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TRANSMITTAL MEMORANDUM

To: Mr. Robert G. Pearson,
Executive Director
Housing Authority of the
City of Santa Barbara
808 Laguna Street
Santa Barbara, California 93101

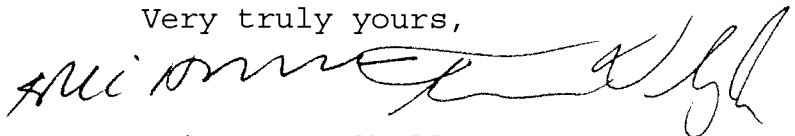
DATE: June 11, 1998

RE: Carrillo/Castillo Street Proposal

ENCLOSED: Preliminary legal memorandum addressing issues raised
in your May 11th Memorandum.

MESSAGE: Per our telephone conference on June 9. We would be
pleased to expand our analysis at your request.

Very truly yours,



Eric P. Hvolbøll
and Fernando Velez, Jr.
for PRICE, POSTEL & PARMA LLP

**By Facsimile: (805) 564-7041
and Messenger Delivery**

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JUN 12 1998

HOUSING AUTHORITY
CITY OF SANTA BARBARA

MEMORANDUM

Price, Postel & Parma LLP

FROM: Price, Postel & Parma LLP
TO: Robert G. Pearson
Executive Director
Housing Authority of the City of Santa Barbara
DATE: June 11, 1998
OUR FILE NO.: 18741.3
SUBJECT: 335 W. Carrillo Street/922 Castillo Street

This memorandum provides brief answers to your questions on page two of your May 11, 1998 memorandum regarding the above-referenced project.

1. The Housing Authority of Santa Barbara ("Authority") May Target A Specific Class Of People (e.g., "Downtown Workers") As Prospective Tenants, Subject To Compliance With All Applicable Laws.

The California Housing Authority Law ("HA Law") grants each housing authority the power to adopt its own rules and regulations establishing a plan for selection of applicants. *Health & Safety Code Section 34322.2 (unless otherwise noted, all Section cites shall be to the Health & Safety Code)*. Although each housing authority may enact its own rules and regulations, certain requirements are prescribed by the HA law.

The Authority's rules and regulations must assure equal opportunity and nondiscrimination on the grounds of race, color or national origin. *Section 34322.2*. In addition, preference categories must be established giving priority to persons displaced by public or private action. *Section 34322.2(a)*. Also, within established preference categories, priority is to be given to families of veterans and servicemen. *Section 34322.2(b)*.

State and federal law impose additional requirements. The California Fair Housing Law prohibits selection of tenants based upon the following factors: race, color, religion, sex, marital status, national origin, or ancestry. *Government Code Section 12955(a)(3)*.

Furthermore, a public housing provider, as a governmental agency, may not impose unconstitutional conditions on the housing privilege (Housing Authority v. Cordova (1955) 130 Cal.App.2d Supp. 883), or arbitrarily discriminate in the selection or eviction of tenants. Banks v. Housing Authority (1953) 120 Cal.App.2d 1; Cordova, at 888.

Although any preference could conceivably be subject to a constitutional challenge, the right to choose to work in a place other than downtown Santa Barbara is not a "fundamental", or "substantive", constitutional right (such as Freedom of Speech). See, Ector v. City of Torrance (1973) 10 Cal.3d 129, 135-36 (*residence requirement for becoming a municipal employee challenged, court determined that there was no fundamental "right to commute"*). Since the right to choose not to work downtown and still be considered for the project is not a fundamental right, a housing preference impinging upon that right is enforceable so long as it is rationally related to a governmental purpose, a standard which should be easy to establish in this case.

Therefore, so long as (1) the preference system is based upon conditions other than race, color, religion, sex, marital status, national origin, or ancestry (and age, as discussed below), (2) the preference system does not require the prospective tenant to waive or forfeit fundamental constitutional rights, and (3) the preference system established for the Carrillo/Castillo project is rationally related to a governmental purpose; the Authority may establish a preference criteria for downtown workers.

2. The Housing Authority May Not House "Younger" Single Persons Ahead Of Single Elderly, Disabled, Or Handicapped Persons.

The California Unruh Civil Rights Act (Civil Code sections 51 et seq.) provides that:

[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color religion, ancestry, national origin, or disability are entitled to the full and equal accommodations, advantages,

facilities, privileges, or services in all business establishments of every kind whatsoever."

Civil Code Section 51; see also Government Code Section 12955(a).

The term "business establishments" applies to public accommodations. King v. Hofer (1996) 42 Cal.App.4th 678.

Although Civil Code Section 51 does not explicitly include age, the California Supreme Court interpreted that section to prohibit a business establishment from discriminating in the sale or rental of housing based upon age, and that interpretation was statutorily adopted in Civil Code Section 51.2. Marina Point, Ltd. v. Wolfson (1982) 30 Cal.3d 721.

Note: marital status ("single") may not be used as a factor. *Government Code Section 12955(a)(3)*. The Authority may, however, establish occupancy standards offering available units only to families of appropriate size (e.g., one person per studio). *Section 34322.2(c)*.

3. The Housing Authority May Go Beyond 80% Of Area Median

The Authority may go beyond 80% of area median pursuant to certain requirements established by state law.

The HA law provides that all rentals shall be provided to low income households. *Section 34322(a)*. "Lower income households" means the same as "low income households", "persons of low income", and "low income families". *25 California Code of Regulations Section 6928(d)*. *Section 34213* defines "persons of low income" as persons or families whose income does not exceed that income permitted by *Section 50079.5*, or persons or families eligible for assistance provided by state or federal housing programs intended primarily to assist lower-income households, as defined in *Section 50079.5*.

Section 50079.5 provides that income cannot exceed qualifying limits for lower income families as established by the federal Section 8 program, as published in the California Code of Regulations. The Regulations define the qualifying limits for "lower income households" as 80 percent of the area median income, adjusted for family size and other HUD factors. 25

California Code of Regulations Section 6928(a). Therefore, the general rule is that the Authority must make all of its units available to families earning 80 percent of the area median or less.

That general rule is made subject to Section 34312.3. *Section 32322(a)*. Section 34312.3(c)(1)(A) provides that:

[n]ot less than 20 percent of all units in housing projects assisted by an authority pursuant to this section shall be available for occupancy on a priority basis to persons of low income.

One half of those units (i.e., 10 percent of all units) must be made available to very low income households. *Id.*

The exception to the general policy is very broad, and applicable to housing projects financed with the use of revenue bonds, construction and mortgage loans, or proceeds from the sale, lease or other disposition of Authority property. *Section 34312.3(a), (b)*. The 20 percent limitation applies to the aggregate number of units assisted by the Authority pursuant to this section. *Section 34312.3(c)(6)(A)*.

The Legislature justified the Section 34312.3 exception to the rule that all Authority housing must be provided to low income households by acknowledging the difficulty of financing a housing project with available funds, and that "excess funds received pursuant to this section can be utilized to further assist in the provision of housing for lower income households" and "it is the intent of the Legislature that the authorization of this section is to be used to enhance and supplement the traditional housing authority role of providing housing only for low-income households." *Section 34312.3(g)*.

4. The Authority Does Not Have The Express Power To Develop And Lease Commercial Space Adjacent To A Housing Project, It Does, However, Have The Express Authority To Issue Revenue Bonds And Lend The Proceeds To A 501(c)(3) Organization For Such Purposes

The Authority has the specific power to make bond-financed loans to 501(c)(3) organizations for the development of multi-family housing. *Section 34377*. The 501(c)(3) organization may

then, as part of the multi-family housing project, acquire commercial property for lease. *Section 34377.4*. No more than 10 percent of the proceeds of any issued revenue bonds may be used to acquire the commercial space, the commercial space must be on the same or adjacent parcel to the housing, and any profits from the commercial space must be used to reduce the rent on the multi-family housing. *Section 34377.4*.

No such explicit authority exists for projects developed by the Authority itself. The Authority is authorized to "[l]ease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project." *Section 34315(a)*. A "housing project" means any work or undertaking to be financed or assisted in whole or in part by the federal government or a state public body, for any one or combination of the following purposes:

- (a) To demolish, clear, or remove buildings from any slum area. Such work or undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes.
- (b) To provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income . . . Such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes.

Section 34212.

Without specific legal authority, we cannot state that development of commercial property by the Authority is allowed. If you would like to pursue this matter further, we will work with you to fashion the most acceptable manner by which your goals may be achieved.