ADVOCATES FOR RESPONSIBLE TREATMENT

http://www.responsibletreatment.org

San Juan Capistrano, CA 92675
949-637-2570
info@responsibletreatment.org

April 9th, 2018

Ms. Paula Villescaz, Consultant
Assembly Health Committee
State Capitol, Suite #6005
Sacramento, CA 95814

AB 3162 (Friedman)
SUPPORT
Assembly Health Committee
Hearing Date: April 17, 2018

Dear Ms. Villescaz,

Advocates for Responsible Treatment, is an all-volunteer, citizens' advocacy group representing Southern California which wishes to ensure recovery businesses operate in a safe, humane and legal manner. We look for win-wins for both recovering addicts AND neighbors. We are writing today **in SUPPORT of AB 3162 (Friedman).** For reasons described below, **we strongly urge the bill to be amended to indicate 300 feet from Depart of Social Services-licensed residences (defined by the Community Care Act) OR to support 800 feet of separation between licensed, treatment residences.**

AB 3162 will address some loopholes and errors in current regulation by clarifying that residential treatment must truly take place entirely within a single residence and not spread out over several residences. It will make the first year of a license provisional, and will require the operator to reapply if it fails licensing requirements. If a residence is alleged to be providing treatment without a license, DHCS would be required to investigate the allegation and indicate by which date the business should cease to provide such services. The bill also provides stiff penalties for violations, instead of the current laughable penalties that do not serve as a deterrent, but rather seem to harken to some bygone era when an ice cream cone cost 5 cents. All of these elements of the bill will slightly strengthen DHCS' authority, which is critical because current loopholes allow businesses to operate in a substandard or outright illegal manner.

As well, AB 3162 provides for separation requirements between LICENSED treatment residences. Last year, we read many spurious arguments--by opponents to regulation--promoting Fear, Uncertainty and Doubt, often reiterated by Health Committee Staff, as though factual. In this letter, we intend to debunk the most absurd of those arguments so that Committee Staff no longer feels a need to repeat myths in support of anti-separation arguments.

The FHA and ADA Don't Address Commercial Housing for Recovering Addicts

The Fair Housing Act entitles the disabled to "reasonable accommodations," not to special privileges or fundamentally different living arrangements than those of other individuals or families. Thus, the disabled are not allowed to buy houses in residential zones, tear them down, and build apartment buildings, unless everyone is similarly allowed.

The disabled are not entitled to pack 12 people into a house without a Conditional Use Permit in a zone limited to 6 adults in a house. The disabled are not allowed to operate a commercial enterprise, such as a boarding house, out of a residence if no other residence in the zone can operate such an enterprise. Similarly, a business or LLC, merely because it is housing the disabled, is not allowed to subdivide the inside of a house with unapproved construction because the disabled are immune to regulation due to some imaginary influence of the FHA. These are examples of unjustified, excessive privileges, some of which are sought by businesses claiming to escape regulation by asserting they are serving the disabled.

Understanding what represents a reasonable accommodation, as supported by the Fair Housing Act, is critical to understanding the impact of the FHA on AB 3162. What is best for recovering addicts is a stable environment with supportive companionship, not a revolving door of housemates, unstable in their recovery, rotating in and out every other week. Therefore, a business that provides transient housing to recovering addicts in a zone designated for permanent housing is NOT making an accommodation. A business offering services for disabled, transient occupants and controlling the living environment is also NOT a cooperative environment, as defined by court cases, and therefore does not meet the requirements to be deemed a "residential use" of property. What is it then? A commercial boarding house.

In a 2003 opinion, the California Attorney General found that communities may prohibit or regulate the operation of a lodging house in a single family zone. A lodging house was defined as "a residence or dwelling... wherein three or more rooms, with or without individual or group cooking facilities, are rented to individuals under separate rental agreements or leases, either written or oral, whether or not an owner, agent or rental manager is in residence." **The AG determined that a lodging house could be considered a commercial use and could be prohibited.**[1] According to the AG, a licensed recovery residence or an unlicensed recovery residence operated by a business is a commercial use.

So how does the Fair Housing Act address *commercial uses* of property to serve the disabled? Contrary to popular opinion expressed to the State Legislature, the FHA is dead silent on the issue. Are the disabled allowed to live on their own in a house as a "residential use?" Of course. A recovering addict could live in his own residence, by himself or by hiring assistance. Likewise, from one to six recovering addicts, living as a "family," hiring assistance, in a semi-permanent setting, MAY ALSO claim a "residential use" of a house in a typical, permanent, suburban residential zone. But a business operating and controlling a transient residence of recovered addicts is a "commercial use," a special privilege, which the Fair Housing Act does not protect.

In other words, in contrast with previous claims by disability rights advocates and Assembly Health Committee staff, **the FHA and the ADA do not prevent cities or California from setting requirements for commercial operations serving the disabled in residential zoning.** Indeed, the State of California already licenses over two dozen businesses serving dependent classes in residential housing. **California's Community Care Act and the Department of Social Services provide separation requirements for 26 forms of dependent adult housing, ranging from 300 feet for the cognitively impaired to 1000 feet for "Residential Health**

[1] *Opinion No. 01-401(March 19, 2003) 86 Ops.Cal.Atty.Gen. 30,* cited in 2008 California Land Use Laws Related to Recovery Facilities (Rehab) and Group Homes.pdf; http://www.cp-dr.com/articles/node-781

Care" for the terminally ill. For adult residential housing, only DHCS' houses and NON-MEDICAL houses for the elderly are presently exempt from separation requirements.

The Present Concentration Crisis Demands Separation of Recovery Residences

Why are separation requirements like those in AB 3162 for licensed recovery treatment houses needed today in California? Because, over the last few year, DHCS has licensed residences with reckless abandon. Today, **forty-four percent of the licensed, 6-and-under recovery residences in the state are in Orange County**. This ignores the number of *unlicensed*, commercial operations providing services in residences to recovering addicts in the same neighborhoods. The majority of these *unlicensed* operations, best described as "Recovery Care Residences," represent 4 to 10 times as many properties, and in-fill into neighborhoods where licensed houses operate. A map of over-concentration in Costa Mesa, the second most impacted city in the state, can be found at this link:

https://www.google.com/maps/d/viewer?mid=11MFPHk4YCy36OVA2CaK3zwpm9WM&ll=33.65325453646528%2C-117.90917099999996&z=9

At the end of this letter are just TWO examples of how concentrated housing is presently sited. We can provide many more.

Separation Requirements Benefit the Disabled

Given a situation where overconcentration has become the norm in several cities in the state, do separation requirements actually BENEFIT protected classes? Yes. According to courts, ***overconcentration,* as we are presently seeing in California, can be discriminatory**. Court cases, including *Familystyle of St. Paul v. City of St. Paul* (8th Cir 1991) 923 F.2d 91, in which Minnesota required new group homes to be located **at least a quarter mile (1320 feet) from an existing Residential Program**, have argued that the disabled should not be institutionalized or segregated into enclaves:

> *"The Court upheld both the State's and City's group home dispersal requirements finding that they were designed to "ensure that mentally handicapped persons needing residential treatment will not be forced into enclaves of treatment facilities that would replicate and thus perpetuate the isolation resulting from institutions."*

Olmstead v. L.C. required that states eliminate unnecessary segregation by ensuring the most "integrated" setting for the disabled. Thus, separation requirements help to ensure that the occupants of a house have equal access to diverse communities.

Providing additional clarification, in a recent, 11/10/2016, Department of Justice and HUD Joint Statement, entitled "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act," the agencies concur:

> *"...**if a neighborhood came to be composed largely of group homes**, that could adversely affect individuals with disabilities and **would be inconsistent with the***

objective of integrating persons with disabilities into the community. *Especially in the licensing and regulatory process,* ***it is appropriate to be concerned about the setting for a group home****. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in* ***entire*** *neighborhoods."*

For recently recovering and detoxing addicts, over-concentration poses a potential endangerment as well; over-concentrated housing creates a physical target market for dealers of illegal drug by clustering potential customers. Sam Quiñones, in the book *Dreamland*, describes how heroin dealers can now respond to the equivalent of take-out phone calls and deliver drugs in small quantities, baggies or balloons, to a location in a matter of a few hours. Far more efficient for drug distributors would be to conduct multiple heroin deliveries to multiple customers in the same neighborhood. Thus, amongst licensed state housing, over-concentration of treatment residences is uniquely risky to the very residents the housing is trying to support, and separation requirements to prevent over-concentration benefit recovering addicts.

Separation Requirements of Up to 800 Feet Are Not Discriminatory

As if evidence from court cases and the federal agencies isn't enough, opponents to AB 3162 might still want to argue that separation requirements of 300 feet for recovering addicts in particular, "might be" discriminatory because the regulations target a specific class. Also, untrue.

Often, opposition quotes *Pacific Shores vs. Newport Beach*, as determining that ANY attempt to regulate or create separation between such houses MAY BE or ACTUALLY IS discriminatory. Such statements intentionally misconstrue *Pacific Shores*. In *Pacific Shores*, the courts concluded **regulations at the heart of *Pacific Shores* were NOT facially discriminatory**; rather, recorded verbal comments made by City Councilmembers expressed intent to eliminate residences, which the Court determined made the INTENT of the regulations discriminatory, not the actual regulations. Thus, a state bill that addresses separation without discriminatory intent, as AB 3162 does, is not discriminatory.

DOJ and HUD have already set a precedent for recovery residence separation. In a 2/21/17 article about the DOJ/HUD investigation of separation requirements enacted by Prescott, the Deputy City Attorney Matt Podracky indicated:

"Based on his recommendations, ***it looked like an 800-foot-buffer zone was in fact something that could be upheld by the DOJ as not violating the Fair Housing Act*** *and help eliminate the congregation of group homes in one area."*

Podracky says the goal is to break up clusters of group homes in one area, not to target and shut down certain homes.

"There was in fact a significant clustering problem of group homes in one area, thus creating the possibility of some sort of institutionalized location for these group homes," he said.

The DOJ and HUD closed the second investigation on the 800-foot group

home buffer finding no violations.[2]

Finally, in California, in *Solid Landings Behavioral Health v. City of Costa Mesa*, **the Court declared that Costa Mesa's 650-foot separation rule was facially reasonable.**[3] In short, up to 800 feet of separation is not considered discriminatory by the federal government OR the courts.

Ironically, seldom argued are the rights of OTHER disabled who seek to locate in the same neighborhood in the same community. If a neighborhood becomes over-concentrated with a single type of recovery housing, recovering addicts who seek to buy a house for individual use in the same neighborhood will be thwarted from doing so, which is discriminatory toward them. In addition, OTHER disabled people or protected classes, including but not limited to the cognitively impaired, the elderly, and those in hospice, might be prevented from access because one category of state-backed, disabled housing has been allowed to dominate. Lastly, and importantly, the rights of existing home-owning disabled and protected classes in the neighborhood should not be trumped by preferential treatment of state-backed, intensive housing for single adults. One of the roles of the State Legislature should be to balance the needs of all of these constituencies, not promote and favor one above all others.

Will Separation Requirements Prevent the State from Providing Recovery Beds?

Opponents to this bill will argue that 300 feet of separation will somehow make more difficult the ability of houses to be sited in the community. In reality, in most suburban communities, **300 feet represents every other to every fifth house on a street**. Likewise, we remind the legislature that this form of housing is intensive, and meets the needs of more adults than are typically living in individual houses in residential-zoned neighborhoods. Every house with 6 adults is providing easily twice the density of adults in a typical house in a residential zone, thereby meeting more demand than one would account for if merely counting residences.

Because of this imagined siting difficulty, opponents of separation requirements may try to claim that such requirements will reduce the supply of beds. When the State Legislature originally established its licensing mandate, it declared the State should license these residences "commensurate with local need." Today, according to industry insiders, approximately 80% of the clients in for-profit, private-insurance-supported, licensed, 6-and-under residences are coming to California from out-of-state. AB 3162 allows hundreds of houses to be available to residential recovery in almost any suburban California city, which is far more than the state needs.

AB 3162 Does Not Address Separation Between All Types of Intensive Residences

It is important to note that AB 3162 sets up a separation merely between LICENSED addiction treatment houses, which means that its proposed separation distance is in actuality far lower than

---

[2] Kuhn, Casey, "DOJ, HUD Close Investigation On Prescott Sober Living Home Regulations," *KJZZ*, 2/21/17, http://kjzz.org/content/438242/doj-hud-close-investigation-prescott-sober-livinghome-regulations

[3] https://www.leagle.com/decision/infdco20150422850

other California separation requirements:

1) AB 3162 does not take into account unlicensed, intensive Recovery Care Residences and Cooperative Sober Homes serving the same protected class. These unlicensed houses will still be allowed to locate wherever they want. Even with a 300 foot separation between licensed houses, with 4 to 10 times as many *unlicensed* houses as licensed houses, locating in the same neighborhoods, recovery housing will still be vastly over-concentrated, in contrast with the density of other forms of Community Care Residences.

2) AB 3162 does not take into account separation of recovery residences from other types of intensive, Community Care housing for other classes of dependent adults that might also be in the neighborhood. In contrast, the Department of Social Services' requirements set up a 300 foot limit (or 1000 foot) between almost all other types of dependent adult housing, regardless of whom is served.

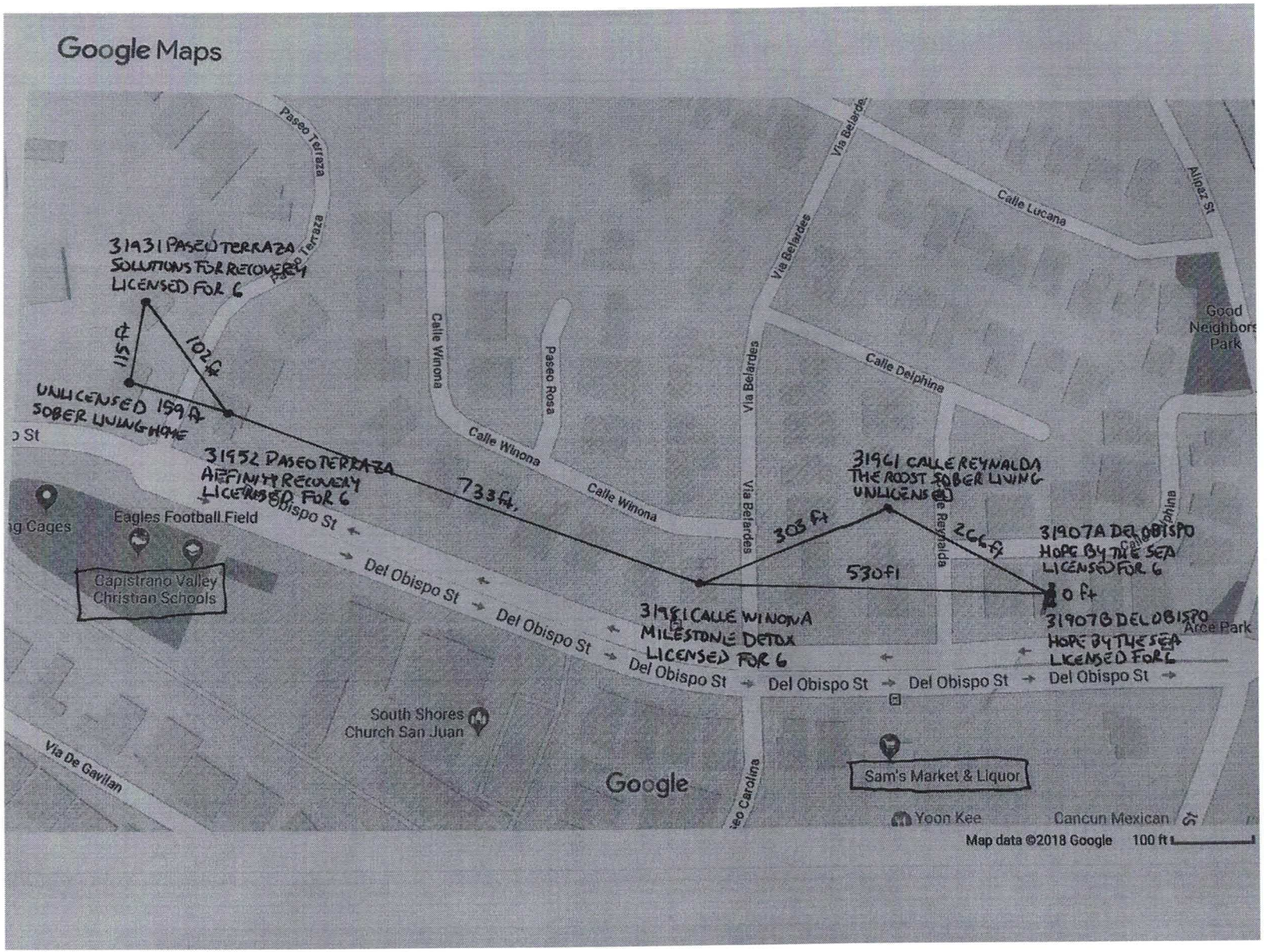
We therefore believe **AB 3162 should be amended to require 300 feet from any other class of state-licensed Congregate Care or to require an 800 foot separation requirement between licensed recovery residences.**

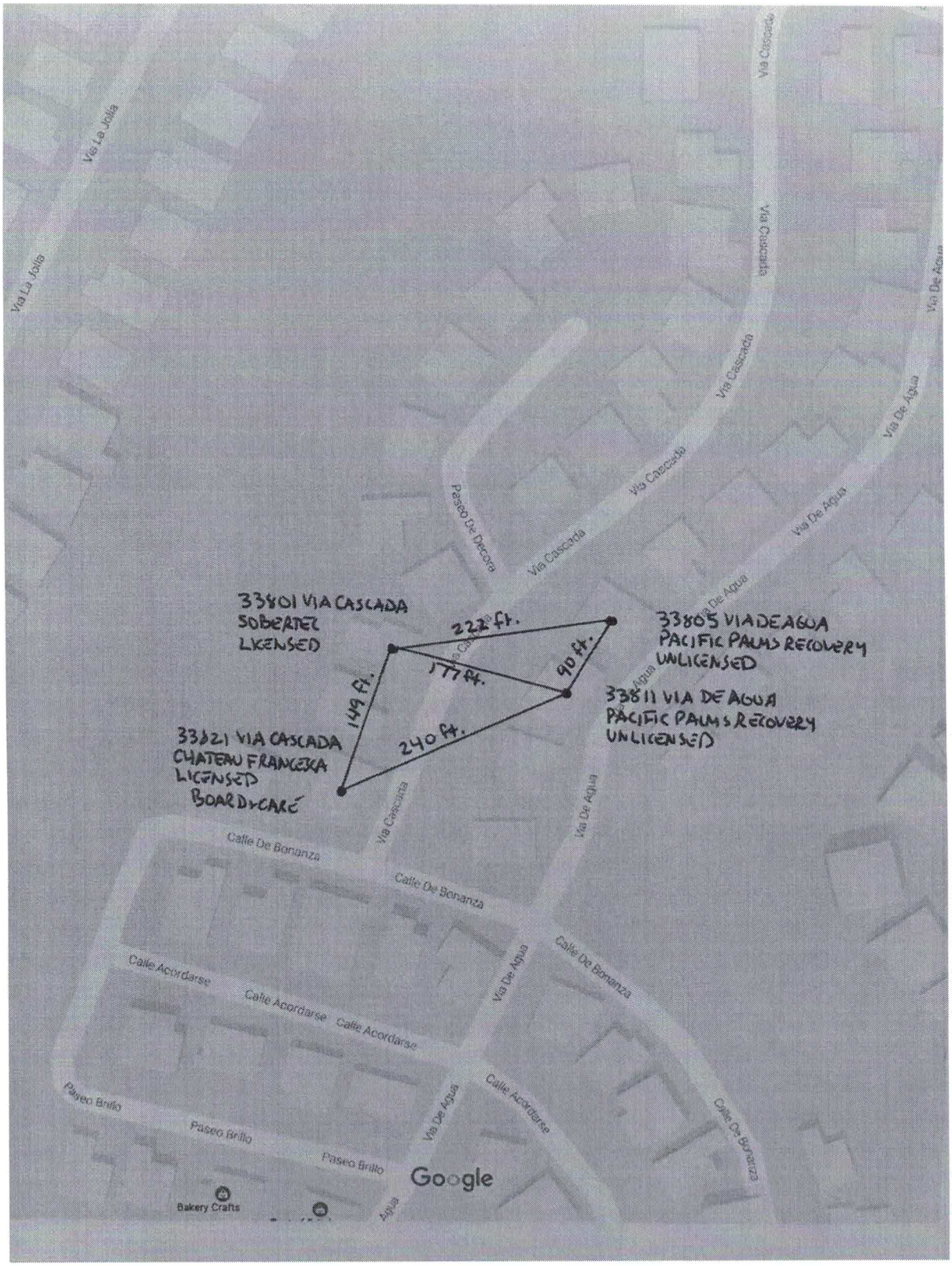
In Conclusion

While we would like to see AB 3162 amended, we support AB 3162 (Friedman) and have sent letters similar to this to the entire Assembly Health Committee.

Sincerely,

Laurie Girand
Steering Committee Member
Advocates for Responsible Treatment


Google Maps
31931 PASEO TERRAZA
SOLUTIONS FOR RECOVERY
LICENSED FOR 6
115 ft
102 ft
UNLICENSED 159 ft
SOBER LIVING HOME
31952 PASEO TERRAZA
AFFINITY RECOVERY
LICENSED FOR 6
733 ft
31961 CALLE REYNALDA
THE ROOST SOBER LIVING
UNLICENSED
303 ft
266 ft
530 ft
31907A DEL OBISPO
HOPE BY THE SEA
LICENSED FOR 6
0 ft
31907B DEL OBISPO
HOPE BY THE SEA
LICENSED FOR 6
31981 CALLE WINONA
MILESTONE DETOX
LICENSED FOR 6
Paseo Terraza
Calle Winona
Paseo Rosa
Via Belardes
Calle Lucana
Alipaz St
Calle Delphina
Calle Reynalda
Good Neighbors Park
Eagles Football Field
Capistrano Valley Christian Schools
Del Obispo St
South Shores Church San Juan
Via De Gavilan
Sam's Market & Liquor
Yoon Kee
Cancun Mexican
Arce Park
Google
Map data ©2018 Google
100 ft


33801 VIA CASCADA
SOBERTEL
LICENSED
222 ft.
177 ft.
90 ft.
149 ft.
240 ft.
33805 VIA DE AGUA
PACIFIC PALMS RECOVERY
UNLICENSED
33811 VIA DE AGUA
PACIFIC PALMS RECOVERY
UNLICENSED
33821 VIA CASCADA
CHATEAU FRANCESKA
LICENSED
BOARD+CARE
Via La Jolla
Via Cascada
Via De Agua
Paseo De Decoro
Calle De Bonanza
Calle Acordarse
Paseo Brillo
Bakery Crafts
Google