

HAS ORANGE COUNTY GIVEN AWAY THE FARM?

**Addressing Problems Associated With Orange County
Housing Authority Invalid Releases of Resale Restrictions
on California Coastal Commission Affordable-Housing
Units**

**PREPARED BY
2003-2004 ORANGE COUNTY GRAND JURY**

HAS ORANGE COUNTY GIVEN AWAY THE FARM?

SUMMARY

In early 2003, the California Coastal Commission issued 83 warning letters and 26 cease-and-desist orders to owners of affordable-housing units in the Niguel Beach Terrace complex in Dana Point. The owners were warned about apparent violations of terms of Attachments to Grant Deeds, which were stipulated at the time of purchase. The condominiums were constructed on prime coastal property in the early 1980s under a development permit issued by the California Coastal Commission. One condition of the development permit was a requirement to include affordable housing to serve the needs of low- and moderate-income persons and families.

Orange County Housing Authority was tasked with preparing resale and occupancy restrictions for the affordable-housing units and designated to administer the program. The adopted restrictions required that the affordable-housing units be held and occupied by the recipients of the program for a period of 20 years, after which time the restrictions would expire.

By 1985, acting under directions from the Orange County Board of Supervisors, Orange County Housing Authority had relinquished all interest in California Coastal Commission affordable-housing projects and assigned responsibility for program management to Community Housing Enterprises. In 1991, Community Housing Enterprises reassigned responsibility to the Civic Center Barrio Housing Corp.

Despite having totally withdrawn from the program in 1985, Orange County Housing Authority has “released” four Niguel Beach Terrace property owners from all resale and occupancy restrictions, which ostensibly allowed the “released” parties to sell or lease properties at market value. The “releases” occurred in 1993, 1998, 2001, and 2002. Orange County Housing Authority also issued post-1985 “releases” to two owners of affordable-housing units in other California Coastal Commission development projects.

“Releases” of resale restrictions to owners of California Coastal Commission affordable-housing units (which Orange County Housing Authority had no authority to issue) cloud titles and expose affected property owners to potential penalties for violation of resale and occupancy restrictions. If unchallenged, these invalid releases reduce

the number of affordable-housing units available to provide for the housing needs of low- and moderate-income persons and families.

INTRODUCTION

Alleged widespread abuse of resale and occupancy restrictions imposed on affordable-housing units in the Niguel Beach Terrace condominium complex in Dana Point prompted the California Coastal Commission (Coastal Commission) in 2003 to issue 83 warning letters and 26 cease-and-desist orders to owners deemed to be in violation of the covenants. The warning letters and orders were issued to halt unauthorized sales and rentals of properties which had been set aside to provide for the housing needs of low- and moderate-income persons and families. Although Orange County Housing Authority (Housing Authority) designed the restrictions and originally administered the affordable-housing program for the Coastal Commission, it relinquished all control over the properties in 1985 following directions from the Orange County Board of Supervisors (Board).

Evidence provided to the Grand Jury shows that the Housing Authority has contributed to the alleged abuses by executing unauthorized and invalid releases from the resale and occupancy restrictions to some property owners. Any real estate transaction that may have occurred as a consequence of an invalid Housing Authority release poses serious legal problems for the parties involved. Perhaps of more importance, unchallenged invalid releases reduce the number of affordable-housing units available for low- and moderate-income families.

PURPOSE OF THE STUDY

The purpose of the study was to review the evolution of Orange County's policies and procedures related to the administration of affordable-housing programs and to determine if practices have been in accordance with official guidelines. Specifically, the study addressed invalid Housing Authority releases from resale and occupancy restrictions that have been issued to selected Niguel Beach Terrace property owners. Because future problems are anticipated in other Coastal Commission affordable-housing projects, the study also addressed Housing Authority releases associated with Coastal Commission projects in southern Orange County known as Beacon Hill Terrace and Spinnaker Run.

SCOPE OF THE INVESTIGATION

Background information was collected from public sources (news media accounts and the Internet) to gain knowledge about the issues involved. Interviews were conducted with representatives from the Coastal Commission, the Civic Center Barrio Housing Corp. (Barrio Housing Corp.) and the Orange County Department of Housing and Community Development (Department of Housing) to gather information concerning alleged violations of resale and occupancy restrictions in the Niguel Beach Terrace condominium complex. The primary focus of the interviews was to determine to what extent Housing Authority activities may have contributed to the alleged violations. A basic element of the investigation was to document Housing Authority administrative procedures related to affordable-housing programs to determine if activities related to the Niguel Beach Terrace properties have been conducted in accordance with existing policy. An original owner of one of the condominium units was interviewed to gain an historical perspective.

Records were collected from the Coastal Commission, the Barrio Housing Corp. and the Department of Housing to document Housing Authority activities related to Coastal Commission affordable-housing projects. In addition, record searches were conducted in the County Clerk-Recorder Office to document various property transactions that have occurred.

BACKGROUND

Numerous Federal, State, County and local programs designed to provide dwellings for low- and moderate-income persons and families have been initiated in the last three decades. Several affordable-housing projects were built under development permits issued by the Coastal Commission. Permit applicants were encouraged to establish low- and moderate-income housing programs through various innovative mechanisms such as tax-exempt mortgage-revenue bonds and density bonuses.

The specific legislation that spurred the inclusion of low- and moderate-income housing in the Niguel Beach Terrace condominium complex was the original version (since revised to eliminate reference to housing opportunities) of Section 30213 of the California Coastal Act, which stated:

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

When applicants sought permits to develop prime coastal property in south-ern Orange County, the Coastal Commission used the authority

provided by the language in Section 30213 to require that 25-35 percent of residential units included in the development plans be set aside for purchase by low- and moderate-income persons and families. Arrangements were made with the Housing Authority to craft resale and occupancy rules for the affordable-housing projects and to administer the program. The restrictions, known as Attachments to Grant Deeds, described requirements that were designed to ensure that properties would be retained in the affordable-housing program for the benefit of low- and moderate-income persons and families.

Although the Coastal Commission's intention was to retain the affordable-housing units in the program in perpetuity, the Housing Authority established a 20-year time limitation on resale restrictions for the Niguel Beach Terrace project. Owners who honored the stipulations of the Attachments for the full 20-year term would be released from the restrictions and be at liberty to enjoy full benefit of any increase in value that may have been realized. Until the 20-year term of the agreement expired, the Housing Authority held a Preemptive Right of Purchase, which could be exercised if the owner violated the terms of the agreement or wished to sell the property. To guard against profiteering, the Attachments included an option that allowed the Housing Authority to limit the purchase price to the original sales price plus a percentage increase based on the inflationary increase in median family income that may have accrued from the time of acquisition.

About the time that the Niguel Beach Terrace project was completed and entrusted to the Housing Authority for administrative oversight, numerous other similar projects were being developed throughout the County and came under Housing Authority purview. Although it is difficult to estimate how many affordable-housing properties were placed under Housing Authority administrative control during the late 1970s and early 1980s, Coastal Commission development permits alone resulted in the construction of almost 800 units, 286 of which were Niguel Beach Terrace condominiums.

The burgeoning affordable-housing programs produced an unexpected work-load for Housing Authority staff. While there was high interest in initial sales of affordable-housing units, complications developed when original owners submitted notifications of intent to sell. The Housing Authority purportedly had problems securing qualified low- and moderate-income buyers within the 60-day time constraint included in the Preemptive Right to Purchase. Consequently, the Housing Authority began to issue "Notice of Intent to Abandon Option" forms, which relieved owners from all resale and occupancy restrictions and allowed owners to sell properties at full market value. In June of 1983, the Board, in Resolution 83-962, acknowledged that the Housing Authority had "...sold

only 22 units while having to release 132 units since the inception of the program...” and directed the Housing Authority to eliminate resale controls on affordable-housing projects developed under County bond-funded programs. The Housing Authority implemented the Board’s new policy by automatically granting “Notice of Intent to Abandon Option” forms to any owner who submitted a notification of intent to sell. In the absence of a formal request from an owner, the controls remained in effect and ostensibly restricted owners from violating other terms of the Attachments. It is important to note that the new policy did not apply to affordable-housing projects developed under State-issued permits.

In August 1983, the Executive Director of the Housing Authority asked the Board for authorization to terminate resale-control agreements with State agencies and assign Housing Authority interests in State-permitted properties to the appropriate agency. In the request, the Director noted that the Housing Authority had received 47 “Notice to Sell” offers from owners of State-permitted units. Only 11 of the units had been sold under the terms of the affordable-housing program and 36 had been released from resale restrictions. Subsequently, the Board authorized the Housing Authority to issue notices to State agencies of the County’s intention to terminate all resale-control agreements and to take necessary steps to transfer administrative responsibility to an appropriate entity.

After the resale-control agreement with the Coastal Commission was terminated, the Housing Authority transferred all interests in Coastal Commission-permitted housing units (including condominiums in the Niguel Beach Terrace complex) to Housing Enterprises by issuing a series of Assignments between June 18, 1984 and December 10, 1985. The assignments included 285 of the original 286 Niguel Beach Terrace restricted units. The Assignments stated, in part:

“For value received, the undersigned Orange County Housing Authority hereby quitclaims, assigns and transfers to Community Housing Enterprises, a California Non-Profit Corporation, all its rights, including the option to purchase property, in those certain properties described in the Attachment hereto.”

The Housing Authority reportedly sent announcements to homeowner associations in the affected Coastal Commission projects advising owners of the changes in the program.

Circumstantial evidence suggests that Housing Enterprises also experienced considerable difficulty in administering resale controls on the Niguel Beach Terrace units. Although property records are difficult

to track, it appears that 25 Niguel Beach Terrace units were released between June 1984 and August 1987 when Housing Enterprises withdrew from the program (see Attachment 1).

After Housing Enterprises withdrew from the program, the Coastal Commission had problems finding a partner to manage the Orange County properties. Serious consideration was given to eliminating resale controls and releasing owners from all restrictions. However, the State Attorney General, in an informal opinion, stated that such action would constitute a gift of public funds and noted, in part:

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

In August 1990, Barrio Housing Corp. agreed to administer the program. On January 15, 1991, Housing Enterprises reassigned interests in the Coastal Commission properties (which included the 260 Niguel Beach Terrace units still under resale control) to the Barrio Housing Corp. A review of property records in the County Clerk-Recorder Office revealed that during the period 1994-1997, Barrio Housing Corp. released at least 14 additional units from resale restrictions (see Attachment 2).

Realizing that the 20-year term of the original Attachments for the Niguel Beach Terrace affordable-housing units was rapidly approaching, the Coastal Commission began an aggressive enforcement program in 2003 to bring alleged widespread violations of resale and occupancy rules under control before restrictions expired. The mandate for the Coastal Commission to enforce the restrictions is contained in Section 30614 of the Public Resources Code (added by passage of AB 2158 enacted on August 28, 2002), which states that:

“The commission shall take appropriate steps to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced and do not expire during the term of the permit.”

The Coastal Commission issued a grant to the Barrio Housing Corp. to fund a thorough investigation of the Niguel Beach Terrace problems and began enforcement actions. As of June 2003, the Barrio Housing Corp. had found sufficient cause to prompt the Coastal Commission to issue 83 warning letters and 26 cease-and-desist orders to halt unauthorized sales and rentals of Niguel Beach Terrace properties. Penalties for

violation of conditions include heavy fines and, where deemed appropriate, restarting the 20-year term of the original restrictions.

HOUSING AUTHORITY INVOLVEMENT

The Barrio Housing Corp. investigation of resale and occupancy infractions revealed that the Housing Authority has issued four unauthorized and invalid releases to condominium owners in the Niguel Beach Terrace complex since relinquishing administrative control in 1985. The releases were ostensibly granted by the issuance of a Housing Authority "Notice of Intent to Abandon Option" form which states, in part:

"The following described real property is hereby released from the terms, covenants, conditions and encumbrances of the Agreement and no further action on the part of the Orange County Housing Authority, the County of Orange (or its successor or assign), or any other party is required to effectuate such release:"

Standing alone, this form would have released owners from all the original stipulations outlined in the Attachments and permitted unencumbered market-value sales or leases. However, Housing Authority relinquished all interests to the properties in its earlier Assignments to Housing Enterprises (see Attachment 3), thereby rendering these Notices invalid.

Unequivocal evidence that post-1985 Housing Authority releases of Coastal Commission-permitted housing units are invalid is contained in a June 25, 2003 letter sent by a Coastal Commission official to an owner of a Niguel Beach Terrace condominium. The owner had submitted a copy of a Housing Authority "Notice of Intent to Abandon Option" form issued on June 14, 2001 as evidence of program compliance. In their response to the owner, the Coastal Commission noted that the Housing Authority:

"...had no interest in your unit at the time of this purported 'release' and, therefore, no legal ability to issue such a 'release'. ...(Barrio Housing Corp.) is the only entity that had the legal ability to issue such a release...."

Clearly, Housing Authority invalid releases for the Niguel Beach Terrace properties are not recognized by the Coastal Commission and merely cloud the titles of the affected properties and mislead owners.

The invalid releases of Niguel Beach Terrace properties by Housing Authority officials that were gleaned from the County Clerk-Recorder Office property files include Units 10, 140, 187 and 188 (see Attachment 4).

Because the Coastal Commission and Barrio Housing Corp. have stated that they plan to expand their investigations of possible violations of resale and occupancy restriction to other Coastal Commission-permitted affordable-housing projects in Orange County, the review of property records that was conducted as a part of this study was not limited to the Niguel Beach Terrace complex. Although the review was not exhaustive, it revealed that the Housing Authority issued invalid releases to the owners of Unit 123 in Spinnaker Run and Unit 53 in Beacon Hill Terrace (see Attachment 4).

While there may have been compelling reasons to release these restricted properties from resale controls, it is apparent that the Housing Authority did not have the power to issue legitimate “Notices of Intent to Abandon Option” forms for these properties on the dates listed in Attachment 4.

CAVEATS

The Grand Jury review of property records was conducted by searching for property transactions coded as a “Release” or “Notice” and associated with various abbreviated versions of “Orange County Housing Authority.” Although the search was conducted as thoroughly as time would allow, it is possible that some transactions were overlooked. If County clerks recorded property transactions under different codes or used an unusual abbreviation for the Housing Authority, the screening technique would not have identified the action. It is important to note that only random searches were conducted on pre-1994 records that are only available for review on microfilm. It is also possible that some Housing Authority releases were sent directly to property owners and not filed with the County Clerk-Recorder Office. Consequently, there are no assurances that the six identified invalid releases listed in this report are all that were issued.

FINAL OBSERVATIONS

It was noted that many of the unauthorized and invalid releases were issued shortly before or after the properties in question had been sold. The timing of the transactions, at the very least, gives the perception that the releases were issued with the intent to facilitate what would otherwise have been illegal sales. If the transactions were market-value

sales (which is reasonable to assume), sellers very likely realized handsome profits. Had these sales been executed under the auspices of the affordable-housing program by the designated agency, proceeds of the sales could have been used to serve the housing needs of low- and moderate-income families.

In response to the Coastal Commission's aggressive enforcement actions against Niguel Beach Terrace homeowners, numerous parties have retained legal counsel to represent them in potential litigation. At least one owner has filed a claim for money damages against several of the agencies involved in the administration of the program, including the Housing Authority.

As the controversy surrounding Niguel Beach Terrace properties wends its way through the legal process, it is possible that the public will react negatively to alleged profiteering by some beneficiaries of the low- and moderate-income housing program. It is also possible that the public will have questions for the agencies entrusted to administer the program and wonder if Orange County has indeed given away the farm.

FINDINGS

Under California Penal Code Sec. 933 and Sec. 933.05, responses are required to all findings. The 2003-2004 Orange County Grand Jury has arrived at the following eight findings:

1. Orange County Housing Authority relinquished control of California Coastal Commission affordable-housing units to Community Housing Enterprises in a series of Assignments between June 18, 1984 and December 10, 1985.
2. Orange County Housing Authority releases of California Coastal Commission affordable-housing units issued after 1985 were contrary to County policy and procedures and were invalid.
3. Orange County Housing Authority issued post-1985 invalid "Release-Notice of Intent to Abandon Option" forms for Niguel Beach Terrace Units 10, 140, 187 and 188; Spinnaker Run Unit 123; and Beacon Hill Terrace Unit 53.
4. Additional Orange County Housing Authority invalid releases of California Coastal Commission affordable housing units may have been issued but not discovered during this investigation.

5. Invalid releases by Orange County Housing Authority cloud property titles, which may cause serious legal and financial problems for affected parties.
6. Invalid releases by Orange County Housing Authority may expose the County to damage claims from affected parties.
7. Invalid releases by Orange County Housing Authority, if used to facilitate inappropriate sales or leases, reduce the number of affordable-housing units available to serve the needs of low- and moderate-income home seekers.
8. Resale proceeds foregone as the result of Orange County Housing Authority releases of California Coastal Commission affordable-housing units could have been used to defray administrative costs of the affordable-housing program and could have helped fund additional projects to replace affordable-housing units lost through market-value sales.

Responses to all findings are required from the Orange County Board of Supervisors and requested from the Orange County Housing Authority.

RECOMMENDATIONS

In accordance with California Penal Code Sec. 933 and Sec. 933.05, each recommendation requires a response from the government entity to which it is addressed. These responses are to be submitted to the Presiding Judge of the Superior Court. Based upon the findings, the 2003-2004 Orange County Grand Jury recommends that:

1. Orange County Housing Authority rescind the six invalid releases issued to owners of California Coastal Commission affordable-housing units and make appropriate corrections to public property records. (Findings 1-3)
2. Orange County Housing Authority inform the California Coastal Commission, Civic Center Barrio Housing Corp. and affected parties that releases for California Coastal Commission affordable-housing projects signed by the Executive Director, Orange County Housing Authority and dated later than December 10, 1985 are invalid and void. (Findings 1-4)

3. Orange County Housing Authority conduct a thorough review of all releases issued since 1985 to identify any that violate applicable rules and regulations, notify affected parties and take steps to correct errors in public property records. (Findings 4-6)
4. Orange County Housing Authority develop procedures to readily identify all future requests for release associated with California Coastal Commission affordable-housing units and promptly forward such requests to the Civic Center Barrio Housing Corp. or its assign for processing. (Findings 7 and 8)
5. Orange County Housing Authority assist Civic Center Barrio Housing Corp. efforts to administer the California Coastal Commission affordable-housing program by identifying and referring eligible low- and moderate-income home seekers to ensure that an adequate supply of eligible buyers are available to fill the needs of their program. (Finding 8)

Responses to all recommendations are required from the Orange County Board of Supervisors. Responses to all recommendations are requested from the Orange County Housing Authority.

ATTACHMENT 1

**Niguel Beach Terrace Condominiums Released by Community
Housing Enterprises Between 1984 and 1987**

# 55	# 108	# 179	# 224	# 326
57	120	186	281	327
67	137	194	282	357
69	150	203	284	394
77	169	211	319	395

ATTACHMENT 2

**Niguel Beach Terrace Condominiums Released by Civic Center
Barrio Housing Corp. Between 1994 and 1997**

# 58	# 89	# 117	# 170	# 243
66	97	122	220	285
76	112	139	226	

ATTACHMENT 3

Assignments of California Coastal Commission Affordable-Housing Units From Orange County Housing Authority to Community Housing Enterprises

1. On June 18, 1984, County Clerk-Recorder Document No. 1984-337318
2. On June 22, 1984, County Clerk-Recorder Document No. 1984-372193
3. On August 7, 1984, County Clerk-Recorder Document No. 1984-327142
4. On December 10, 1985, County Clerk-Recorder Document No. 1985-494571

ATTACHMENT 4

California Coastal Commission Affordable-Housing Units Released by Orange County Housing Authority After 1985

1. On December 20, 1993, Niguel Beach Terrace Unit 188, 34148 Selva Rd., Dana Point, County Clerk-Recorder Document No. 1994-066349
2. On July 3, 1998, Niguel Beach Terrace Unit 187, 34148 Selva Rd., Dana Point, County Clerk-Recorder Document No. 1998-426007
3. On April 2, 2001, Spinnaker Run Unit 123, 25611 Quail Run, Dana Point, County Clerk-Recorder Document No. 2001-209385
4. On June 14, 2001, Niguel Beach Terrace Unit 10, 34012 Selva Rd., Dana Point, County Clerk-Recorder Document No. 2001-529604
5. On December 13, 2002, Niguel Beach Terrace Unit 140, 34042 Selva Rd., Dana Point, County Clerk-Recorder Document No. 2003-010307
6. On May 30, 2003, Beacon Hill Terrace Unit 53, Terrace Circle, Laguna Niguel, County Clerk-Recorder Document No. 2003-684285