Study H-851 December 12, 2002

First Supplement to Memorandum 2002-55

Nonjudicial Dispute Resolution Under CID Law: Procedural Fairness in Association Rulemaking and Decisionmaking (Comments of James Lingl)

We have received an e-mail from James Lingl, an attorney experienced in common interest development law. It is attached in the Exhibit. Mr. Lingl makes a number of comments regarding the staff draft recommendation, which are discussed below.

We also received a letter by email from the Executive Council of Homeowners ("ECHO"). It is attached in the Exhibit. ECHO reiterates their preference that the proposed procedures be mandatory and apply to all associations. They maintain that the property rights of all CID owners are deserving of the same level of protection and that allowing variation in procedures could undermine those protections. See Exhibit p. 6.

GENERAL REACTION

Although Mr. Lingl makes a number of specific suggestions for improvement to the draft recommendation, they are relatively minor and he believes that the current draft is a significant improvement over earlier efforts:

> In summary, the Memorandum 2002-55 Staff Draft Recommendations dated 11/27/02 reflect a tremendous improvement over the various proposals which had been distributed earlier in this Study. The sophistication of analysis, understanding of complex legal issues and inconsistent legal concepts, and harsh reality of attempting to balance association activities against individual owner complaints is very evident.

See Exhibit p. 5.

OVERLAPPING STATUTORY REQUIREMENTS

Generally

Mr. Lingl observes generally that confusion results when the Davis-Stirling Common Interest Development Act ("Davis-Stirling Act") and the Corporations

Code address the same subject, but in a different manner. He suggests that it would be helpful if a general provision were added to the Davis-Stirling Act indicating that it controls over the Corporations Code where the two are in conflict. See Exhibit p. 1.

The Commission is aware of the need for better coordination between the Davis-Stirling Act and the Corporations Code and has plans to address the issue as part of its more general review of common interest development law. Mr. Lingl's specific suggestion is worth noting for later consideration.

Threshold for Member Meeting Regarding Rule Change

Proposed Section 1357.170 authorizes member reversal of a recent operating rule change. That provision is drafted to coordinate with Corporations Code provisions governing a meeting of the members of a nonprofit mutual benefit corporation. Under Corporations Code Section 7510(e), five percent of the members of a nonprofit mutual benefit corporation may call a special meeting for any lawful purpose. The Commission decided to set the threshold slightly higher for calling a member meeting to reverse a rule change — proposed Section 1357.170 would require 10 percent.

Mr. Lingl writes, at Exhibit pp. 1-2:

> The Rule Change Reversal provision allows "10 percent" of the members to call for a special meeting [p.10, ln 32]. The Comment notes that this 10 percent threshold "supersedes the five percent threshold in Corporations Code Section 7510(e)."
>
> Since the language of Corp. C. 7510(e) permits special meetings to be called by 5% of the members "for any lawful purpose", and since a rule change reversal would become a 'lawful purpose' if the proposal is enacted, it is doubtful that there would really be any supersedure of the threshold percentage in the Corp Code or, more likely, there would simply be new confusion among boards and members about the percentage needed to call for a rule reversal vote.
>
> Although as a practitioner who has spent 20 years representing associations I prefer the higher threshold number in order to avoid 'nitpicking' by a small number of members, it would be better to either revise the percentage on line 32 to 5%, thereby matching it up with the Corp. C. language, or to add a clarifying phrase or sentence at the end of sub (a) stating that the percentage requirement controls 'notwithstanding the lower percentage as set forth in Corp. C. 7510(e).'

Because the language granting the power to reverse a rule change is specifically qualified by the 10 percent requirement, the staff believes it would supersede the general rule in Corporations Code Section 7510(e). However, to avoid any confusion on this point, the Commission should consider revising the comment to read as follows:

> **Comment.** Section 1357.170 authorizes member reversal of a recent rule change. This authority is limited to cases where members owning 10 percent more of the separate interests call a meeting for that purpose within the specified time. This specific provision supersedes the general provision authorizing five percent or more of the members of a nonprofit mutual benefit corporation to call a special meeting. See Corp. Code § 7510(e).

Limit Cross References to Other Codes

Proposed Section 1350.7 authorizes alternative methods of delivery of notices under the proposed procedures. The provision authorizing delivery by mail incorporates, by reference, a provision from the Code of Civil Procedure. Mr. Lingl believes that this reference makes it harder to understand what is required. See Exhibit pp. 4-5. Considering that we're striving to make common interest development law understandable to lay people, this is a good point. The staff recommends that Mr. Lingl's suggested change be implemented, by revising Section 1350.7(b)(2) as follows:

> (b) A document shall be delivered by one of the following methods:
>
> …
>
> (2) ~~Mail, pursuant to the procedure provided in subdivision (a) of Section 1013 of the Code of Civil Procedure for service by mail.~~ First class mail, postage prepaid, addressed to a member at the address last shown on the books of the association or otherwise provided by the member. Delivery is deemed to be complete on the fifth day after deposit into the United States Mail.

This would reiterate the relevant substance of the referenced section, without requiring a reader to look it up.

ARCHITECTURAL REVIEW PROCEDURES

Mr. Lingl makes a number of specific comments discussing different aspects of the proposed architectural review procedure. These are discussed below.

Relation to Civil Code Section 1360

Mr. Lingl suggests that the proposed architectural review provisions should be located near existing Civil Code Section 1360, which provides as follows:

> 1360. (a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:
>
> (1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.
>
> (2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:
>
> (A) The modifications shall be consistent with applicable building code requirements.
>
> (B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.
>
> (C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.
>
> (D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.
>
> (b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

Subdivision (a) relates to multi-unit structures, such as condominium projects. It is more substantive than procedural, limiting the scope of an association's authority to restrict certain types of modifications to such

structures. Note, however, that subparagraph (a)(2)(D) does require submission of plans and specifications for review by the association. Mr. Lingl notes that the language in that subparagraph is different from the more general language in the proposed law requiring the submission of a "written application" as the starting point of the safe harbor architectural review procedure. See Exhibit p. 3. However, the two provisions are not in conflict and the staff does not see the need for any change to the proposed law. It might be helpful if the following language were added to the Comment to Section 1378.070:

> See Section 1360(a)(2)(D) (plans and specifications must be submitted on applying to make specified types of changes).

If we were not proposing to add organizational headings to the Davis-Stirling Act, Mr. Lingl's suggestion to locate the proposed architectural review provisions near Section 1360 would make sense. However, with the recommended organizational headings, the staff thinks that the proposed location of the architectural review provisions is more logical. The Commission intends to review the organization of the Davis-Stirling Act as a whole at a later stage of this study. Mr. Lingl's suggestion can be revisited at that time.

Changes Affecting Common Area or Exclusive Use Common Area

Mr. Lingl writes, at Exhibit p. 2:

> Many architectural applications involve proposed modifications to not only the 'separate interest' [see definitions at CC 1351(l)], but also to portions of Exclusive Use Common Areas [1351(i)] and, frequently, to Common Areas [1351(b)] adjacent to an owner's residential structure. In a planned development, for instance, the 'common area' will sometimes include a portion of an owner's actual lot over which the association has an easement for landscaping or other purposes. In a condominium development, patios, balconies, etc., are inevitably 'exclusive use' portions of the common area.
>
> In order for it to be both comprehensive and simple, the coverage of proposed section 1378.010 should be revised to state on page 14, in line 36, that "... before altering a separate interest, any exclusive use common area or any other portion of the common area, this article governs.....' A similar revision should be made in proposed sections 1378.070(a) on page 16, lines 21-22, 1378.090 on page 17, line 11, etc.

Mr. Lingl makes a good point and the staff recommends that his proposed changes be implemented.

Form of Application

Mr. Lingl writes, at Exhibit p. 3:

> The governing documents of many associations, and of almost all large associations, spell out in some detail the basic requirements for an architectural application, i.e., plot plan, elevations, colors, materials, landscaping, etc. Please add a clarifying phrase or sentence in 1378.070(a), page 16, line 21-22, to the effect that the written application must be in the form and provide the information required by the association's governing documents. If the application does not comply with the requirements, then it should be deemed to be an 'incomplete application' and the subsequent proposed timelines would not apply.

The staff believes it is implicit that the application would be in the form specified by the association, but there is no harm in making it explicit. Language making clear that an incomplete application does not trigger the review process might also be helpful. To that end, Section 1378.070(a) could be revised as follows:

> (a) An association member who proposes to alter a separate interest shall submit a written application to the reviewing body. <u>The application shall be in the form specified by the association. An incomplete application may be returned to the applicant with an explanation of why the application is incomplete. No further action is required on an application that is returned as incomplete.</u>

Cost of Notices

Under the proposed law, notice to every member would be required when an architectural review application is received and when an appeal has been requested. Mr. Lingl writes, at Exhibit p. 3:

> The 'delivery of notice' provision of 1378.070(b), page 16, lines 23 - 27, is potentially very expensive and onerous. The typical cost of a simple mailing to members in an association is in excess of $1.00 per household, NOT including any charges added by a management company. Postage, envelopes, copy costs and paper all add up. My firm represents an association with 2,163 homes, several with 400 to 600 homes, and a couple of master associations with several thousand homes in multiple sub-associations. The very

> large associations receive hundreds of architectural applications each year. Typically tight association budgets would mean that they could not possibly afford to follow the proposed procedure as it is written.
>
> Proposed 1387.070(b) needs to be revised to either (1) limit the number of notices that must be delivered to only the homes in the vicinity of the proposed architectural alteration, or, (2) require the member who proposes to make the alteration to deliver the notices and provide proof of such delivery, or, (3) specifically allow the association to impose and collect a fee consistent with existing CC 1366.1 in connection with any application.

Mr. Lingl's concern about the cost of mailing in a very large association that processes hundreds of applications each year is justified. However, the proposed law has been crafted to try to keep mailing costs down. For one thing, email may be used where the recipient has assented to its use. Also, the distribution deadlines have been extended to 30 days, specifically to allow notices to be combined with monthly newsletters or dues statements. These measures would not eliminate mailing costs, but would reduce them.

Of Mr. Lingl's suggested reforms, the second and third would shift the cost of mailing to the applicant. In an association of the size Mr. Lingl mentions, this would impose a significant cost on the applicant (perhaps as much as $2,000). This does not seem like an adequate solution to the problem of excessive mailing costs.

His first suggestion, limiting mailings to neighbors of the applicant is one we have discussed before, but it warrants further consideration. In concept the idea has considerable appeal. However, it is difficult to conceive of a straightforward way to implement the idea.

The law could require notice to "adjacent" or "adjoining" properties, which would work well for properties that share a boundary, but might be hard to define with respect to properties across a street. It would not address the problems of properties that are at a higher elevation and have a clear sight line to the applicant's property, despite their nonadjacency.

Another approach would be to require notice to properties within a specified distance of the applicant's property (e.g., 100 feet). This might prove hard to implement, and could require notice to every unit in a high rise apartment-type building.

One problem with limiting notice to nearby properties is that every member in an association has an equal right to enforce the governing documents. Though

a member at one end of development might never see an applicant's property, that member still has a right to ensure that the architectural standards are applied uniformly throughout the development.

If the Commission is interested in limiting the scope of notice, the staff recommends the following revision of Section 1378.070(b) (with a parallel revision to Section 1378.090(b)):

> (b) Within 30 days after receipt of the application, the reviewing body shall deliver notice of the application to ~~all~~ members ~~of the association~~ owning property adjacent to the separate interest, common area, or exclusive use common area that is the subject of the application. The notice shall include the address of the separate interest that is the subject of the application, a description of the proposed alteration adequate to inform other members of its nature, and the date after which the reviewing body may make its decision. The notice shall also be posted in the common area, or made available for inspection where association records are kept.

A general provision would then be added along the following lines:

> For the purposes of this article, a separate interest, common area, or exclusive use common area is adjacent to another separate interest, common area, or exclusive use common area if they share a common border or if their border would be common if not for an intervening street.

This would implement the adjacent property approach, with the addition of a posting requirement. An earlier draft of the recommendation required posting in lieu of any other type of notice. That approach was criticized as impractical and insufficient (especially with respect to absentee property owners). However, combining posted notice with limited delivery might strike a reasonable balance between cost and effectiveness. Those most likely to be interested would receive actual notice, those who might theoretically be interested would have posted notice.

Scope of Inquiry

Proposed Section 1378.110 provides as follows:

> 1378.110. In making a decision to approve or disapprove a proposed alteration of a member's separate interest, the decisionmaker may consider any relevant information. The decisionmaker is not required to consider information other than that provided to the decisionmaker.

Mr. Lingl was unsure who the "decisionmaker" was and therefore misconstrued the section as an attempt to modify the scope of judicial inquiry in an administrative mandamus proceeding reviewing an association's final decision on a proposed alteration of a member's separate interest. See Exhibit p. 4.

The ambiguity could be eliminated by revising the section as follows:

> 1378.110. In making a decision to approve or disapprove a proposed alteration of a member's separate interest, the ~~decisionmaker~~ reviewing body or board of directors may consider any relevant information. The ~~decisionmaker~~ reviewing body or board of directors is not required to consider information other than that provided to the ~~decisionmaker~~ reviewing body or board of directors.

This would clarify that the provision governs the association's deliberations and not the deliberations of a judge in a subsequent writ proceeding.

Judicial Review

Mr. Lingl writes, at Exhibit p. 4:

> Requiring 'exhaustion of remedies' and use of the 'Administrative Mandamus' provisions of the CCP as proposed in 1378.100 [page 17, lines 36 - 41] may help speed up and reduce the cost of judicial challenges to architectural application decisions. It is unclear whether the mandamus remedy would be adequate in many situations, such as where the improvements have been made after approval but before a writ is issued or denied [for instance, if board approval is given for a room addition that is constructed before the mandamus proceedings are concluded, and the court determined that the approval should not have been granted, who would bear the cost of tearing the thing down? How would mandamus work in a situation such as was the fact pattern in Posey v. Leavitt [229 Cal.App.3d 1236]?

Mr. Lingl's comments do raise a significant policy issue. If a member proceeds with an improvement, in reliance on approval of the board of directors, and the approval is then set aside by a writ of mandamus, may the court compel removal of the improvement? At whose cost? Would it be better if the proposed law remained silent as to the nature of any judicial review?

LOCATION OF DEFINITIONS

Mr. Lingl suggests that the various definitions in the proposed law be moved to Section 1351, which is the location for definitions applicable to the Davis-Stirling Act as a whole. There is some advantage to having all of the definitions in one place. However, where definitions are used only in a discrete part of the Act (e.g., a chapter or article), it often makes more sense to include the definition in that part, for readier access. The staff is inclined to leave the definitions where they are. They are specialized definitions that apply only to the procedures with which they are located. It seems easier to find them there, than to hunt for them elsewhere in the Act. If, at a later stage of this study, we find ourselves using the defined terms in other areas of the act, the definitions could be generalized.

Respectfully submitted,

Brian Hebert
Staff Counsel

COMMENTS OF JAMES LINGL

Date: Wed, 11 Dec 2002 22:31:44 EST
Subject: Study H-851 - Memo 2002-55
To: bhebert@clrc.ca.gov
CC: LinglLaw@aol.com

Dear Mr. Hebert:

Please consider the following comments in connection with the Study H-851 Draft Recommendations set forth in Memorandum 2002-55. Specific references are to page and line numbers as set forth in the Staff Draft Recommendations.

As a general matter, please consider that when CID legislation is enacted as part of the Davis-Stirling Act which changes or varies from something already covered in different sections of the Codes, it only adds to the confusion; its does not clarify it. For instance the procedures set forth in Civil Code section 1363(h), mentioned in footnote 8 on page 2, differ from the disciplinary provisions of Corp. C. 7341, mentioned in the same footnote. I have been asked by board members more than once whether those two different provisions create 'alternatives', or whether one supersedes the other. Without getting into the discussion about rules of statutory interpretation, which we hope will become unnecessary after the Commission's work is done, it might just solve a lot of problems if a sentence were added either in section 1350 or, more properly in section 1352, which says something like "In the event that any provision of this title differs from any other provision of any Code applicable to a common interest development or a community association, the provision of this title shall control."

The above is a general observation, but arises specifically in view of the 'Comment' following the proposed Rule Change Reversal provisions of new section 1357.170, commencing on page 10 at line 31.

The Rule Change Reversal provision allows "10 percent" of the members to call for a special meeting [p.10, ln 32]. The Comment notes that this 10 percent

threshold “supersedes the five percent threshold in Corporations Code Section 7510(e).”

Since the language of Corp. C. 7510(e) permits special meetings to be called by 5% of the members “for any lawful purpose”, and since a rule change reversal would become a ‘lawful purpose’ if the proposal is enacted, it is doubtful that there would really be any supersedure of the threshold percentage in the Corp Code or, more likely, there would simply be new confusion among boards and members about the percentage needed to call for a rule reversal vote.

Although as a practitioner who has spent 20 years representing associations I prefer the higher threshold number in order to avoid ‘nitpicking’ by a small number of members, it would be better to either revise the percentage on line 32 to 5%, thereby matching it up with the Corp. C. language, or to add a clarifying phrase or sentence at the end of sub (a) stating that the percentage requirement controls ‘notwithstanding the lower percentage as set forth in Corp. C. 7510(e).’

I do not understand the proposed addition of a new heading of ‘Article 1’ as discussed on page 14, lines 26 -32. There are currently NO ‘Article’ headings in Title 6 of Part 4 of Division 2 of the Civil Code. Adding new Article headings near the end of Title 6 is confusing.

The entirety of proposed sections 1378.010 - 1378.120 [Line 33 on page 14 through page 18] appears to ignore the existing provisions of CC 1360, and particularly 1360(b). For clarity, simplicity and consistency, shouldn’t the new procedures be grafted into D-S as new 1360.010 through .120?

Many architectural applications involve proposed modifications to not only the ‘separate interest’ [see definitions at CC 1351(l)], but also to portions of Exclusive Use Common Areas [1351(i)] and, frequently, to Common Areas [1351(b)] adjacent to an owner’s residential structure. In a planned development, for instance, the ‘common area’ will sometimes include a portion of an owner’s actual lot over which the association has an easement for landscaping or other purposes. In a condominium development, patios, balconies, etc., are inevitably ‘exclusive use’ portions of the common area.

In order for it to be both comprehensive and simple, the coverage of proposed section 1378.010 should be revised to state on page 14, in line 36, that “... before altering a separate interest, any exclusive use common area or any other portion of the common area, this article governs.....’ A similar revision should be made in proposed sections 1378.070(a) on page 16, lines 21-22, 1378.090 on page 17, line 11, etc.

The 'written application' requirement of 1378.070 [page 16, line 22] is partly duplicative of the existing requirement in CC 1360(1)(D), and is somewhat inconsistent in its wording.

The governing documents of many associations, and of almost all large associations, spell out in some detail the basic requirements for an architectural application, i.e., plot plan, elevations, colors, materials, landscaping, etc. Please add a clarifying phrase or sentence in 1378.070(a), page 16, line 21-22, to the effect that the written application must be in the form and provide the information required by the association's governing documents. If the application does not comply with the requirements, then it should be deemed to be an 'incomplete application' and the subsequent proposed timelines would not apply.

The 'delivery of notice' provision of 1378.070(b), page 16, lines 23 - 27, is potentially very expensive and onerous. The typical cost of a simple mailing to members in an association is in excess of $1.00 per household, NOT including any charges added by a management company. Postage, envelopes, copy costs and paper all add up. My firm represents an association with 2,163 homes, several with 400 to 600 homes, and a couple of master associations with several thousand homes in multiple sub-associations. The very large associations receive hundreds of architectural applications each year. Typically tight association budgets would mean that they could not possibly afford to follow the proposed procedure as it is written.

Proposed 1387.070(b) needs to be revised to either (1) limit the number of notices that must be delivered to only the homes in the vicinity of the proposed architectural alteration, or, (2) require the member who proposes to make the alteration to deliver the notices and provide proof of such delivery, or, (3) specifically allow the association to impose and collect a fee consistent with existing CC 1366.1 in connection with any application.

If an alteration will involve any part of the Common Area, then it will be essential that notice be given to 'all members of the association' as proposed, since a modification could affect all owner's property rights in those common areas and in some instances, i.e., constructing or planting something in, or fencing/enclosing part of the common area, definitely would affect all other owner's property rights in the common areas. The common areas are usually either owned as tenants in common by all owners or are subject to easement rights of all owners.

The costs associated with delivery of a 'notice of appeal' in proposed 1378.090(b) [page 17, line 16] are the same as those discussed above for 1387.070(b). A similar resolution of the 'cost bearing' problem needs to be provided.

Requiring 'exhaustion of remedies' and use of the 'Administrative Mandamus' provisions of the CCP as proposed in 1378.100 [page 17, lines 36 - 41] may help speed up and reduce the cost of judicial challenges to architectural application decisions. It is unclear whether the mandamus remedy would be adequate in many situations, such as where the improvements have been made after approval but before a writ is issued or denied [for instance, if board approval is given for a room addition that is constructed before the mandamus proceedings are concluded, and the court determined that the approval should not have been granted, who would bear the cost of tearing the thing down? How would mandamus work in a situation such as was the fact pattern in Posey v. Leavitt [229 Cal.App.3d 1236]?

There is a term ('decisionmaker') used in proposed 1378.110 [page 18, lines 10 and 11] that is not otherwise defined and is therefore confusing. Is the term 'decisionmaker' intended to refer to the board/reviewing body as in 1378.070 and 1378.090? Or is it intended to refer to the judge in an administrative mandamus case? If the board/reviewing body, then why the use of the new term? If in a mandamus proceeding, which appears to be the intent given the numbering and placement of the section, why not just use 'judge' or 'court'?

The language of proposed 1378.110 is either clumsy or internally inconsistent. If this section is intended to relate to mandamus proceedings, there may be conflicts between what it appears to say and the procedures already existing in CCP 1094.5.

A couple of final comments. Thank you for consistently using terms as defined in 1351 whenever possible, and for adding definitions where necessary. Please, however, move all of the new definitions into 1351 so that they are all in one place for simplicity. Unless it is really necessary, as in the judicial review portion of proposed 1378.100, please do NOT cross reference to other Codes. What might have been a very straightforward description of using mail for 'Document delivery' in proposed 1350.7(b)(2) becomes a struggle due to its reference to "subdivision (a) of Section 1013 of the Code of Civil Procedure for service by mail." [page 7, lines 7 - 8]. Maybe 1350.7(b)(2) could be revised to just say "(2) First class mail, postage prepaid, addressed to a member at the address

last shown on the books of the association or such other address as a member may provide. Delivery by mail is deemed to be complete on the fifth day after its deposit into the United States Mail." or words to that effect. What about also adding something for delivery by alternate document delivery services. Do not, please DO NOT, require anything to be sent certified or registered, since all that does is adds delay, cost, inconvenience to the recipient, and will not be picked up if a member thinks it will contain 'bad news'.

In summary, the Memorandum 2002-55 Staff Draft Recommendations dated 11/27/02 reflect a tremendous improvement over the various proposals which had been distributed earlier in this Study. The sophistication of analysis, understanding of complex legal issues and inconsistent legal concepts, and harsh reality of attempting to balance association activities against individual owner complaints is very evident. The Staff is to be congratulated.

If I can be of any assistance, or provide any further information or comments, please feel free to contact me.

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COMMENTS OF EXECUTIVE COUNCIL OF HOMEOWNERS

Executive Council of Homeowners
Of, By and For Homeowners

DATE: DECEMBER 12, 2002
TO: NAT STERLING, ESQ.
FROM: S. GUY PUCCIO, LEGISLATIVE ADVOCATE
RE: CLRC MEETING

ECHO is in receipt of the minutes of the meetings held November 7th and 8th, 2002 in Los Angeles. As you are aware, ECHO has participated in most of the discussions held by the CLRC regarding the important issues being considered for possible amendments to the Davis-Stirling Act.

Unfortunately, no representative of ECHO was able to attend the November meeting and the same will be true for the meeting tomorrow. However, we did wish to share with you a remaining concern that we have regarding the proposed recommendations summarized in the minutes of the November meeting. It is our understanding the commission considered a portion of the memorandum 2002-44. That portion of the memorandum and comments received were in regard to tentative recommendations for procedural fairness in decisionmaking and rulemaking by the boards of community associations.

We noted that the commission's current tentative recommendation is to characterize its proposed procedures as "safe harbor" procedures rather than statutory mandates. The commission suggests that if alternative procedures are adopted, they shall be made in good faith and in a fair and reasonable manner. The proposed "safe harbor" procedures would be set forth in Civil Code §§1378.050 and .080. ECHO believes that the primary goal in adopting the decisionmaking and rulemaking procedures should be to protect the property rights of each member of the community association.

Members of community associations should expect and are entitled to rely upon uniform procedures no matter how small or how large the common interest development project may be. Allowing directors of community associations to adopt alternative procedures could easily result in confusion and misunderstandings with a concomitant diminishment of the property rights of

the individual members. No matter where an individual member owning a separate interest lives, or plans to relocate, they should expect to experience the same procedural protections. ECHO much prefers that the procedure for decisionmaking and rulemaking be implemented by statutory mandate and, therefore, applicable to all community associations.

SGP:kj

Dictated but not read to expedite transmission.