Study H-855 April 21, 2009

Memorandum 2009-17

Statutory Clarification and Simplification of CID Law (Status Report)

In 2007, the Commission finalized a recommendation on *Statutory Clarification and Simplification of CID Law* (Dec. 2007). The purpose of the recommendation was to restate and reorganize existing common interest development ("CID") law so that it would be easier to understand and use. Some minor substantive improvements were included in the recommendation, but the Commission decided early on to exclude any substantive reform that would draw significant opposition to the proposal. Such reforms were noted for possible future study.

In 2008, Assembly Bill 1921 (Saldaña) was introduced to effectuate the Commission's recommendation. The bill drew numerous comments from interest groups, and a handful of minor amendments were made. Most of the amendments reversed substantive reforms that the Commission had believed to be noncontroversial, but that turned out to be controversial once the bill was in print.

As amended, the bill passed the Assembly. However, the process of analyzing and responding to comments in the Assembly was very time consuming. As a result, when the bill reached the Senate there was little time left to analyze and vote on the very large bill. That timing problem was compounded by a lengthy and strongly worded opposition letter submitted to the Senate by an ad hoc group of 25 attorneys whose practice involves CIDs.

Due to those complications, it was not feasible to proceed with the bill in the Senate. It was withdrawn from consideration.

On August 4, 2008, Commissioner Edmund Regalia and Executive Secretary Brian Hebert met with eight representatives of the ad hoc group. The purpose of the meeting was to discuss how the ad hoc group and the Commission could work together to identify and address the group's concerns about the proposed law.

It was agreed that a working group would be formed under the auspices of the State Bar Real Property Law Section (the "Working Group"). The Working

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

Group would review the Commission's recommendation, as expressed in the amended version of AB 1921, and offer constructive criticism. Originally, it was hoped that the Committee's work would be completed by the end of 2008. That goal was not met. The Working Group then predicted completion of their work by March 31, 2009. See Minutes (Feb. 2009), p. 3.

The staff has just received a preliminary report from the Working Group. It is attached. See Exhibit p. 14.

A letter from Jim Anderson of Laguna Hills, commenting generally on the Commission's efforts to revise CID law, is also attached. See Exhibit p. 1.

There is not sufficient time remaining before the Commission's April meeting to analyze either submission in this memorandum. The staff intends to discuss the status of this project orally at the meeting.

Respectfully submitted,

Brian Hebert
Executive Secretary

JIM ANDERSON
PO BOX 3346
LAGUNA HILLS, CA 92654-3346

March 31, 2009

VIA E-MAIL bhebert@clrc.ca.gov (w/attachments)
Mr. Brian Hebert, Executive Secretary
California Law Revision Commission
3200 5th Avenue
Sacramento, CA 95817-2799

RE: Statutory Clarification and Simplification of CID Law; Comments regarding CID Law

Dear Mr. Hebert,

I saw a reference in the minutes of the February 19, 2009 California Law Revision Commission that the Commission is working on a proposal relating to re-codification of the statutory common interest development law. As circumstances would have it, I found that reference because I have been considering sending suggestions for revisions to the common interest development laws to my legislators because of the manner in which the majority of the board of our neighborhood association has dealt with an issue regarding interpretation of our Association's CC&R's through a purported "clarification" to be included in the Association's Architectural Review Guidelines.

The more people I talk to who live in a CID community, the more I run into people who shake their head, roll their eyes and relate stories regarding CIDs. In addition to the difficultly of finding owners interested in serving on the board, there are any number of things that individuals with a limited agenda have done to manipulate the processes of the association to their advantage in violation of rights of other members of the community or to the detriment of the operations of the association. In many cases, CID boards are made up of owners without a background or training for their role as board members. CID boards are not subject to the checks and balances that apply to individuals who serve as public officials, such as city council members or school district members. Furthermore, a CID does not necessarily have the infrastructure in place, or staff with sufficient backbone given their desire for employment, to establish an approach consistent with state law. Both majority and minority points of view need a better framework in which to operate.

As was noted in connection with SB 528, membership is mandatory for residents who live within a CID sphere of influence. CIDs have the power to tax through the assessment process and the power to regulate behavior and architecture through the operating rules. Families who live within CID's have the constitutional right to know what their leadership is up to. Families who live within CID's do not have the choice to sell shares in the corporation or discontinue their involvement in the CID, without physically moving to a new residence.

Attached hereto as Exhibit A is a list of my comments and questions regarding the common interest development laws and attached as Exhibit B are a letter from our Association's counsel and the first page of a letter from our Association's General Manager describing why a "Town Hall" meeting is not a Board meeting as defined in Civil Code Section 1363.05. What is troubling to me is that if a "Town Hall" meeting conducted by Board members is not a meeting, than a regular Friday night dinner by a 3 Board majority that discusses Association business would not be a "meeting" or a meeting by a majority of the board members with a standing committee would not be a meeting. That does not seem proper to me regardless of whether I support or oppose the majority of a board. The Association counsel letter also explains their basis for denying access to an agenda packet document and to a document in the form last

projected on a screen during a Board meeting. In my view, these are association records under Civil Code Section 1363, which I am entitled to review and to copy.

In providing my comments and questions in some cases I have referenced events our Association experienced to show the effect of the provisions. The events in our Association highlight how practices of Board members and management can misuse the provisions of common interest development laws to the detriment of the rights of members, such as the right to transparency of proceedings of the board. I hope you find it informative of what owners living within CID's throughout the State deal with on a regular basis, and that you will consider including provisions to have CID's follow Brown Act type requirements in legislative proposals you make. Establishing requirements regarding what constitutes a meeting, regarding notice of meetings and regarding preparation of agenda packets similar to what is required for public agencies under the Brown Act would provide more information to members and to minority Board members.

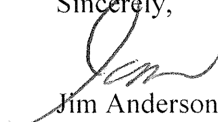
Notwithstanding the intent of the Legislature, it is still too easy for a CID Board with the advice of the CID's attorneys to work around the transparency intended by applicable State laws. While I am not a big proponent of government regulation, there has got to be a better way to set parameters for how majority and minority interests deal with each other and for educating Board members on what they can and cannot do. In hindsight, enactment of Assembly Bill 567 (Saldana) seems a step in the proper direction and I would encourage a re-introduction of the bill and working with the Governor to overcome his basis for a veto.

As I reviewed the California Law Revision Commission's proposal, I see that most of my comments are not suited to the current effort being undertaken to recodify the legislation without making substantive changes. Nevertheless, I am providing my comments and questions to you. I read on page 28 of the "Pre-Print Recommendations February 21, 2008" which I reviewed, a section captioned "Further Study" and the text there indicates that a number of suggestions for substantive changes to existing law were received by the Commission but that "[m]ost were too substantive for inclusion in a reform of this type. However, the Commission noted all of the suggestions and will study them on an ongoing basis." *Since you are active in reviewing the law, it would be best to work on both the non-substantive and substantive matters concurrently and allow each to be presented to the Legislature as soon as either is developed sufficiently for such purposes. Substantive revisions may need to be presented in several different bills so as not to delay approval of the changes which are ready the earliest. Furthermore, a compilation of the suggestions noted should be made available to all members of both houses of the Legislature as well as the public, so that any legislator or any member of the public can focus on specific suggestions and pursue appropriate legislative changes to deal with needed substantive changes. Making note of suggestions and not making them available is not helpful to resolving the serious issues that exist with CID's.*

I look forward to successful implementation of both the non-substantive re-write of the laws relating to CID's as well as to immediate action to correct substantive problems as well.

Thank you for your consideration.

Sincerely,



Jim Anderson

EXHIBIT A

Comments and Questions with respect to Proposed Revisions to Davis-Sterling Act

Introductory/Summary Description.

1. I take exception to your summary reference with respect to the right to inspect association records as including only the membership list, "accounting books and records" of the association, and minutes of meetings. (See page 15 of the Pre-Print Recommendation February 21, 2008 which I reviewed.) I believe Civil Code Section 1363 provides for more than that. Civil Code Section 1363 provides for "access to association records, including account books and records and membership list" in accordance with specified provisions of the Corporations Code. Section 1363 does not limit access to accounting books and records, membership lists and minutes. The documents which may be accessed by owners are greater than the listed items. By your reference, you endorse the misconception that some Association counsel perpetuate regarding limits on owner access to records. Section 1363 provides for access to records of the association. I have attached a letter I received from our Association's counsel which makes a similar assertion. Notwithstanding those statements, documents provided as part of the agenda packet to board members at board meetings are records of the association and should be available to owners unless an exemption applies. Section 1365.2, which contains a definition of "association records" and of "enhanced association records," applies the definition of "association records" and of "enhanced association records" only to Section 1365.2 (see Section 1365.2(a)) and does not by its terms limit the general disclosure requirements of Section 1363. For that matter, if Section 1365.2 is intended to limit access to Association records such as documents included in agenda packets, the provision fails to provide the "transparency" so frequently mentioned and should be amended to provide the "transparency" needed with respect to board action. That amendment should be similar to the language of the Brown Act regarding public agencies.

Furthermore, the thought that I should need to seek judicial enforcement to obtain a copy of a document included in a board agenda packet or prepared during a board meeting is absurd. At what cost must a member go to obtain a copy of a document consisting of less than 20 pages of text? If it is not clear to you, to Association counsel or to association staff that a document not otherwise subject to exemption from member review included in an agenda packet is an association record available to the members or that a document projected on a screen so owners can hear the discussion regarding the edits made is an association record and should be available to owners after the meeting, the law should be changed.

2. With regard to the reference to "Date of Delivery" and provision of notices, given the vagaries of mail delivery service, particularly in the bulk mail delivery context, the time periods referenced may not be sufficient. Our Association mailed out a survey to members on or about January 25, 2009 with a return date of February 11, 2009. I have spoken with someone who received the survey the Saturday after February 11, 2009 and that individual indicated they were aware of at least one other individual who also received the survey the Saturday after February 11, 2009. Whether the delayed deliver problem resulted from internal issues at the Post Office, or resulted from the Association realizing they had not included all owners in the initial mailing, I do not know.

3. With regard to whether the Davis-Sterling Act provision regarding "Common Interest Development Open Meeting Act" borrows some language from the Brown Act provisions (Government Code Section 54950 and following) and has a similar thrust, I believe the Common Interest Development Open Meeting Act is written to create the impression that it follows the

Brown Act requirements, but in practice it fails to do so and should be revised to more closely follow the Brown Act requirements. For example, requiring advance notice of a meeting is insufficient. Copies of the non-privileged agenda packet materials should be available to members in advance of the meeting, and certainly after the meeting. The reference to minutes is misleading and creates the impression more is being provided than association counsel advise associations to provide. The minutes in many cases are a very limited summary of actions considered and taken at meetings and do not provide sufficient information without access of the documents included in the agenda packet.

4. With respect to teleconferencing (Section 4525), I agree with the suggested provisions which provide that in addition to Board "members" hearing the conversation, since the Board meeting is open to the owners, the owners should also be able to hear the conversation. In a recent meeting of our Board, not only could all the Board members not hear the teleconferenced Board member, but owners in the audience were unable to hear the teleconferenced Board member. This section includes an appropriate change and if the revisions are not moved forward this year, this change should be separately scheduled for consideration by the Legislature.

5. Board action by "unanimous consent" (Section 4545) should take guidance from the Brown Act rather than the Corporations Code. Action by "unanimous consent" deprives owners of transparency. In a divided community, a controversial issue can result in the majority side gaining control of the entire board. Action by "unanimous consent" in that case without an open board meeting deprives the minority of their opportunity to comment and to know what is being approved.

6. With regard to record keeping, consideration should be given to keeping records of documents included with the agenda packet. Keeping records of the minutes provides very limited information and as board majorities change, can result in loss of important documentation. Furthermore, in addition to keeping copies of executed contracts for a period of 4 years after termination of the contract, the bid specifications should be kept. As an example, our association may have very detailed specifications for landscaping or other work bid out each year. I can imagine a circumstance in which a new board decides to clean house and destroy the bid specifications that have been developed over the years asserting the bids were written to enable only a limited number of contractors to satisfy the requirements. After a couple years of work preformed by a new contractor, the same individuals or those on a later elected board may decided that the prior bid specifications contained details that were important for the work to be performed under the contract and wish to incorporate the prior specifications. At that point, the specifications may no longer be available if they were destroyed.

Comments with respect to specific Section references:

7. Section 4035: Is the notice to be mailed addressed to the president or secretary at an association office, or at the president or secretary's home? Mailing to an association office, if one exists, would provide more continuing for the handbook reference than updating for officer addresses.

8. Section 4045: Posting on an Internet website or a location accessible to members is subject to mischief. There are few members who have the time to check regularly for posted notices (unless the notice is for a regularly scheduled meeting). The provision should encourage other notice alternatives, such as e-mail of items if an owner consents to e-mail notice, rather than relying on members to regularly drive by the association office or regularly check an association website.

9. Section 4070 seems to have corrected an ambiguity in Section 5034, and absent revisions pursuant to Section 4070, Section 5034 should be amended in a similar manner as soon as possible. Section 4070 establishes a majority of a quorum as the required vote, with the provision that if there are two or more classes for purposes of voting, each class must approve the action by a majority of the votes cast in an election at which a quorum is achieved. Section 5034 seems to me to refer to two different standards, one relating to a majority of a quorum, the other the affirmative vote as required by the bylaws (i.e., the beginning of Section 5034 refers to the approval by a majority of the owners represented and voting at a duly held meeting at which a quorum is present while the latter part of Section 5034 either means what Section 4070 suggests, or may refer to affirmative vote or written ballot of such greater proportion, including all of the votes of the memberships of any class, unit or grouping as may be provided in the bylaws).

10. Section 4090: The provision that a Board meeting consists of the congregation of directors constituting a quorum at the same time and place to hear, discuss, or deliberate upon "any business schedule to be heard by the board" is subject to abuse, and essentially sets no standard for a meeting since a quorum of the Board can meet to decide an issue before the item is scheduled to be hear by the board. The provision should follow the Brown Act language and be amended to read as follows: "Board meeting" means a congregation of directors constituting a quorum at the same time and place to hear, discuss, or deliberate upon any ~~business scheduled to be heard by the board~~ *item that is within the subject matter jurisdiction of the board*." See Government Code Section 54952.2. For an example of how the current language is applied to enable meetings to not be meetings, see the letter from our Association counsel and the excerpt from a letter from our General Manager attached hereto.[1]

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[1] In our particular circumstance, my understanding is that counsel to the Association sometime after the Board election July 28, 2008 met with the continuing Board members and new Board members and advised them that they could meet so long as no "action" was taken. Based on comments made by the Board members at meetings I have attended, the Board members had a meeting or meetings without notice to members, without a written agenda and without minutes of the meetings at the start of the 2008-2009 term of the Board to tour Association facilities. Since that time due to issues regarding additional restrictions on the use of property in the open space portions of lots contained in the CC&R's, the Board held a "Town Hall meeting" in October 2008, at which all Board members were present and at which the Board President indicated it was not a Board meeting, and therefore the Board was there only to listen, but could not respond to questions or take action. The Town Hall meeting was noticed, but to my knowledge no agenda was provided until the beginning of the meeting, and no minutes of the Town Hall meeting were made. More recently, a second Town Hall meeting was held regarding the equestrian facilities owned by the Association. At that meeting, only two Board members were scheduled to conduct the Town Hall meeting, but the other three Board members attended in the audience, and at least two of those three Board members made comments and asked questions. It would have been a simple step to notice each Town Hall meeting as a Board meeting, to provide notice as such, rather than as some lesser meeting, to provide an agenda in advance of each meeting and to provide for minutes to preserve a record of each meeting. If a Town Hall meeting is not a meeting, than a regular Friday night dinner by 3 Board members to discuss association business would not be a meeting and a meeting by a majority of the board members with a committee of the association would not be a meeting. That does not seem proper to me regardless of whether I support or oppose the majority of the board.

Following the Town Hall meetings, I sent a letter to the General Manager indicating that I did not believe the Board was complying with Civil Code Section 1363.05 in its handling of the Town Hall meetings or other congregations of a majority of the members of the Board. For example, the Town Hall meeting regarding the equestrian center would be "Town Hall" meeting and not a Board meeting, had only two members been present conducting the meeting. As I read paragraph (j) of Civil Code Section 1363.05 as amended by SB 528 (2007), when the other three members attended the meeting, even though in the audience, that constitutes a meeting at which they heard information regarding the equestrian center, a matter which will be an item of business for future action of the Board. Furthermore, last fall I was in the Association office when at least 3 Board members met with the newly appointed members of the Architectural Review Committee. Thought I do not know the subject of that meeting, I assume it related to proposed Guidelines

11. Section 4160: Definition of member. I did not check the new provisions to be certain all references to board members now refer to directors. The existing common interest development laws referred to both members of the board and members of the association and the use of the word "member" is sometimes confusing and some provisions that should include both directors and owner/members omit the owner/members (e.g., the provisions for teleconferences which require the board members can hear each other, but which does not provide that owner/members be able to hear the board member who is not present or that the board member who is not present must be able to hear the owner/members).

12. Sections 4165 and 4180: Definition of "operating rule" and of "rule change" By reference to "adopted by the board," there is an implication that a rule created by a committee, such as an architectural review committee, is not subject to the provisions. The terms need to include those rules as well, so that owners are advised of those rule changes and there is an opportunity to review those rule changes or reverse the rule changes. Our Board recently tried to move a portion of the Architectural Review Guidelines to a "process document" to be drafted by the architectural review committee, and there was suspicion that was done to avoid the rule change provisions, since it was no longer a rule adopted by the Board.

13. Section 4520: Notice of the board meeting should include making documents in the agenda packet available in advance of the board meeting to facilitate transparency as well as providing the agenda packet to board members in advance of the meeting so they can prepare for the meeting. Based on comments made during Board meetings, our Board majority on more than one occasion did not provide agenda packet documents to the minority members until those members were driving to the Board meeting. In addition, the Association is refusing to provide copies of a document included in the agenda packet to owners and is refusing to provide copies of the final form of a document as projected on a screen and edited during a board meeting to owners. See the attached letter from our Association counsel.

14. Sections 4520 and 4528: The phrasing of Board "action" versus Board "discussion without action" should be considered. Our current Board's practice is to reference an action with a proposed resolution. Whether intentional or not I do not know, but a controversial item regarding revisions to the architectural review guidelines was listed as a "discussion" item in a board agenda, rather than as a proposed resolution, as was the case for all other "action" items on that agenda. Some owners reading the agenda concluded the "proposed resolution" or "action" would come at a later meeting and did not bother attending the meeting due to the "discussion" reference.

15. Section 4550 (Section 1363.05): In addition to minutes, the documents in the agenda packet should be available to members. Minutes by themselves frequently provide little information and are available only after the meeting. Agenda packet materials should be available in advance of a meeting to all board members and to members. If a change to an agenda packet item needs to be made that can be provided at the meeting, but a regular practice of providing limited distribution of agenda packets should not be allowed. Furthermore, with respect to records which are not subject to inspection, such as attorney opinions, memorandum or correspondence, when there is a

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rules change and the roles of the Architectural Review Committee, and thus would also be hearing an item of business scheduled to be heard by the Board and should have been noticed, with an agenda and minutes as provided by Civil Code Section 1363.05.

question as to whether board members are satisfying their respective obligations to perform their duties in good faith, in a manner in the best interest of all of the members of the association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances, the association should have to confirm the existence of an opinion, memorandum or correspondence supporting the action taken by the board. See Corporations Code Sections 7231(b)(2).

16. Section 4560: In the rule change described above for our architectural review committee, would Section 4560 apply to a committee meeting? It is not clear the committee exercises the power of the board?

17. Section 4580: How is a quorum determined at a member meeting if the secret ballots are insufficient to determine a quorum? Is a sign-in register maintained leading up to the member meeting? I have heard stories from another person that in a recall election, a person at a member meeting turned away owners who arrived stating a quorum had not been achieved. The owners had no way to confirm whether that person was correct or not, and did not know how that person could know prior to the appointed time whether a sufficient number of owners would arrive.

18. Section 4585: Is member action by secret ballot, or can in-person attendance and roll call vote be required? With regard to Section (c) regarding adjournment, is another implication of that clause that the members can declare the member meeting failed for lack of a quorum, and no adjournment shall occur?

19. Section 4625 or related provisions: For a member meeting which needs to reach a specified quorum threshold, what is the process for managing the vote of those who appear at the meeting seeking to adjourn to a later date to enable a lower quorum threshold provided for in the association bylaws versus those who appear at the meeting seeking to declare the meeting failed to reach the quorum and therefore the issue to be considered by the member meeting failed for lack of a quorum. Is it mob rule between the conflicting sides with no written record of who was in attendance? Shouldn't there be a process for registration of attendance at the meeting and confirmation as to whether those attending are voting to adjourn to a later date at which the lower quorum threshold will be set or voting to declare the quorum has not been met and the matter fails for lack of a quorum?

20. Section 4630: May the operating rules provide that a director who has been recalled cannot run for election for a specified number of years?

21. Section 4640: Are there any member meeting actions that do not require a vote? If a vote is required, shouldn't the vote be by secret ballot? Can the association require an in-person vote rather than by mailing out a secret ballot? I read comments to the Commission that secret ballots do not make sense for small associations, but from personal experience I have seen people who would vote one way if their vote is open because they do not wish to publicly disagree with their neighbors, but when the ballot is secret, they will check a box different than what their neighbors expect them to check.

22. Section 4640(e); Corporations Code Section 7513: In some cases, the bylaws provide for a quorum at a member meeting of 50% of the members, but if the quorum is not satisfied at the member meeting, those in attendance may adjourn the meeting to a specified later date and at that later meeting, the quorum threshold is reduced, e.g., reduced to 25% of the members rather than 50% of the members. If an action is conducted entirely by mail, do the members lose the ability to adjourn the "member meeting" to a later date at which the quorum threshold is reduced, or is

the meeting at which the ballots would be opened, still a member meeting at which those in attendance can argue whether to adjourn to a later date at which a lower quorum threshold will apply or whether the item failed for lack of a quorum. There should be provision to allow for a member meeting which may be adjourned to the later date to prevent one portion of the community from manipulating the election process to avoid the lower threshold requirement.

23. Section 4650: Section 4650 is a little vague. If the results of an election are to be noted in the minutes of the meeting at which the ballots were counted, those minutes may not be approved for a year, the date of the next annual meeting. Is the notice to be delivered within 15 days a separate notice from the minutes or is it intended that the notice somehow relates to the as yet unapproved minutes?

24. Section 4670: If an association provides campaign-related information in a newsletter Internet website, or other media, and cannot edit or redact the information provided by a candidate or advocate, may the association limit the number of words in the materials provided through the newsletter, Internet website, or other media? See also Section 1363.03(a)(1) –(2); and 1363.04.

Section 4700(a)(11): If an association only has a few employees, while the omission of a name is possible, a general reference to the job classification, or even a listing of compensation for the few positions would provide "identifying information" for purposes of knowing which employee is paid which amount. What is allowed or intended by this provision? See also Section 1365.2(a),(d)(1)(e)(v) and (d)(2).

25. Section 4700: Obtaining electronic mail addresses could be useful for opposing sides of an issue to contact owners in a timely and cost effective way. However, once the address is known, should there be a requirement that users provide a means for a recipient to opt out of future notices. In our association, some members commented they were very unhappy to be receiving e-mails from the opposing side and wanted to know how their e-mail addresses were obtained and how to be removed from the e-mail lists.

26. Section 4775: Duty to Maintain Records: This section lists certain limited records, contracts and other materials to be maintained. Other materials such as agenda packet documents, including bid specifications, may be useful for future Board members. For example, if an association board is replaced due to concerns that bid specifications were written to benefit a particular company or relationship, and the board changes and then modifies the bid specifications, in a few years, the old bid specifications may be destroyed and the board then in control may determine that there was a basis for the bid specifications as previously written, but the board may have lost the historical knowledge as to what the bid specifications were. This is covered somewhat by Section 4780 which requires retention of the contract for at least 4 years after the termination of the contract's effect but additional thought should be given to these provisions as to other association documents such as bid specifications.

27. Section 4780(2): the language should be broadened to cover not only minutes of a committee that exercise a power of the board but also minutes of a committee that enforces or interpret operating rules. Some CC&R's or bylaws establish committees that operate separately from the board, and minutes of those committees should be kept as well, especially if the committee operations relate to enforcement of operating rules.

28. Section 4785: Do any provisions limit the director's use of the information received during executive sessions? Is Section 7231 sufficient for this purpose or are there other provisions that

apply? The Brown Act has more specific provisions regarding use of confidential information. See Government Code Section 54963.

29. Section 6116 and 6120: What is required to be included in the notice of a rule change and reversal of a rule change? Our association sent out what purported to be the full text of a rule change (approximately 7 pages of text), but the text referred to an "architectural review procedure document" that did not exist. The cover letter stated that the procedural provisions of the prior architectural review guidelines would be in place (approximately 5 and ½ pages of omitted text) until the new document is approved after notice to the owners. By sending what purports to be the full text, rather than excepts of the text, and then having the cover letter reference the missing text, the notice was insufficient, because an owner who was not familiar with the prior rule or did not read the cover letter closely, would not realize the 7 pages received omitted 5 and one half pages of text that would apply after adoption of the new rule.

Also, if a rule change is approved, and a petition to reverse is filed, why is the rule in effect pending the member election? Should a threshold number of petitioners be able to preclude the effectiveness of the rule change, like a referendum does for acts by a legislative body? See also Civil Code Section 1357.130.

30. Section 6120: Since members may call a meeting for any purpose, can't the members call a meeting to reverse the rule change after the 30 day period if it takes longer for the members to realize they are opposed to the rule change?

31. Section 6120(d): What is the benefit of allowing the bylaws to provide for a greater vote for a rule change? Isn't one possible effect of Section 6120(d) to encourage someone planning a rule that would be reversed by a majority of a quorum to first amend the bylaws to require a greater proportion before publicly proceeding with the proposed rule change?

EXHIBIT B

ASSOCIATION CORRESPONDENCE REGARDING ASSOCIATION RECORDS REQUESTS

NEULAND, NORDBERG, ANDREWS & WHITNEY
LIMITED LIABILITY PARTNERSHIP
22502 AVENIDA EMPRESA
RANCHO SANTA MARGARITA, CA 92688
TELEPHONE (949) 766-4700
FACSIMILE (949) 766-4712

Nancy Michael
nancymichael@nnawlaw.com

March 13, 2009

James Anderson
P.O. Box 3346
Laguna Hills, CA 92654

Reference: **Nellie Gail Ranch Owners Association**
Subject: *Response to March 9, 2009 Correspondence and Document Request*

Dear Mr. Anderson:

As corporate counsel for Nellie Gail Ranch Owners Association ("Nellie Gail"), I am writing you to respond to your March 9, 2009 correspondence wherein you have requested access to various documents.

Specifically, you have requested the following:

- A copy of the draft Architectural Guidelines discussed at the September 2008 Board meeting.
- A copy of the agenda and minutes of the October Town Hall meeting regarding the Architectural Guidelines.
- A copy of the Architectural Guidelines as presented at the end of the December 17. 2008 Board meeting.
- A copy of the agenda and minutes of the February 11, 2009 Town Hall meeting regarding operation of the equestrian center.

First, let me begin by clarifying that the Town Hall meetings were not Board Meetings. These meetings were intended to solicit member comment on particular topics for which they were held. Therefore, there are no agendas or minutes available to provide to you.

As you are likely aware, California Civil Code Section 1365.2 governs a member's right to inspect and copy association records. Specifically, Civil Code Section 1365.2 provides that members are entitled to inspect and copy "Association Records" and "Enhanced Association Records". Those terms are specifically defined in Civil Code Section 1365.2.

EX 11

The documents you request are neither Association Records nor Enhanced Association Records. Therefore, the Association is unable to satisfy your request. Further, the documents you seek were draft or working copies of the Architectural Guidelines and, as I understand, were continually changing. Therefore, the particular documents you seek may have already been revised at subsequent meetings.

Should you have further questions on this matter, please contact the undersigned.

Sincerely,

Neuland, Nordberg, Andrews & Whitney LLP

By:______________________________
Nancy Michael, Esq.

NM/n
cc: Board of Directors
Frederick T. Whitney, Esq.

G:\Nellie Gail Ranch Owners\01 General\Letters\Anderson 090311 to re Response to March 9 Doc Request.doc

25211 Empty Saddle Drive
Laguna Hills, CA 92653
949.425.1477 Phone – 949.425.1478 Fax
www.nelliegailranch.org

March 5, 2009

James Anderson
P.O. Box 3346
Laguna Hills, Ca 92654

Reference: Nellie Gail Ranch Owners Association
Subject: Response to February 24, 2009 Correspondence

Dear Mr. Anderson:

I received four (4) separate correspondence from you dated February 24, 2009, each addressing various issues or requests. The following is a response to the issues you raised.

Insurance Certificate/D&O Liability Policy

A copy of the D&O Policy is available for pick-up at the Association Office. There is a fee for copying this document of $6.15 (41 pages @.15 per copy).

Open Meeting/ Notice for Meeting

As you note, California Civil Code Section 1363.05(j) provides:

> "… "meeting" includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session."

At the town hall meeting there was no agenda or "business scheduled to be heard by the board". Therefore, a congregation of the board absent such scheduled business does not constitute a meeting. The town hall meeting was, in fact, intended to be a forum for members to express their opinions, concerns and/or questions pertaining to proposed architectural guideline changes. Therefore, the town hall meeting was more akin to a member meeting, although there was no proposed action to be taken by the members. Furthermore, notice of the town hall meeting was posted at the Administration Office, on the Nellie Gail website and via 2 e-mail blasts.

Document Request: Attorney Opinions, Memorandum and Correspondence

As you are aware, California Civil Code Section 1365.2 outlines a member's right to inspect and copy association records. Specifically, Civil Code Section 1365.2 provides that

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A LIMITED LIABILITY PARTNERSHIP

California Law Revision Commission
c/o Brian Hebert, Executive Secretary
3200 5th Avenue
Sacramento, CA 95817

Re: Statutory Clarification and Simplification of California's Common Interest Development Laws; Report and Recommendations of the State Bar Real Property Law Section Working Group.

Dear Mr. Hebert:

For several years the California Law Revision Commission (the "Commission") has been pursuing the "Statutory Clarification and Simplification of Common Interest Development (CID) Law" project (the "CID Law Project"). As stated in the Commission's Memorandum 2009-12, the purpose of the final recommendations of the Commission in the CID Law Project was to restate and reorganize existing common interest development law[1] so that it would be easier for interested parties to understand and apply those laws. It was not the intention or goal of the CID Law Project to make or propose substantive reforms to the existing common interest real estate laws.

In 2008 Assembly Bill 1921 (Saldana) ("AB 1921") was introduced in the Legislature to effectuate the Commission's recommendations. Commission Memorandum 2009-12 reports that numerous comments on AB 1921 were received from a number of interest groups, including a letter dated April 18, 2008, drafted by an informal group of attorneys whose practices regularly involved the representation of a broad range of constituencies within the common interest development arena, including developers, owner associations (both commercial and residential), individual owners of common interest real estate, property managers, accountants, and consultants.

[1] References in this letter to CID law, generally, primarily refer to the Davis-Stirling Common Interest Development Act (California Civil Code sections 1350 et seq.), although the Commission's proposal, as embodied in Assembly Bill 1921 also proposes conforming amendments to a number of other provisions of the Civil Code, the Business & Professions Code, the Code of Civil Procedure, the Government Code, the Health and Safety Code, the Revenue and Taxation Code and the Vehicle Code. References in this letter to the Act are references to the Davis-Stirling Common Interest Development Act.

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Following presentation of that joint letter of April 18, 2008 to the Commission, the Real Property Law Section of the State Bar of California designated an adhoc subcommittee of the Section's Subsection on Common Interest Developments (the "Working Group"). The Working Group was given the mission of reviewing and commenting on the Commission's legislative proposal, as presented in AB 1921, with a view towards assisting the Commission in achieving the goals and objectives of the CID Law Project. Although impetus for forming the Working Group under the auspices of the State Bar Real Property Law Section was the April 18, 2008 letter and some of the Working Group members were signatories to that letter, neither the Working Group nor the Real Property Law Section purport to represent the opinions or interests of all of the lawyers who signed the letter. Instead, the Working Group derives its authority, and speaks solely on behalf of, the State Bar Real Property Law Section.

The Working Group approached its work mindful of the valuable contributions that the Commission has made over its many years to the improvement of California's laws, as well as to the State Bar's responsibility to assist the Commission in its work by offering constructive commentary and analysis of Commission proposals. While the approach the Real Property Law Section's Working Group is recommending may depart from the stated preference of the Commission and its staff, the Section's goal remains unchanged, namely to offer constructive recommendations to the Commission.[2]

In earlier correspondence to the Commission, the undersigned, in his capacity as the principal spokesperson for the Working Group, noted that there were a variety of opinions among the members of the Working Group regarding the extent to which the Commission's proposed comprehensive revision and reorganization of the text of the current Davis-Stirling Act, as reflected in AB 1921, is, in fact, a significant improvement of the existing law. In an effort to achieve consensus among the members of the Working Group, tasks were assigned to each Group member to assume responsibility for reviewing and analyzing substantive topics within the current Davis-Stirling Act, comparing the current provisions addressing those subjects to the corresponding provisions of AB 1921, and recommending to the Commission and its staff revisions to present Act or to the text of the Bill.

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[2] Several staff memoranda from the Commission (see for example, Memorandum 2009-12) speak of the concern or perception of other common interest advocates or advocacy groups that the Commission and its staff are unduly solicitous of the opinions and recommendations of interested lawyers. Some of these commentators have gone so far as to suggest that there is outright collusion between the Commission and its staff members and some perceived unified consortium of common interest attorneys that resulted in the current CID legislative proposal to the exclusion of meaningful input or consideration of other participating common interest groups. The fact that the Working Group of the Real Property Law Section of the State Bar is advocating an approach to future statutory revisions that departs from the Commission's proposal in significant ways should belie those concerns. Nevertheless, the Davis-Stirling Common Interest Development Act is State law that must be consulted, applied, and analyzed by judges, lawyers, regulatory agencies, and members of the general public that either live in or work with common interest communities. Statutory precision and accuracy of language should not be sacrificed in an effort to make the Act more consumer friendly. The Act's original salutary goals and objectives, as embodied in existing provisions of the Act that has been applied and interpreted by the courts, should not be abandoned, summarized or abbreviated merely to accommodate those who are hostile to the concept of private governance by owner associations and/or critical of lawyers, board members, and property managers. The original goals of the Act will not be accomplished by reducing the Act to a layman's handbook for homeowner association management.

This process produced a consensus among the members of the Working Group that any comprehensive revision of the Davis-Stirling Act should more closely adhere to the present text and layout of the Act, rather than basing future comprehensive revisions proposals on the text and organization of AB 1921. Nevertheless, the Working Group believes it has a shared objective with the Commission and its staff to propose revisions to the Act that have as their goal: (i) the deletion or consolidation of provisions in the current law that are repetitive of other Act provisions, (ii) simplification of Act provisions that are considered unduly complicated (including provisions that can be clarified and made more user-friendly by being broken down into more manageable subparts), and (iii) clarification of Act provisions that the Working Group considers to be ambiguous or capable of differing interpretations.

The Working Group recommends that the existing Act be revised and augmented to meet these goals, with the foundation for those changes being anchored in the Act's current organization and format. In proposing revisions to the current Act, the Working Group would recommend utilizing and incorporating in a new revision proposal many provisions in the text of AB 1921 that accomplish or further these goals.

SUMMARY OF THE WORKING GROUP'S CONCERNS WITH THE PRESENT LEGISLATIVE PROPOSAL (ASSEMBLY BILL 1921):

The Working Group is aware that the approach the Group is recommending in this letter is not the preferred approach that the Commission and its staff would desire the Group's members to play in an effort to improve the CID Law restatement proposal that is now embodied in AB 1921. That preferred approach, as articulated many times by the Commission's staff, would be for the Working Group to focus on the text and organization of AB 1921 and to propose further revisions that would improve that text and further the Commission's stated objectives of simplifying and clarifying existing common interest and community association law. The Working Group is recommending a different approach to clarifying and simplifying the current Act. The Working Group recommends that the Commission adheres more closely to the existing Act as a foundation or point of departure for future revisions. This alternative approach is being advanced, primarily for these reasons:

- During the past several months, the Working Group achieved consensus on two important points, namely that most provisions of the current Act are sufficiently well written and clear to merit preservation with little or no change and that it is important from the perspective of the orderly evolution of law that terms, phrases, and provisions in existing law that have been applied and interpreted by the courts and used by lawyers and laypersons (primarily common interest owners, association board directors and managers) in everyday practice be preserved. Most, if not all, of the members of the Working Group have expressed strong feelings that a wholesale reorganization of the Act, with significant alterations in the text of the Act's present statutory provisions, will create confusion and difficulties in applying and interpreting the CID Law without actually achieving the Commission's stated objectives of clarifying and simplifying current California's current CID laws.

- The Working Group is also of the opinion that many of the changes in text proposed in AB 1921 represent an over simplification of the current corresponding text in the Act and that in the course of drafting that simplified text, the Commission staff actually altered the meaning, intent, and interpretation of the original text. In previous correspondence and communications between the Working Group and the Commission Staff, the Staff has requested that the Working Group provide more specificity as to these objections than was presented in the original letter from the group of attorneys dated April 18, 2008. In the course of its work, what the Working Group attorneys concluded was that it was simply not productive to spend time offering comments, objections and analysis of provisions in proposed AB 1921 when that same time could be expended in drafting proposals for improving specific provisions of the existing Act that merit revision.

Although a line-by-line analysis and commentary of the Bill was ultimately concluded to be an unproductive exercise that would not further the shared goal of the Commission and the Real Property Law Section to improve and simplify the Act, here are several examples that we believe to be representative of similar drafting problems that are found throughout AB 1921):[3]

(i) On the first page of Part 5 of AB 1921 (a proposed addition to Division 4 of the Civil Code) the fifth proposed statutory section (Section 4020 of the Bill) begins with a list of provisions of the Act that will not apply to industrial and commercial projects that might otherwise fall within the definition of a common interest development. Currently those provisions exempting commercial and industrial projects from some provisions of the Act are found near the very end of the present Act (at Civil Code section 1373). That positioning of the exemption provisions in the Act reflects, in large part, the fact that applicability of the Act to non-residential developments was largely an oversight (thus requiring an amendment to the Act in 1988), and yet it seems inappropriate to open a comprehensive presentation of substantive CID law with a list of provisions that do not apply to narrow sub-set of CIDs (particularly when there is a separate on-going analysis of the need for new or separate laws relating to industrial and commercial projects). The Working Group acknowledges that there is another effort being undertaken by the Commission that is focused on, and limited to, proposed revisions to Civil Code section 1373 (see, for example, the Commission's First Supplement to Memorandum 2009-18; April 17, 2009). The Working Group supports that revision project and strongly recommends that the two projects be coordinated to ensure that consistent approaches emerge from a comprehensive revision of the current CID Law[4].

(ii) The Working Group, as a whole, had significant concerns with the proposed incorporation in AB 1921 of statutory provisions that are already found in the Mutual Benefit

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[3] All comments in the Working Group's draft proposal are restricted to Part 5 of AB 1921 which is limited to the proposed revision of the Davis-Stirling Act. AB 1921 is 188 pages long in the version reviewed for this letter and no comments are being offered currently by the Working Group with respect to proposed changes in law presented in the Bill that are not part of the Davis-Stirling Act.

[4] That same recommendation also applies to the parallel project that is being pursued by the Commission to consider possible exemptions for small common interest developments and their associations (see, Second Supplement to Memorandum 2009-19; April 17, 2009)

Corporations Law (California Corporations Code sections 7110 et seq.). Currently, the Act simply states, in Civil Code section 1363(c), that owners associations that are not organized as a nonprofit mutual benefit corporations shall have all the powers granted to a nonprofit mutual benefit corporation in Section 7140 of the Corporations Code. Admittedly, the current Act does include provisions that concern matters of association governance, such as the right of members to attend meetings of the board of directors (Civil Code section1363.03), the right of members to inspect corporate records (Civil Code section 1365.2), and the manner in which director elections and other significant member votes are conducted (Civil Code section 1363.03). However, the Working Group is of the opinion that these special governance rules, which do act to supplement rules of internal governance found in the Mutual Benefit Corporation Law, are adequate and appropriate given the significant role that common interest associations play in the personal lives of CID property owners and the mandatory nature of association membership. As noted below, the Working Group recommends that some of these special rules of governance can be improved by better organization and drafting.

However, the Commission's proposal, as presented in AB 1921, goes much further by repeating, often with different terminology, provisions found in the Nonprofit Mutual Benefit Corporation Law and includes provisions that simply negate provisions of the Mutual Benefit Corporation Law as applied to owner associations (e.g., proposed Civil Code section 4025). The consensus of the Working Group is that this repetition of Corporations Code provisions that are universally applicable to the diverse universe of nonprofit mutual benefit organization is ill-advised. There is a risk and distinct possibility that future changes to California's corporate laws that are generally applicable to mutual benefit corporations under the Corporation Code could be approved by the Legislature without those revisions being reflected in corresponding amendments to the Act, as revised[5]. Furthermore, the number of unincorporated owner associations is few and, of the universe of incorporated owner associations, the vast majority are incorporated as mutual benefit corporations or perhaps cooperative corporations[6]. Nevertheless, in Section 4025 of AB 1921, numerous sections of the Public Benefit Corporation Law are cited.

With respect to proposed Section 4025 in particular, the Working Group feels that a wiser and more understandable approach might be to refer to, incorporate or expressly supersede the portions of the Corporations Code, where appropriate, in the context of the Sections of the Act where those Corporations Code sections might be relevant or inconsistent, rather than trying to

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5 It is respectfully noted to the Commission that the Mutual Benefit Corporation Law covers a wide range of nonprofit organizations from the smallest sports, fraternal, and social clubs to very large organizations such as the Automobile Club of California. The Working Group sees no compelling need to modify the generally applicable provisions of the Nonprofit Mutual Benefit Corporation Law, as applied to incorporated owner associations, than is currently implemented by the Act. There are practically no connections between interest groups that routinely track, monitor and comment on proposed legislation affecting the Mutual Benefit Corporation Law, such as trade associations, large membership organizations such as the Automobile Club, and the State Bar Committee on Nonprofit Corporations and CID interest and advocacy groups. Therefore, the likelihood of legislation being approved that affects the Mutual Benefit Corporation Law without the knowledge or input from CID advocates is high.

6 The undersigned has attended meetings of the Commission where advocates of the interests of cooperative corporations have advocated changes to the Davis-Stirling Act, but never have I seen advocates on behalf of public benefit corporations regulated primarily by Corporations Code sections 5110 et seq.

address it all in a single section of the Act. The danger of a single section is that it tries to do too much. For instance, we are aware of no commercial or residential owners associations that are nonprofit public benefit corporations. Owners associations are not formed for public or charitable purposes. When incorporated, they are almost universally organized as non-profit mutual benefit corporations. As such, the provisions of the California Nonprofit Public Benefit Corporation Law (Corporations Code Sections 5110 et seq., do not apply to common interest owner's associations at all. Section 4025, however, purports to have the revised Act supersede Corporations Code Section 5211, 5510, 5610, 5611, 5612, 5615, 5617, and 6310, all of which are within the Nonprofit Public Benefit Corporations Law. The implication is that other Sections of the Public Benefit Corporation Law would apply, which is not the case.

(iii) The Working Group is of the opinion that a sensible revision of the current Act would begin (as the Act originally began) with a section defining terms of art that are used throughout the Act. That is not the organization that the Commission Staff has presented in AB 1921. The Working Group supports the Commission's proposal to relocate current Civil Code section 1350.7 (which addresses the manner in which documents may be delivered to owners of separate interests in common interests developments). We would also recommend that the Section of the Act presenting terms of art (i.e., defined terms) should be expanded to include a number of other terms that are currently defined elsewhere in the Act, such as "reserve accounts" and "reserve account requirements."

(iv) AB 1921 includes numerous provisions that alter the current text of the Act with no demonstrable benefit. For example, Sections 4115 through 4125 and 6075 through 6080 of the Bill present a modified definition of the terms "condominium", "condominium project" and "condominium plan" which are not an improvement over the current definitions of those terms as currently presented in Civil Code section 1351, subsections (e) and (f). In fact, the new definition of a "condominium project' speaks of a "real property development", rather than a "common interest development" and uses the term "separate interest" which is a collective term in the Act that refers to several different types of individually owned interests that can exist in the overall universe of common interest developments. In a condominium project the only kind of separate interest there can be is a "unit," --- a term that is not even defined in the revised text presented in AB 1921.

In many other instances, the departures from existing Davis-Stirling Act language in AB 1921 result in unintended substantive changes in existing law, or at the very least, ambiguous departures from existing law. A good example of such unintended changes can be found in Sections 5550 and 5560 of the Bill that address the obligations of association boards to conduct periodic reserve studies, develop a reserve funding plan, and disclose the results of the study and the plan to the members. These provisions of the Bill essentially reorganize and restate Civil Code sections 1365.2.5 and 1365.5, subsections (e), (f) and (g).

The Working Group found the clear separation of the board's reserve study obligation (Bill Sections 5550 and 5555) from the board's reserve funding plan obligations (Bill Section 5560) and the re-location of the reserve study disclosure form (Bill Section 5555(c)) to be beneficial clarifications in the presentation of these topics which should be included in future

proposed legislation. The revised text of those sections of the Bill, however, contain many intended or inadvertent changes to existing provisions of the Act that the Working Group considers to be substantive in nature. Attached as an exhibit to this letter is the text of Sections 5550 and 5555, subsections (a) and (b), together with an annotated version of those proposed sections that makes this point.

The attachment to this letter presents only five brief sections of a Bill that is over 188 pages long (page count in my computer). The Working Group has found that comparing each separate section and subsection of AB 1921 to current law and analyzing each for substantive changes that may or may not have been intended is a prodigious and time consuming task. The Working Group has concluded that it would be more productive to recommend to the Commission and its staff that the Commission return to the current text of the Act, propose non-substantive changes in text that would clearly be beneficial improvements to existing law, while incorporating as many of the excellent organizational changes that are found in AB 1921, rather than spending many hours of analysis, review, comparison, and revision of the Bill, in order to bring the text of AB 1921 back to a more faithful presentation of current common interest development law.

THE WORKING GROUP'S RECOMMENDED APPROACH TO FUTURE EFFORTS TO CLARIFY AND SIMPLIFY THE DAVIS-STIRLING ACT:

As noted above, after much deliberation and review of AB 1921, the Working Group concluded that its contribution in assistance to the Commission would be most productive if the Group's members returned to the current Act as the foundational template, and then to work forward building on that foundation and keeping current statutory verbiage where it works, looking to the Commission's proposed text when that text is considered to be an improvement or clarification of existing law, either as to organization or content.

Several members of the Working Group assumed responsibility for reviewing substantive provisions of the Act, corresponding provisions of the Bill, and recommending revised text that could be incorporated in new proposed legislation. To date, those individual efforts on the part of Group members have resulted in revised proposed text relating to the following portions of the existing Act:

- Revised and expanded definitions that would be presented at the beginning of a proposed reorganization, simplification and clarification of the current Act.

- A new proposed section of the Act consolidating notices to member and document/notice delivery issues (essentially to replace current Civil Code section 1350.7).

- A proposed reorganization of the sections of the Act relating to the right of members to access association records and the association's obligations to retain records.

- A proposed consolidation in one part of the Act of all provisions dealing with

permitted and prohibited property use restrictions.

- Proposed revisions and clarification of association annual financial reporting requirements.

- Proposed revisions and consolidation of other annual or periodic document preparation and disclosure requirements for associations.

- Proposed revisions and consolidation of member and developer dispute resolution procedures (internal dispute resolution, alternative dispute resolution, and Calderon claims).

- Proposed amendments and consolidation of the Act's provisions relating to the imposition and collection of assessments.

These specific revision projects were then consolidated by the Working Group into a foundation draft document that is grounded in the text and general organization of the current Act. This consolidation has been pursued by the Group in a fashion similar to the practice followed by the American Law Institute, by appointing one of the Group's members as the Working Group's "recorder," with the job of collating the work and comments of the other Working Group members and examining those drafting efforts against the text proposed by the Commission staff. Interestingly, the outline has begun to take on something similar to the familiar organization of topics found in most Declarations of CC&Rs.

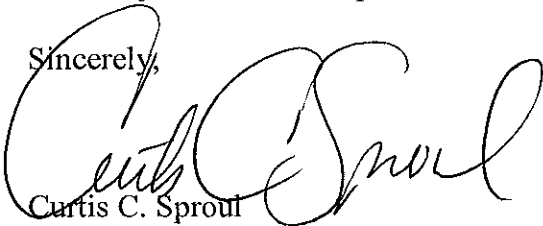
LOOKING TO THE FUTURE:

Ideally, we would like to arrange a meeting with you in Sacramento to present the current work product of the Group and to discuss and explain to you more fully the approach we are taking to this important project. Because the current work product of the Real Property Law Section Working Group remains in draft form, we would appreciate an opportunity to discuss that draft with you and then make further revisions and refinements before the draft or commentaries on the draft are given broader circulation.

Our designated recorder has begun the process of numbering sections in what we envision as a revised and restated Davis-Stirling Act with a view towards preserving some of the most familiar sections of the Act with their current numbering (e.g., 1365, 1365.5, 1366, 1367.1 et seq., 1368, and 1375 et seq.). Significant effort has gone into the formatting and layout and structure and numbering of the Working Group's draft proposal, to make it look consistent with the Commission's style. Nevertheless, in the current draft from the Working Group there are still numerous comments in the text, legal questions that need input and comment from all members of the Group, and cross references that need to be completed. For that reason we would prefer to have the accompanying draft document received and considered by the Commission's staff to be a preliminary draft that should be further refined following further exchanges or discussions between the Commission Staff and representatives of the Working Group. We are available at the Staff's convenience.

At the end of the day, our initial assessment is that the current section numbering of the Davis-Stirling Act will not be capable of being retained in its entirety, due to reorganization of certain topics where considered beneficial and the deletion or consolidation of certain sections of the current Act that are, in many respects, repetitive of other sections of the Act (such as Civil Code sections 1367.4 and 1367.6 which address issues already addressed in Civil Code section 1367.1). Accordingly, avoiding a renumbering or deletion of some sections of the current Act is not a major issue in the opinion of the Working Group.

Sincerely,



Curtis C. Sproul
On behalf of the Common Interest Development Legislative Advisory Committee,
A special committee of the State Bar Real Property Law Section, Subsection on
Common Interest Developments

cc: Scott Rogers, Chairman, Executive Committee of the
State Bar Real Property Law Section
Pam Wilson, State Bar Director of Sections
Paul Dubrasich
Marianne Adriaticio
Mary Howell
David Van Atta
Katie Jacobsen
Sandra Bonato
Gary Kessler

AN EXAMPLE OF AN EFFORT TO BRING THE TEXT OF TWO PROVISIONS OF AB 1921 MORE CLOSELY IN TO LINE WITH THE CORRESPONDING TEXT OF THE CURRENT DAVIS-STIRLING ACT

Current Text of Sections 5550 and 5555 (a) and (b) of AB 1921

Article 3. Reserve Funding

5550. At least once every three years, the board shall conduct a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to maintain.

5555. (a) At least once every three years, the board shall prepare a reserve funding study. The board shall review the study annually and make any necessary adjustments to the study.

(b) The study shall describe each major component that the association is obligated to maintain and that has a remaining useful life of less than 30 years. The study shall provide at least the following information for each included component, as of the end of the fiscal year for which the study is prepared or updated:

(1) An identifying description of the component.

(2) The total useful life of the component, in years.

(3) The estimated repair and replacement cost of the component over its useful life.

(4) The average annual repair and replacement cost for the component. This is calculated by dividing the lifetime repair and replacement cost by the total useful life of the component.

(5) The number of years the component has been in service.

(6) The required balance for the component. This amount is calculated by multiplying the average annual repair and replacement cost and the number of years that the component has been in service. The required balance also may be calculated using a generally accepted alternative method if the alternative method is described in the study and the alternative amount is provided as a supplement to the amount calculated by the method specified in this paragraph, and not as a replacement for that amount.

Recommended Revisions to that text in the Bill:

Article 3. Reserve Funding

5550. At least once every three years, the board shall conduct a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to **repair, replace, restore, or** maintain. **[COMMENT: "repair, replace, restore or**

maintain" is materially different from a mere maintenance obligation. This observation applies to much of the bold text, below]

5555. (a) At least once every three years, the board shall prepare a reserve funding study **that includes all major components of the common interest development that the association is obligated to repair, replace, restore or maintain, if the current replacement value of the major components is equal to or greater than one half of the gross budget of the Association [COMMENT: the annotated text to the CLRC proposal says that the decision to delete the text exempting the study requirement when the major components are modest was intentional. It is the opinion of the Working Group that this is a substantive change that adds unnecessary burdens on small associations]**. The board shall review the study annually **or cause it to be reviewed** and make any necessary adjustments to the study.

(b) The study shall describe each major component **of the common interest development** that the association is obligated to **repair, replace, restore, or** maintain and that, **as of the date of the study,** has a remaining useful life of less than 30 years. The study shall provide at least the following information for each included component, as of the end of the fiscal year for which the study is prepared or updated:

(1) An identifying description of the component.

(2) The total useful life **[current Act text says "probable remaining"]** of the component, in years.

(3) The estimated **cost** of repair **[strike "and"]** and replacement, **restoration and maintenance [strike "cost"]** cost of the component over its useful life.

(4) The average annual repair **[strike "and"]** and replacement **restoration and maintenance** cost for the component. This is calculated by dividing the lifetime repair and replacement cost by the total useful life of the component.

(5) The number of years the component has been in service.

(6) The required balance for the component **[What does "required balance for the component really mean? Is it: "The required reserve account balance that is estimated to be required to replace the major component at the end of its useful life"?]**. This amount is calculated by multiplying the average annual repair **[strike "and"]** and replacement, **restoration and maintenance** cost and the number of years that the component has been in service. The required balance also may be calculated using a generally accepted alternative method if the alternative method is described in the study and the alternative amount is provided as a supplement to the amount calculated by the method specified in this paragraph, and not as a replacement for that amount. **[Current Civil Code section 1365.5(e)(4) seems clearer and more succinct]**

GENERAL COMMENT: It was the collective conclusion of the Working Group that, despite the considerable effort of the Commission staff to present an annotated version of the Commission's proposal indicating where provisions of the Act had been relocated in AB 1921 or

abandoned entirely, reviewing AB 1921 for content, word changes, and structure proved virtually impossible or, perhaps better stated, unproductive, because, despite having a breakdown of what provisions of the Act purportedly went to what sections in AB 1921, the Bill simply represented too many changes from the existing law to competently track those changes back to the current text of the Act and give comments, criticisms, and recommended revisions with confidence.