

**CALIFORNIA COASTAL COMMISSION**

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MEMORANDUM

March 6, 2002

TO: Commissioners and Interested Parties

FROM: Sarah Christie, Legislative Coordinator
John Bowers, Staff Counsel

SUBJECT: Report on Affordable Housing Program

LEGISLATIVE HISTORY

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 As originally enacted, Section 30213 of the Coastal Act provided:

“Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided.” (Emphasis added.)

Under that authority, the Commission required, as conditions to coastal development permits issued for numerous Orange County residential subdivisions, that 25% to 35% of the permitted units be maintained as affordable housing with re-sale controls to ensure their continued affordability.

In 1981, the Legislature repealed the Commission’s statutory authority to protect and provide affordable housing in the coastal zone. SB 626 (Mello) (Ch. 1007 Statutes of 1981) amended PRC Section 30213 by deleting the italicized language above, and by adding Section 30500.1 which states:

“No local coastal program shall be required to include housing policies and programs.”

And Section 30607.2 (a) which states:

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

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

BACKGROUND

Between January 1, 1977 and January 1, 1982, a total of 1,195 affordable, owner/occupancy dwelling units were either constructed or required to be built as part of large development projects in Orange County as a result of Commission actions pursuant to Section 30213. The Commission subsequently removed the condition to provide 429 affordable units prior to their construction at Monarch Beach (A-79-5539), at the request of the developer. A total of 766 units countywide were actually built. These units are in the communities of Laguna Niguel, Dana Point, San Clemente, and various unincorporated areas of Orange County.

The conditions imposed by the Commission required the original permit applicants to establish programs assuring the continued affordability of these units. This was accomplished through an arrangement with the Orange County Housing Authority (OCHA), which agreed to administer the re-sale program. (See Exhibit 1.) Under the agreement, which the Commission approved, the owners of the affordable units all bought their units at restricted, below-market prices. These sales were publicly subsidized through a combination of tax-exempt mortgage revenue bonds, density bonuses and cost disbursement.

As owners decided to sell, the Authority could purchase and resell the units to qualified buyers at a controlled price, or in some cases, recapture the difference between the controlled price and the market price if the option to purchase was not exercised by the Authority. The earned increment was used to support the program.

The Commission's original permit conditions were silent on the question of the duration of time that the re-sale controls were to remain in effect. The conditions simply stated that subsequent sales following the initial sale must be kept at a price affordable to households earning the same percentage of the median income. Typical condition language stated “Units shall be subject to controls on resale to assure continued affordability as provided in the Commission's Statewide Interpretive Guidelines.”¹ These guidelines, endorsed by the Legislature in Section 30169 (f) of the Coastal Act, neither contain nor provide for any limit on the duration of the resale restrictions on owner-occupied units.

¹ Permit # P-80-7284

Under the administration of the OCHA, durational limits were introduced into the resale provisions, allowing the units to be released from the program if they did not undergo resale for a period of time ranging in length from 20-30 years,. This was accomplished in the language worked out with the applicants and included in the attachments to grant deeds, which vary in format. The first of these resale controls on units in original ownership are set expire in March, 2003. Upon expiration, the units can be sold at full market value, with the seller netting the profit.

The resale provisions also require the units to be owner-occupied. Any violation of this requirement through rental or otherwise confers on the OCHA or its successor the right to cause an immediate sale of the unit either to the OCHA or to the OCHA's designee. There is strong circumstantial evidence that a greater than insubstantial proportion of the units in the program are not in compliance with this owner-occupancy requirement.

The OCHA administered the program on behalf of the Coastal Commission until February 1984, when the Orange County Board of Supervisors adopted a policy terminating the county's participation. (See Exhibit 1.) Subsequent to OCHA's withdrawal, the Commission and the Coastal Conservancy entered into an agreement with the non-profit group, Community Housing Enterprises (CHE) (See Exhibit 2.) which administered the program until 1987, when administrative demands exceeded the non-profit's capacity and what it perceived as a lack of political will on the part of public agencies to support affordable housing demoralized the volunteer staff. The organization relinquished control of the program to the Commission and the Conservancy on August 31, 1987. (See Exhibit 3.)

For approximately 2 1/2 years following CHE's exit, Commission staff was unable to find a non-profit or governmental agency willing to manage the program, and was on the verge of terminating it by allowing homeowners to delete relevant permit conditions. An informal General's opinion declared that such action would constitute a gift of public funds. (See Exhibit 4.) The opinion stated in part:

"In short, increases in value were to benefit the housing program, not the individual purchaser. The effect of amending the permits to delete the resale provisions is to permit the current individual owners, upon resale of their units, to realize the profits which would otherwise belong to the administering agency."

In response to the AG's concerns, the Commission modified, rather than deleted the resale controls, allowing the units to be sold for full market value, with up to \$10,000 per unit being placed in a special escrow account for the future implementation of an affordable housing program, should an acceptable agency or organization assume responsibility in the future.

Over the years, the program has lost 350 affordable units, which have reverted to market rate and thus been lost to the affordable housing pool. These losses occurred for a variety of reasons.

- Lack of oversight during management changes.
- Lack of qualified buyers.
- Officially released from the program by the County, CHE, CCBH or the Commission.

In August 1990, Civic Center Barrio Housing (CCBH) agreed to administer the program, which by then had dwindled to 416 units. (See Exhibit 5.) The program is self-sustaining, and offers low-interest, revolving loans as well as incentives to local realtors who find qualified buyers.

The portion of these units that are still in original ownership will lose their resale controls within the next 12 years under the existing terms of the attachments to grant deeds. The location of the units, the total number of units in the program when the CCBHC assumed responsibility for administering it, and the earliest dates on which controls on units in original ownership will expire are as follows:

Location	Total # of Units	Earliest Date of Expiration
• Niguel Beach Terrace, Dana Point	241	2003
• Cyprus West, San Clemente	9	2004
• Aliso Meadows, Laguna Hills	7	2011
• Beacon Hill, Dana Point	33	2012
• Spinaker Run, Dana Point	52	2013
• Pacific Terrace, Dana Point	36	2014
• Seawatch, Laguna Niguel	38	2014

DISCUSSION

The Legislature, the Attorney General and the Commission have declared the provision of affordable housing serves a valuable public purpose. In Section 65589.5 of the Government Code, the Legislature finds all of the following:

(1)The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California. (2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing. (3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

Although the Coastal Act no longer specifically authorizes the Commission to impose conditions relative to affordable housing on permits or amendments, a continuing responsibility exists to carry out the provisions of previously issued coastal development permits. The May 9, 1988 letter opinion of the California Attorney General deems the program to be “a valuable asset of the government” and states clearly that the Commission retains control over the program and “ultimately holds the right to control the housing program and the options to purchase or to recapture profits which are contained in the conditions.”²

Affordable housing in Orange County and throughout the coastal zone is extremely limited, due to the high cost of coastal real estate and the fact that the supply of new units lags behind demand by about a million units statewide, according to the California Housing Law Project.

² Letter to Peter Douglas, from Supervising Deputy AG Anthony Summers, May 9, 1988

Most urban areas within the county are at or near build out, eliminating the opportunity to provide substantial numbers of affordable units as a component of new development projects, and making it harder for cities to meet their affordable housing goals. Jurisdictions are attempting to offset the regional impacts of affordable housing losses by charging in-lieu fees and employing other subsidy mechanisms, but maintenance of existing units, if feasible, is generally considered to be the most effective means of providing for affordable housing needs. Unless legislative action is taken, the remaining 416 units will be lost with little likelihood of replacement.

In reading the original permit conditions requiring resale controls on a percentage of new housing between 1977 and 1982, one could come away with the impression that the commission intended the units to remain affordable for the life of the project. Although the specific language varies from permit to permit, staff could not find any permits that contemplated a reversion to market rate units. A study done by the Fair Housing Council of Orange County in 1989 calculated the difference between the subsidized rate and market rate of the units at \$14,896, 343.

Local governments count these units toward their affordable housing quotas and other planning goals set by the Housing and Community Development Agency, the Southern California Area Association of Governments and the South Coast Air Quality Management District. In some instances, the projects' specific plans have been approved by local government and the Commission in part because they have been found to be in compliance with SCAQMD Regulation 15.01 and 15.02, which requires work-trip reductions, and alternatives to work-trip reductions, achieved in part by providing an acceptable jobs/housing ratio.

CONCLUSION

The Commission clearly has a continuing responsibility to continue oversight of the affordable housing program. If the Commission decides that preserving the existing affordable units in Orange County is beneficial, it may pursue either of the following options.

- 1) Pursue legislation. Assembly-member Lowenthal has introduced a spot bill, AB 2158, to carry forward any legislative initiative that might address the issue; or
- 2) Support efforts by CCBHC to 1) identify existing units that are currently in violation of the owner-occupancy requirement (i.e. rented) 2) exercise under the terms of the program the remedy of recapture of the units by CCBHC.