Study H-851 January 23, 2004

Memorandum 2004-5

Common Interest Development Law: Architectural Review and Decisionmaking (Comments on Tentative Recommendation)

The governing documents of many common interest developments require approval of the community association before a homeowner can make a physical change to the homeowner's separate interest property. Existing case law requires that a decision regarding a proposed change to a homeowner's separate interest property be made in good faith, pursuant to a fair and reasonable procedure, and that the decision not be unreasonable, arbitrary, or capricious. In November 2003, the Commission approved circulation of a tentative recommendation to codify those general requirements. The proposed law would also require that a decision be in writing and that a homeowner whose application is disapproved have a right of reconsideration by the board of directors.

We received three letters commenting on the tentative recommendation. The first two letters are attached in the Exhibit as follows:

The third letter, from Frank H. Roberts of Palo Alto (Jan. 13, 2004), was fairly lengthy and commented only briefly on the tentative recommendation. It is on file with the staff, but has not been attached. Excerpts from Mr. Roberts' letter are included in this memorandum where relevant.

After considering the issues discussed in this memorandum, the Commission should decide whether to approve the tentative recommendation, with or without changes, as its final recommendation. Assembly Member Patricia Bates is interested in introducing a bill based on the tentative recommendation.

GENERAL RESPONSE

Duncan R. McPherson, an attorney affiliated with the Community Associations Institute, is generally in favor of the proposed law: "I thought the proposal was satisfactory and basically workable. … Good job and I appreciate

you responding to our input." See Exhibit pp. 1-2. He suggests a few minor changes, which are discussed below.

Norma J. Walker, writing on behalf of herself and Carole Hochstatter, believes that the proposed law is "appropriate," but is concerned about the lack of a nonjudicial enforcement mechanism. See Exhibit p. 3. The Commission is currently exploring the possibility of creating a state agency to help address problems with enforcement of the law. Ms. Walker and Ms. Hochstatter are both CID homeowners.

Frank H. Roberts raises a few minor issues, which are discussed below. Mr. Roberts is an attorney and CID homeowner.

BOARD OF DIRECTORS REVIEW

The proposed law would provide homeowners with a right to have a disapproval decision reconsidered by the association's board of directors. Issues relating to review by the board are discussed below.

Board as Initial Decisionmaker

Mr. McPherson suggests that reconsideration by the board should not be required when the board itself was the initial decisionmaker. See Exhibit p. 1. Board reconsideration is important because it provides an opportunity for community input at an open meeting and because it vests the final decision in the association's ultimate governing authority. If the initial decision is also made at an open meeting of the board, both of those objectives would be satisfied. It isn't clear that reconsideration would add any value under such circumstances. The staff recommends that proposed Section 1378(a)(4) be revised as follows:

> (4) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors at an open meeting of the board.
>
> **Comment**. ... Subdivision (a)(4) provides an applicant with the option to seek reconsideration of a disapproval decision, at an open meeting of the board of directors. An applicant preserves other remedies whether or not the applicant seeks reconsideration. The right of reconsideration by the board only applies if the initial decision is made by an entity other than the board of directors.

Which Board?

Some associations are part of a master planned community, in which individual associations are subordinate to an overarching master association. In such a community it might not be clear which board of directors is to review a disapproval decision. Mr. McPherson suggests that this potential ambiguity should be cleared up. See Exhibit p. 1.

The staff thinks the statute is sufficiently clear, but sees no harm in adding the following Comment language:

> **Comment**. ... Subdivision (a)(4) provides an applicant with the option to seek reconsideration of a disapproval decision, at an open meeting of the board of directors. In a master planned community, an architectural review decision could be made by the master association or by a sub-association. In such a community, a disapproval decision would be reconsidered by the board of the association that made the decision (i.e., disapproval by the master association would be reviewed by the board of the master association; disapproval by a sub-association would be reviewed by the board of the sub-association). An applicant preserves other remedies whether or not the applicant seeks reconsideration.

Closed Hearing

Mr. McPherson raises the question of whether to allow reconsideration to be conducted, at least partially, in closed session. See Exhibit p. 1. The staff recommends against this proposal. One of the benefits of reconsideration by the board is the forum it provides for community members to provide information and opinions on a proposed architectural change. Considering that the architectural standards of many associations are based on community aesthetics, and that an architectural change could conceivably affect a neighbor's property rights, it seems appropriate to provide for community involvement in the reconsideration process. What's more, proposed changes to one's home are not inherently embarrassing or private. The staff sees no need for a closed session.

Independent Architectural Committee

At the November 2003 meeting, the Commission considered whether the provision for board reconsideration of a disapproval should apply to an association where architectural review authority is vested exclusively in a body other than the board of directors. The Commission decided against exempting such associations from the general rule. In other words, all disapproval decisions

would be subject to review by the board of directors, regardless of whether such review is consistent with an association's governing documents.

As additional background on the issue, Sandra Bonato of the Executive Council of Homeowners provided the staff with a citation to an unpublished case that discusses an independent architectural review committee. In that case, the court examined the association's declaration and concluded that the board of directors had no authority to review and reverse a decision of the architectural committee. See 2001 WL 1192110 (Cal. App. 4 Dist). While that case does not provide a legal precedent, it does confirm the existence of the problem — there is at least one association with governing documents that reserve architectural review authority exclusively to a body other than the board of directors.

Given the Commission's decision to override contrary governing documents in this area, it may be worth briefly discussing the extent to which a statute may override an existing declaration without offending the contract clauses of the federal and state constitutions. See U.S. Const. art. I, § 10; Cal. Const. art I, § 9.

In *Barrett v. Dawson*, 61 Cal. App. 4th 1048 , 1054-55 (1998) (citations omitted), the court stated the following test for whether retroactive legislation violates the contract clause:

> As the United States Supreme Court has interpreted the federal contracts clause, contracts clause questions turn on a three-step analysis. … The first and threshold step is to ask whether there is any impairment at all, and, if there is, how substantial it is. … If there is no "substantial" impairment, that ends the inquiry. If there is substantial impairment, the court must next ask whether there is a "significant and legitimate public purpose" behind the state regulation at issue. … If the state regulation passes that test, the final inquiry is whether means by which the regulation acts are of a "character appropriate" to the public purpose identified in step two.

In *Barrett*, neighbors were trying to enforce a restriction prohibiting operation of a home business, in order to prevent the operation of a home day care center. After the declaration was recorded, the Legislature enacted Health and Safety Code Section 1597.40, which provides, in relevant part:

> every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

Section 1597.40 voids a substantive use restriction. Not surprisingly, the court found that a contract right had been substantially impaired. However, it found that there was also a significant and legitimate public purpose to the statute ("Indeed, ensuring adequate and local day care for working parents is probably about as broad a public purpose as any that might be imagined in the regulatory universe."). *Id*. at 1055. It then concluded that the statute was appropriately tailored to its regulatory purpose. Thus, the statutory override did not violate the contract clause.

In *Hall v. Butte Home Health, Inc.*, 60 Cal. App. 4th 308 (1997), the court upheld the retroactive application of a statute forbidding the enforcement of a restrictive covenant that would prohibit operation of a group home for the disabled. Neighbors sought to enforce a restriction prohibiting operation of a home business, in order to prevent the operation of a residential care facility for the elderly disabled. The court's analysis focused on the degree of impairment of the contractual obligation.

> The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

Id. at 319 (*quoting* Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245, 98 S.Ct. 2716, 2720, 57 L.Ed.2d 727 (1978)).

In examining the facts, the court concluded that the retroactive prohibition on enforcement of the restriction did not constitute a substantial impairment of the homeowners' contractual rights.

> The record is devoid of evidence that plaintiffs have suffered anything more than a minimal alteration of what is assuredly a long-standing, beneficial property right. …
>
> More importantly, "[t]he obligations of a contract are impaired by a law which renders them invalid, or releases or extinguishes them...." (Home Building & Loan Assn. v. Blaisdell (1934) 290 U.S. 398, 431, 54 S.Ct. 231, 237, 78 L.Ed. 413, 425, fn. omitted.) The [statute would neither] extinguish nor render invalid the Shirley Park restrictive covenants. [The statute would] prohibit enforcement of the Shirley Park restrictive covenants only to the extent such covenants have the effect of excluding the disabled and other classes of persons protected by the civil rights laws. [The statute would] not prevent enforcement of the restrictive covenants to prohibit the operation of any other type of commercial establishment nor [would it] forbid plaintiffs from excluding those

> types of facilities housing persons who are not members of the classes protected by the fair housing laws.

Id. at 320. Because the statute did not substantially impair the contract right, it did not violate the contract clause. Even if it had substantially affected a contract right, the statute's purpose and effect satisfied the other two steps of the contract impairment test. *Id*. at 321-23.

In analyzing the constitutionality of the proposed law, we must first consider whether it would "substantially" impair the contractual obligation reflected in the declaration. If the impairment is not substantial, retroactive application of the law is constitutional.

Both *Barrett* and *Hall* dealt with a statute overriding a substantive use restriction. In *Barrett*, the restriction was voided and the court found the impairment to be substantial. However, in *Hall*, the court found no substantial impairment, in part because the use at issue would only be minimally different from noncommercial residential use. Significantly, the *Hall* court also found that the impairment was not substantial because the contractual right was not fully extinguished — homeowners could still enforce the declaration to prohibit other types of home businesses.

The proposed law would not extinguish the substantive restriction on architectural change. It would merely alter the procedure by which that restriction is enforced. This strikes the staff as a much less significant impairment than was at issue in *Hall*. If the impairment in *Hall* was not substantial, a change in procedure that does not affect the substance of a contractual right is probably not substantial either. If the impairment is not substantial, no further analysis is required — the constitution is not offended.

If the impairment resulting from the proposed law is substantial, the proposed law would need to be examined to determine whether it serves a significant and legitimate public purpose and is appropriately tailored to that purpose. The provision for board reconsideration of a disapproval decision would serve the following important objectives: (1) Improve the fairness of the architectural review decisionmaking process by providing for a face-to-face hearing, in an open meeting at which other members of the community can observe and testify. (2) Improve the accountability of the decisionmaker, by vesting ultimate decisionmaking authority in a body that is elected, rather than appointed. (3) Avoid any uncertainty that might arise as to whether the duties and standards that govern a board of directors would also apply to an

independent architectural committee. These are significant and legitimate purposes. Given the relatively modest degree of impairment at issue, the hurdle to be cleared is correspondingly low. The purposes described should be sufficient to survive a contract clause challenge.

The final question is whether the proposed law is well-tailored to achieve its legitimate purposes. We could perhaps have reduced the scope of the contractual impairment by creating an exemption for an association that has an independent architectural review committee. This would deny the benefits of the proposed law to some associations, undermining the overall purpose of the proposed law. It would also complicate the law slightly, making it that much more difficult to understand and use. In *Barrett*, the court noted that the statute at issue "might have been better tailored to its purpose" but upheld it nonetheless. *Barrett* at 1048. A perfect match is not required. In general courts will defer to legislative judgment as to the necessity and reasonableness of a particular measure. 1 Miller & Starr, Cal. Real Estate Digest 3d *Constitutional Law* § 72 (2003). Given the relatively low hurdle that must be cleared, the staff believes that the proposed law is sufficiently well-tailored to its purposes.

Note also that the degree of prior regulation of a group affects the reasonableness of subsequent regulation. "Whether the state actively regulates the industry at issue frames the parties' reasonable expectations and minimizes any potential statutory impairment." *Id*. CID governance is subject to considerable statutory regulation. In fact, the Davis-Stirling Act is filled with provisions that override an association's governing documents. For example, Civil Code Section 1366 sets limits on the amount by which assessments may be increased without a vote of the members. Section 1363.05 imposes detailed procedures for conducting board meetings. Those provisions undoubtedly override the governing documents of some associations. The staff is not aware of any case in which a provision of the Davis-Stirling Act has been held to violate the contract clause.

If the proposed law overrides contrary provisions of an association's governing documents, it might be helpful to include Comment language to that effect:

> The requirements of this section apply regardless of any contrary provision in an association's governing documents.

STANDARD FOR DECISION

Consistent with case law, proposed Civil Code Section 1378(a)(2) provides:

> A decision on a proposed change shall be made in good faith and shall not be unreasonable, arbitrary, or capricious.

The following comments were made regarding this decisionmaking standard:

Standard Unnecessary?

Mr. Roberts questions whether this provision is necessary:

> I am also concerned that [proposed Civil Code Section 1378(a)(2)] would be interpreted in an appropriate factual setting to expand upon the liabilities of directors as defined in Corporations Code Section 7231. I do not suggest that under Section 7231 a director can act in bad faith or in an arbitrary, capricious or unreasonable manner; I do say that unless some expansion on the liabilities defined is Section 7231 is intended, [subdivision (a)(2)] serves no useful purpose. If you want to say that a director must conform to the rules set forth in Section 7231 of the Corporations Code, why not say so directly?

Subdivision (a)(2) serves a useful purpose. Not all homeowners associations are incorporated. An unincorporated association is not subject to Corporations Code Section 7231. Furthermore, Section 7231 governs the conduct of a *director*. As discussed above, an architectural decision could be made by a person other than a director. Subdivision (a)(2) applies to nondirectors and unincorporated associations.

To the extent that subdivision (a)(2) restates a director's duties under Section 7231, the staff sees no harm in doing so. The Davis-Stirling Act must be read and understood by lay board members who may not have ready access to the Corporations Code. It would be helpful to state the standard for architectural review decisionmaking in a location where it can easily be found by a decisionmaker.

Mr. Roberts is concerned that the standard stated in subdivision (a)(2) could perhaps expand the potential liability of a decisionmaker. However, existing law includes express provisions limiting the liability of a director for a decision made in good faith and with reasonable care. See Civ. Code § 1365.7; Corp. Code § 7231. The staff does not see how a requirement of good faith and reasoned decisionmaking in this specific context would affect those general protections. If the Commission would like to emphasize the fact that the proposed law does not

affect existing liability limitations, the following language could be added to the Comment:

> Nothing in this section affects the limitation on director liability provided in Section 1367.5 or in Corporations Code Section 7231.

Consistency with Governing Documents

Mr. McPherson suggests that the standard should also require that an architectural review decision be consistent with the association's governing documents. See Exhibit p. 1. This makes sense. The authority to require approval of an architectural change is derived from the governing documents. A decision made under such authority should be consistent with the authority that the governing documents confer.

The staff recommends that subdivision (a)(2) be revised as follows:

> (2) A decision on a proposed change shall be made in good faith and shall not be unreasonable, arbitrary, ~~or~~ capricious, or inconsistent with the association's governing documents or governing law.

EXCLUSIVE USE COMMON AREA

Proposed Civil Code Section 1378(b) makes clear that the proposed law does not authorize a change to the common area that is inconsistent with an association's governing documents or the law. Mr. Roberts wants it to be clear that subdivision (b) applies to exclusive use common area.

By definition, "exclusive use common area" is part of the common area. See Civ. Code § 1351(i). Thus, the reference in subdivision (b) to the common area, includes a reference to exclusive use common area. That fact could be reinforced by revising a sentence in the Comment to subdivision (b) as follows:

> In other associations, the governing documents may permit changes to certain features of the common areas (such as common walls, ceilings, ~~and~~ floors, and exclusive use common areas) with the approval of the association. See Civ. Code § 1351(i) ("exclusive use common area" defined).

On a related point, Mr. Roberts also feels that it is important that the term "physical change" be understood to include "not only structural changes but also changes in painting or other coverings," which would include "all windows, balcony railings, etc." The proposed Comment language is fairly clear on this

point, but there would be no harm in including additional illustrative examples, as follows:

> Physical changes that might be subject to association approval requirements include additions or renovations, landscaping, choice of exterior paint colors, coverings, or roofing materials, changes to windows and balconies, and other such changes to the structure or appearance of the property.

INTRODUCTORY CLAUSE

Mr. McPherson suggests that the application of the proposed law might be clearer if the introductory clause were revised as follows:

> 1378. (a) If an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area, the association in reviewing and approving or disapproving a physical change to the owner's separate interest shall satisfy the following requirements:

See Exhibit p. 1. The staff is not convinced that this is any clearer than the current draft of the proposed law. The Commission should consider whether further clarification of the introductory clause is warranted.

NONRESIDENTIAL DEVELOPMENTS

The Commission's focus has been on residential CIDs. It has not considered how the proposed law might affect a commercial or industrial development. For that reason, the proposed law would amend existing Civil Code Section 1373 to exempt nonresidential CIDs from application of proposed Civil Code Section 1378. That decision is noncontroversial. However, Mr. McPherson raises a technical point regarding Section 1373, which is discussed below. See Exhibit pp. 1-2.

At one time, Section 1373 paralleled the language used in Business and Professions Code Section 11010.3 (exempting a nonresidential CID from certain provisions governing subdivided land), which now reads:

> 11010.3 The provisions of this chapter shall not apply to the proposed sale or lease of lots or other interests in a subdivision in which lots or other interests are (a) limited to industrial or commercial uses by zoning or (b) limited to industrial or commercial uses by a declaration of covenants, conditions, and restrictions, which declaration has been recorded in the official

records of the county or counties in which the subdivision is located.

In 2000, Section 11010.3 was amended to revise the language defining nonresidential developments. The principal change was to add the language in clause (b) that refers to a recorded declaration as the source of the use limitation. See 2000 Cal. Stat. ch. 279, § 2. Mr. McPherson was involved in the amendment process and reports that the failure to make a parallel change to Civil Code Section 1373 was inadvertent. Because both sections were intended to apply to the same types of developments, it would be helpful if the two sections use the same language to describe those developments. Otherwise, the differences in phrasing might imply an intended difference in meaning.

Mr. McPherson requests that Section 1373 be amended to more closely parallel the language used in Section 11010.3, thus:

> 1373. (a) The following provisions do not apply to a common interest development ~~that is limited to industrial or commercial uses by zoning or by its declaration~~ in which lots or other interests are limited to industrial or commercial uses by zoning or are limited to industrial or commercial uses by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:
>
> **Comment**. The introductory clause of subdivision (a) of Section 1373 is amended to more closely parallel the language used in Business and Professions Code Section 11010.3 (exemption of nonresidential subdivision from laws governing subdivided land). This is a nonsubstantive change.
>
> Subdivision (a)(9) is added to exempt a nonresidential common interest development from the statutory provision governing review of a proposed physical change to property within the development. Nothing in this section affects the application of a common law requirement governing association review of a proposed property change. An industrial or commercial common interest development that is subject to such a requirement remains subject to the requirement.

The staff agrees that two sections that address the same subject matter should use the same language to describe that subject matter. However, because of the slightly different contexts, it is not possible to use identical language in these two sections. The language set out above has been adjusted to refer to common interest developments, to eliminate the numbering of the two conditions, and to

eliminate some unnecessary words. Despite those differences, the language above would bring Sections 1373 and 11010.3 significantly closer together.

The proposed change appears to be nonsubstantive. Unless an objection is raised to making the change, the staff recommends that it be included in the proposed law.

CONCLUSION

The staff recommends that the Commission approve the tentative recommendation as its final recommendation, with or without the various changes discussed above. For ease of reference, staff-recommended changes to proposed Section 1378 and its Comment are set out below:

Civ. Code § 1378 (added). Procedure for decision on proposed physical change to property

SEC. ___ . Section 1378 is added to the Civil Code, to read:

1378. (a) If an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's governing documents.

(2) A decision on a proposed change shall be made in good faith and shall not be unreasonable, arbitrary, ~~or~~ capricious, or inconsistent with the association's governing documents or governing law.

(3) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the board of directors.

(4) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors at an open meeting of the board.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents or governing law.

Comment. Section 1378 is new. Paragraphs (1) and (2) of subdivision (a) are consistent with case law. See Ironwood Owners Ass'n IX v. Solomon, 178 Cal. App. 3d 766, 772, 224 Cal. Rptr. 18 (1986) ("When a homeowners' association seeks to enforce the

provisions of its CCRs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious."). Physical changes that might be subject to association approval requirements include additions or renovations, landscaping, choice of exterior paint colors, coverings, or roofing materials, changes to windows and balconies, and other such changes to the structure or appearance of the property.

Subdivision (a)(4) provides an applicant with the option to seek reconsideration of a disapproval decision, at an open meeting of the board of directors. In a master planned community, an architectural review decision could be made by the master association or by a sub-association. In such a community, a disapproval decision would be reconsidered by the board of the association that made the decision (i.e., disapproval by the master association would be reviewed by the board of the master association; disapproval by a sub-association would be reviewed by the board of the sub-association). An applicant preserves other remedies whether or not the applicant seeks reconsideration. The right of reconsideration by the board only applies if the initial decision is made by an entity other than the board of directors.

The requirements of this section apply regardless of any contrary provision in an association's governing documents. Nothing in this section affects the limitation on director liability provided in Section 1367.5 or in Corporations Code Section 7231.

Subdivision (b) makes clear that this section does not authorize physical change to the common area in a manner that is inconsistent with an association's governing documents or the governing law. In many associations the governing documents require a vote of the membership to approve a change to the common area. See, e.g., Posey v. Leavitt, 229 Cal. App. 3d 1236, 280 Cal. Rptr. 568 (1991). In other associations, the governing documents may permit changes to certain features of the common areas (such as common walls, ceilings, ~~and~~ floors, and exclusive use common areas) with the approval of the association. See Civ. Code § 1351(i) ("exclusive use common area" defined). In all cases, the requirements of the governing documents control.

Respectfully submitted,

Brian Hebert
Assistant Executive Secretary

Exhibit

EMAIL FROM DUNCAN MCPHERSON

Subject: RE: Architectural Review
Date: Sun, 14 Dec 2003

Brian, I finally had a chance to review the recommendation on Architectural Review and Decision Making adding CC 1378 and the Non-Residential Development provision amending CC 1373(a). Regarding the proposed CC 1378, I thought the proposal was satisfactory and basically workable. I have only a couple of comments. In the opening paragraph of (a) I would suggest making the language a little clearer as to what the subsections apply. For instance it might read, "..the association in reviewing and approving or disapproving a physical change to the owner's separate interest shall satisfy the following requirements:..." You may in subsection (2) may want to make reference to a decision be consistent with the governing documents. The major issue may be the appeal to the board. I normally provide for such an appeal but in some associations the situation may be more complex if there are sub-associations. You may want to make it clear the board is the board of the association which appoints the reviewing committee. In small associations normally the decisions are made directly by the Board. The appeal provision of subsection (3) should provide for the appeal only if the original decision was not made by the Board. Also some comments I have heard suggest that some applicants would prefer for a hearing in closed session to avoid embarrassment. You may want to consider allowing the applicant to ask for a closed hearing. As in all closed hearings I am of the opinion that no decisions can be made in closed session and that the actual decision would have to be voted on and announced in an open meeting just as required by the Brown Act for government entities (a view not share by all my fellow attorneys).

With regard to the proposed amendments to CC 1373. I appreciate the Commission dealing with this subject for I have felt badly that we forgot to amend this section when Business and Professions Code 11010.3 was amended by a bill that I drafted which added 11010.35 to the Business and Professions Code a few years ago. The Davis-Stirling Act should follow the language of the Subdivided Lands Act in this case and (a) should read like Section 11010.3. "(a) The following provisions do not apply to a common interest development in which lots or other interests are (i) limited to industrial or commercial uses by zoning or (ii) limited to industrial or commercial uses by a declaration which declaration has been recorded in the official records of the country or counties in which the common interest development is located.

I think the way the Commission has written the change does the job but since these provisions of the CC and B&P Codes are interactive and since the DRE really

wanted to make sure the declaration was recorded to restrict the property I would suggest parallel language.

Good job and I appreciate you responding to our input.

Duncan R. McPherson, Neumiller & Beardslee Mail: Post Office Box 20, Stockton, CA 95201-3020 509 West Weber Ave., Stockton, CA 95203
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EMAIL FROM NORMA WALKER

Subject: Comments Norma Walker-Bakersfield
Date: Tue, 13 Jan 2004

To Whom It May Concern:

Comments For Architectural Review and Decisionmaking

Carole Hochstatter and I are so pleased that your commission is continuing to act on issues of the Common Interest Developments in California. As you have found, many of the associations have difficulties in enforcing and understanding their current CCRR's.

This codification your group has written seems appropriate; however, when the Board of Directors does not follow current process and case law, what happens? Our association has been in "potential litigation" with a homeowner for three years, and the attendant legal fees continue; and we have a process.

Without sanctions of some kind, what's the point of more law. We have a greater need of enforcement outside the "Courts." Sincerely,

Norma J. Walker
Carole Hochstatter