rationale advanced in the present case would have produced a contrary result in *Sequoia Park*.

But the “state statute” exception would sweep much more broadly. Local governments bent on evasion could cite the foregoing

land-use statutes alone to justify innumerable deviations. Those statutes alone authorize local action on a myriad of issues such as highways, terminals, military installations, forests, soils, rivers, harbors, fisheries, pollution, erosion, open space, noise, earthquakes, floods, and tsunamis.

Beyond the land-use statutes, however, lies a vast trove of state law that local governments hostile to § 66427.5 could invoke. For example, why not require applicants to track down every dog within 25 miles of the mobilehome park and file a report on their safety? Under the “state statute” rationale, a city could easily point to Civil Code § 3342.5, which admonishes that “[n]othing in this section shall be construed to prevent legislation in the field of dog control by any city, county, or city and county.” (Subd. e))

*Sequoia Park* properly rejected the “housing element” rationale for evading § 66427.5 even though it rests squarely on state law. This Court should now reject the entire “state statute” rationale. It would invite interference with conversion applications any time a local agency could cite a statute relevant in any way to a mobilehome park or its proposed conversion to resident ownership. If that were sufficient to avoid the preemptive force of § 66427.5, it would effectively repeal the statute. And that is the Legislature’s prerogative, not the courts’.

## II.

### REVIEW IS WARRANTED TO SETTLE THE INTENDED SCOPE OF THE COASTAL ACT AND MELLO ACT

Even assuming *arguendo* that *some* state statutes might justify a deviation from § 66427.5, neither the Coastal Act nor the Mello Act would do so. Their own language and purpose bar their use to justify local stonewalling of a conversion application under § 66427.5. Moreover, their construction below would upset a delicate balance deliberately established by the Legislature between those statutes and others arguably covering similar issues.

## A.

### THE COASTAL ACT

Palisades Bowl will first demonstrate that the Coastal Act does not even apply to conversions governed by § 66427.5. But to whatever extent it might otherwise apply to mobilehome parks, several of its provisions preserve the limitations imposed on local government authority by § 66427.5.

1.

**The Act Does Not Apply  
to These Conversions**

The attempt to invoke the Coastal Act in this case rests on a very slim reed. The Act's definition of the "development" it covers includes the phrase "any other division of land." (Pub. Res. Code § 30106) But that phrase appears in a clause whose only subject is a "change in the density or intensity of use of land. . . ." And the conversions governed by § 66427.5, by definition and settled case law, do not effect such a change.

Here is the pertinent definition of "development," without changing any word or punctuation, but separating out and numbering independent clauses and emphasizing the one at issue here:

"Development" means, on land, in or under water,

[1] the placement or erection of any solid material or structure;

[2] discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste;

[3] grading, removing, dredging, mining, or extraction of any materials;

**[4] 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, except where the land division is brought about in**

connection with the purchase of such land by a public agency for public recreational use;

[5] change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure,<sup>[1]</sup> including any facility of any private, public, or municipal utility; and

[6] the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

The plain meaning of Clause 4 is that the Act applies to a “change in the density or intensity of use” of coastal land. And that reflects the dominant purpose of the Act. But then, wisely or unwisely, Clause 4 cites examples of *methods* by which such a change can be made: “including, but not limited to, subdivision pursuant to the Subdivision Map Act . . . and any other division of land, including lot splits. . . .”

Both grammatically and logically, the illustrative methods cited in Clause 4 do not alter the defining subject identified at the beginning of the clause: changes in density or intensity of use. And when a statement has a defining subject like that, especially one so plainly stated as here, it impresses a meaning and limits on any examples that follow.

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<sup>1</sup> A subsequent definition of “structure” has no bearing here.

Otherwise, such examples could too easily be taken out of context, ignoring and distorting the plain meaning of the statement as a whole. Indeed, that very flaw was identified and rejected in *American Civil Rights Found. v. Berkeley Unified School Dist.* (2009) 172 Cal.App.4th 207 (*review denied*). The appellant was relying on one phrase in a constitutional provision. The Court of Appeal responded: “The argument distorts the language of the constitutional provision *by omitting the subject of the sentence . . .*” (*Id.* at 218; italics added)

The same flaw undermines the principal authority the opinion cites to the contrary on Clause 4: *California Coastal Commission v. Quanta Inv. Corp., supra*, 113 Cal. App.3d 579, 605-609. Without addressing the defining subject of Clause 4, the opinion by Justice Auerbach held that the phrase “division of land” was sufficient to apply the Coastal Act to a conversion of apartments into a stock cooperative. *Quanta* said nothing about the context of that phrase in a clause whose only subject was a change in density or intensity of use. Instead, *Quanta* focused exclusively on the examples of methods, reasoning that a “division of land” must be construed at least as broadly as a “subdivision pursuant to the Subdivision Map Act. . . .”

True enough, subordinate phrases ordinarily have the same import when used for similar purposes in the same statement. But the

*nature* of that common import depends on the defining subject of the statement. With respect, *Quanta* erred by taking subordinate phrases completely out of context, and thereby giving the Coastal Act an expansive reach that cannot be reconciled with the grammar, logic, and purpose of Clause 4.

The opinion below marks the first time *Quanta* has ever been followed on this point, and part of its rationale is now moot.<sup>2</sup> Accordingly, the present case presents an apt opportunity to disapprove this holding or, at a minimum, limit it to stock cooperatives. In the present case, for example, it is well settled that mobilehome park conversions under § 66427.5 entail *no* change in use of the land — let alone a change in “density or intensity” as contemplated by the Coastal Act. *El Dorado* squarely held that “a change in form of ownership [under § 66427.5] is not a change in use.” (96 Cal.App.4th 1153) Similarly, *Sequoia Park* held that, notwithstanding a conversion under § 66427.5, “the mobilehome park will continue to operate as such,

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<sup>2</sup> *Quanta* reasoned that, if a stock cooperative conversion affects affordable housing, it “may have an impact of concern in this area of [Coastal] Commission interest” (113 Cal.App.3d at 588 and 609) But the statutory language twice cited to that effect, in Pub. Res. Code § 30213, was deleted the next year. (SB 626; Stats.1981, c. 1007, p. 3900, § 2) And the same bill added a provision that “[n]o local coastal program shall be required to include housing policies and programs.” (*Id.*, § 3, codified as P.R.C. § 30500.1)

merely transitioning from a rental to an ownership basis.” (176 Cal.App. 4th 1296)

On this record, then, this Court should hold that the Coastal Act was never intended to apply to conversions under § 66427.5 because they entail no change in the density or intensity of use of coastal land.

2.

**Even if the Coastal Act Applied in Other Ways, It Expressly Preserves the Force of a Statute Like § 66427.5**

Unlike § 66427.5, which leaves no room for parallel or supplemental rules on its subject matter, the Coastal Act repeatedly acknowledges such rules and expressly preserves their force. And it does so on the very subject of local authority. As a result, to whatever extent the Legislature may have intended the Coastal Act to apply to mobilehome parks, the Act expressly preserves the limitations on local authority found in a statute like § 66427.5.

To begin with, Pub. Res. Code § 30005, subd. (a), addresses local power “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.” That broad power arguably

extends to mobilehome parks. But while § 30005(a) declares that the *Coastal Act* does not limit that power, the subdivision begins: “[e]xcept as otherwise limited by state law. . . .” Thus, § 30005(a) expressly preserves all other state-law limitations on the local power it addresses. Accordingly, however else the Coastal Act might authorize local action involving mobilehome parks, the Act expressly preserves the limitations of local power under a statute like § 66427.5. If there were truly a tension or conflict as the city maintains, the Legislature plainly intended § 66427.5 to control.

To the same effect is Pub. Res. Code § 30005.5. It provides, in relevant part: “[n]othing in this division shall be construed to authorize 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 [P.R.C.] Section 30519.” As applied here, one of the “laws of this state” denies any power to local governments to impose criteria for conversion applications not enumerated in § 66427.5. Nor does P.R.C. § 30519 address that subject at all. Again, P.R.C. § 30005.5 expressly defers to a power-limiting statute like § 66427.5.

Finally, P.R.C. § 30007 provides in pertinent part: “[n]othing in this division shall exempt local governments from meeting the requirements of state . . . law with respect to providing low- and

moderate-income housing . . . or any other obligation related to housing imposed by existing law or any law hereafter enacted.” Section 66427.5 is one such requirement. It compels local governments to approve any conversion map meeting the uniform statewide criteria. And the purpose of that requirement is to maintain California’s mobilehome parks as sources of affordable housing.

The appellant city’s own opening brief below so acknowledges. It correctly points out that the Legislature:

establish[ed] a fund to help residents acquire the mobilehome parks in which they reside . . . . [because] mobilehome parks provide a significant source of homeownership for California residents. . . . [The Legislature] further identifie[d] pressures on the park owners to convert the parks to other uses which create a danger to residents most in need of affordable housing. . . . Therefore, . . . the Legislature intended to encourage and facilitate the conversion of mobilehome parks to resident ownership, and for the government to provide supplemental funding. (AOB 36)

We cannot say it any better. But the Legislature’s same policy — “to encourage and facilitate” these conversions — also explains its determination in § 66427.5 to prohibit local deviations and obstructions.

In addition, § 66427.5 addresses the affordability of *rents* at a converted park. It speaks of “avoid[ing] the economic displacement of all nonpurchasing residents” (introductory par.); gives residents an “option” to purchase, not a command (subd. (a)); and controls rent for all who do not purchase, in accordance with their means. (Subd. (f))

For the foregoing reasons, § 66427.5 is precisely the type of legislation identified in P.R.C. § 30007. And it follows that the latter statute expressly preserves the force of § 66427.5 against any contrary reading of the Coastal Act.

## **B.**

### **THE MELLO ACT**

The Mello Act is much shorter than the Coastal Act, and needs only one provision to establish its deference to statutes like § 66427.5. Govt. Code § 65590, subd. (h), states: “[n]o provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.” In other words, the Mello Act expressly preserves any other law that limits local authority within the scope of subdivision (h).

One such law is § 66427.5. As fully explained in the preceding section of this petition, both the text and underlying policy of § 66427.5 address “the continued affordability of housing” within the meaning of the Mello Act. And the latter, accordingly, expressly preserves the *limitation* in § 66427.5 on local powers on that subject.

Finally, it makes perfect sense for the Mello Act to defer in that way. The essence of the Act is to require *replacement*, when necessary, of low- or moderate-income housing in a coastal area. (Govt. Code § 65590, subd. (b)) Indeed, while the Act includes mobilehome park conversions within its primary coverage clause,<sup>3</sup> the latter contains a restriction dramatically confirming the Act’s focus on a *loss* of housing units in a coastal area, not just a change in the form of ownership. And as shown previously, conversions governed by § 66427.5 entail no loss of housing units at all.

Under its primary coverage provision, subdivision (b), the Mello Act applies only to “residential dwelling units occupied by persons and families of low or moderate income. . . .” But subdivision (b) goes on to limit that phrase sharply. A separate paragraph provides:

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<sup>3</sup> The general coverage clause, subdivision (b), uses the term “conversion,” whose definition in subd. (g)(1) includes a mobilehome park conversion.



## CERTIFICATE OF LENGTH OF PETITION

The undersigned, counsel for the plaintiffs and appellants, hereby certifies pursuant to Rule 14(c)(1), California Rules of Court, that the foregoing petition is proportionately spaced, has a 13-point typeface, and contains 4,350 words as computed by the word processing program (WordPerfect X4) used to prepare the petition.

DATED: October 12, 2010

/s/

ELLIOT L. BIEN

