L A F C O M E M O R A N D U M

SANTA BARBARA LOCAL AGENCY FORMATION COMMISSION
105 East Anapamu Street ♦ Santa Barbara CA 93101 ♦ (805) 568-3391 ♦ Fax (805) 568-2249

February 6, 2020

TO: Each Member of the Commission

FROM: Paul Hood PLH
Executive Officer

SUBJECT: Report on report on UCLA Planning and Land Use Conference- January 23, 2020.

This is an Informational Report. No Action is Necessary

DISCUSSION

Several Commissioners and LAFCO's Legal Counsel attended the UCLA Planning and Land Use Conference on January 23, 2020.

The Conference material is attached as **Exhibit A**.

The program, included practitioners from both land use law and planning disciplines providing balanced analysis of critical legal cases that affect land use decisions. The conference also focused on the actual results of laws that have been in effect for some time and provided updates on aspects of the law, like CEQA, that evolve every year. The panelists provided their insight and perspective into land use issues ranging from housing and rent control to coastal policies, cannabis land use, and development and zoning law.

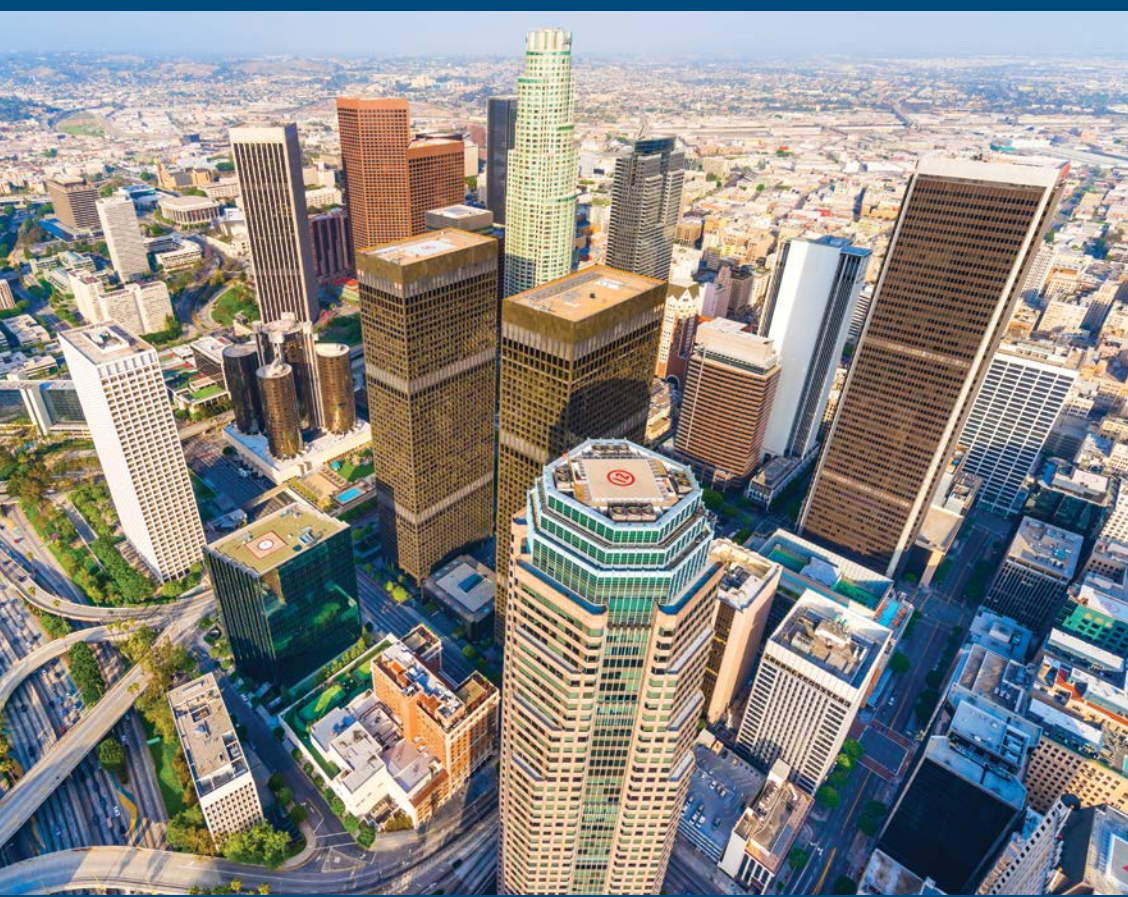
Santa Barbara LAFCO conference attendees will brief the Commission on perceptions of the conference.

Please contact the LAFCO office if you have any questions.

INFORMATION ITEM NO. 4

UCLA Extension

34th Annual Land Use Law & Planning Conference



UPDATES, TRENDS & ASSESSMENTS

UCLA EXTENSION PUBLIC POLICY PROGRAM

FRIDAY, JANUARY 24, 2020, 8:30AM-4:30PM
MILLENNIUM BILTMORE HOTEL, LOS ANGELES, CA

EXHIBIT A

Welcome

Welcome to UCLA Extension Public Policy Program's 34th Annual *Land Use Law & Planning Conference*! This conference is designed for practitioners, based on the tenacious belief of former UCLA Law Professor Don Hagman that land use planners and land use lawyers need to work as partners across the disciplines of law, planning, and public policy. Our annual conference has strived to exemplify, sustain, and build on Professor Hagman's contributions.

In today's program, you will find practitioners from both land use law and planning disciplines providing balanced analysis of critical legal cases that affect land use decisions. The conference will also focus on the actual results of laws that have been in effect for some time and will provide updates on aspects of the law, like CEQA, that evolve every year. From our expert panelists, you will hear insight and perspective into land use issues ranging from housing and rent control to coastal policies, cannabis land use, and development and zoning law.

We would like to thank the Hagman and Freilich Scholarship sponsors and cooperating organizations that are listed in the program. Their continued support of and dedication to the conference is greatly appreciated. Please consider making a donation to either the Hagman Scholarship Fund or the Joanne Freilich Scholarship Fund, both of which support the transition of the next generation of planners from formal education to the professional field. These funds were established in memory of Donald Hagman and Joanne Freilich, who both played significant roles in bridging the practitioner and academic worlds of land use law and planning.

Most importantly, we appreciate the loyal support we have received from so many of you in returning each year to renew this cross-disciplinary experience. To those joining us for the first time, we hope you find the conference to be of value, and we look forward to seeing you again next year!

Very truly yours,

Conference Chairs

Matthew Burris, *AICP, LEED AP, Deputy City Manager, City of Rancho Cucamonga*
David Smith, *Partner, Manatt, Phelps & Phillips LLP*
Alisha Winterswyk, *Partner, Best Best & Krieger LLP*

Conference Scholars Advisor

Helene Smookler, *Attorney at Law*

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COOPERATING ORGANIZATIONS

We gratefully acknowledge the following organizations and firms for their endorsement and support of this annual conference:

The Environmental Law Section of the California Lawyers Association

APA Los Angeles

California State Association of Counties

UCLA Lewis Center for Regional Policy Studies

APA California

Richards, Watson & Gershon PC

Best Best & Krieger LLP

CO-SPONSORS OF HAGMAN & FREILICH CONFERENCE SCHOLARS

We gratefully acknowledge and express deep appreciation to the following law firms, consulting firms, and individuals that have contributed funding to sponsor the conference attendance of faculty and students selected by their schools to be Hagman Conference Scholars, as well as those selected as Freilich Scholars:

The Law Offices of Remy Moose Manley, LLP

Best Best & Krieger LLP

Meyers Nave

Thomas Law Group

Richards, Watson & Gershon PC

The Sohagi Law Group

Susan K. Hori

Manatt, Phelps & Phillips, LLP

Steven A. Preston, FAICP

Helene V. Smookler, PhD

EXHIBIT A

CONFERENCE PROGRAM

EXHIBIT A

UCLA Extension Public Policy Program

34TH ANNUAL
LAND USE LAW & PLANNING CONFERENCE

JANUARY 24, 2020
Los Angeles, California

7:45 AM REGISTRATION AND CHECK-IN

8:30 AM WELCOME AND PROGRAM OVERVIEW

Dr. Stephanie Hoekstra, *Public Policy Director, UCLA Extension*

8:45 AM UPDATE #1

CEQA 2019: The Strength of Exemptions and Other Lessons Learned

A perennial staple and favorite at the conference, hear distinguished counsel representing all sides – petitioner, respondent, and real party in interest – survey the latest judicial, legislative, and regulatory developments in the CEQA arena, providing invaluable and strategic insights as to their implications for legal practitioners, consultants, and lead agencies.

Moderator: David Smith, *Partner, Manatt, Phelps & Phillips, LLP*

Panelists:
- **Kevin Bundy,** *Of Counsel, Shute, Mihaly & Weinberger*
- **Tina Thomas,** *Founding Partner, Thomas Law Group*

10:00 AM MORNING BREAK

10:15 AM ASSESSMENT #1

The Land Use Implications of Cannabis

Which cities want it? Which cities want to block it? And what to those look like in practice? What are the zoning implications for dispensaries? Licensing? Taxing revenues when banking disallowed? Growing it? Moral judgments aside, what are the private sector and local agency implications of legalized recreational pot?

Moderator: Matt Burris, *Deputy City Manager, City of Rancho Cucamonga*

Panelists:

- **Ryan Stendell,** *Director of Community Development, City of Palm Desert*
- **Lori Sassoon,** *Deputy City Manager, City of Rancho Cucamonga*

11:30 AM RECESS TO GOLD ROOM

11:45 PM LUNCH AND SCHOLAR PRESENTATION

Recognition of Scholars

12:20 PM KEYNOTE ADDRESS
Kate Gordon, Director, CA Governor's Office of Planning and Research; Senior Advisor on Climate to Governor Newsom

"Land Use Issues in California and How OPR is Addressing Them"

1:00 PM RECESS TO CRYSTAL ROOM

1:15 PM UPDATE #2

Quick Hits

- Endangered Species: Major Regulatory Reforms by Trump Administration
- AB 1482: California's Tenant Protection Act of 2019
- "Waters of the United States" Under the Clean Water Act
- A Battle Rages for a Breath of Fresh Air: California's Fight to Regulate Vehicle Emissions
- The Ebb and Flow of Coastal Act Policy: What is Hot Today?

Panelists:

- **David Smith,** *Partner, Manatt, Phelps & Phillips, LLP*
- **Matt Burris,** *Deputy City Manager, City of Rancho Cucamonga*
- **Alisha Winterswyk,** *Partner, Best Best & Krieger LLP*

1:45 PM ASSESSMENT #2

Finding the Shortcuts: Entitlement Strategies for Siting and Approving Housing

While the white whale of "CEQA Reform" remains elusive, the Legislature has provided several important strategic options for streamlining review and curtailing potential litigation hooks for the "right" kind of housing projects in the "right" locations. Hear our experts' strategic insights on what is meaningful, what is useless, and what can truly move housing projects forward.

Moderator: David Smith, Partner, Manatt, Phelps & Phillips, LLP

Panelists:
- **Mark Teague,** *PlaceWorks, Inc.*
- **Al Herson,** *Of Counsel, Sohagi Law Group*

2:45 PM AFTERNOON BREAK

3:00 PM **UPDATE #3**

Planning, Zoning, and Development Law: What's New from California's Judicial and Legislative Branches?

Extra! Extra! Hear all about it! California courts and our state legislators worked mightily in 2019 tackling important planning, zoning and development law issues. Join our panelists as they walk through the high points of last year's statutory and case law adventures, which will undoubtedly put you ahead of the rest on your land use trivia.

Moderator: Alisha Winterswyk, *Partner, Best Best & Krieger LLP*

Panelists:
- **Matthew Richardson,** *Partner, Best Best & Krieger LLP*
- **Matt Klopfenstein,** *Legislative and Legal Advisor, California Advisors, LLC*

4:15 PM CLOSING COMMENTS

Dr. Stephanie Hoekstra, *Public Policy Director, UCLA Extension*

SPEAKER BIOGRAPHIES

EXHIBIT A

KEVIN BUNDY
Of Counsel
Shute Mihaly & Weinberger
Bundy@smwlaw.com

KEVIN BUNDY is is an attorney at Shute, Mihaly & Weinberger LLP, where he primarily represents public interest and community groups in environmental and land use matters, with a particular focus on CEQA litigation and local ballot measures. Kevin also spent several years as a Senior Attorney and Climate Legal Director with the Center for Biological Diversity's Climate Law Institute, where his practice focused on regulation of greenhouse gas emissions under the federal Clean Air Act, the California Environmental Quality Act, and AB 32, as well as on broader California climate, forest, and energy policy issues. Kevin holds a J.D. from the University of California Berkeley School of Law. He also served as a judicial clerk to the Honorable Procter R. Hug, Jr., of the Ninth Circuit U.S. Court of Appeals and the Honorable David W. Hagen of the U.S. District Court for the District of Nevada.

MATTHEW BURRIS (CONFERENCE CO-CHAIR)
Deputy City Manager
City of Rancho Cucamonga
matt.burris@cityofrc.us

MATTHEW BURRIS is the Deputy City Manager over Community and Economic Development for the City of Rancho Cucamonga. He has over 17 years of experience working with local government working for a variety of private sector firms as well as for local governments as an employee. Matt also served as a Planning Commissioner for California's newest City of Jurupa Valley. In addition to his work in community development, Matt has regularly taught planning courses for both UC Berkeley and UC Riverside. He in a Certified Planner, a LEED Accredited Professional, and holds a Bachelor of Science in Environmental Studies from UC Santa Barbara, as well as a Master of Science in City and Regional Planning and a Master of Science in Engineering from Cal Poly San Luis Obispo. Both Matt in his professional capacity, and many of the projects he has been instrumental in, have won state and national awards.

KATE GORDON (KEYNOTE SPEAKER)
Director, CA Governor's Office of Planning and Research
Senior Advisor on Climate to Governor Newsom

KATE GORDON is a nationally recognized expert on the intersection of climate change, energy, and economic development. Gordon was appointed Director of the Governor's Office of Planning and Research and Senior Advisor to the Governor on Climate by Governor Gavin Newsom on January 7, 2019. She has authored or co-authored numerous publications, including the Fourth National Climate Assessment's chapter on "Reducing Risks Through Adaptation Actions". Prior to being appointed OPR Director, Gordon was a Senior Advisor at the Henry M. Paulson Institute, where she oversaw the "Risky Business Project," focused on quantifying the economic impacts of climate change to the U.S. economy, and also provided strategic support to the Institute's U.S.- China CEO Council for Sustainable Urbanization. She was also a nonresident Fellow at the Center on Global Energy Policy at Columbia University. Earlier in her career Gordon served as Vice President for Climate and Energy at the Center for the Next Generation, Vice President of Energy and Environment at the Washington D.C.-based Center for American Progress, and Co-Executive Director at the national Apollo Alliance (now the Blue Green Alliance). Gordon earned a J.D. and a masters in city and regional planning from the University of California-Berkeley, and an undergraduate degree from Wesleyan University.

AL HERSON
Of Counsel
Sohagi Law Group
aherson@sohagi.com

AL HERSON, JD, is a CEQA, environmental, and land use attorney for planning, infrastructure, water, and land use projects with over 40 years' experience. He is a recognized authority on the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and natural resources law. Al is Of Counsel with Sohagi Law Group, where he helps public agency clients prepare legally-defensible environmental and planning documents. His clients include cities, counties, regional planning agencies, state agencies and water districts. Al is co-author of *California Environmental Law and Policy: A Practical Guide (2d edition)*, the LexisNexis *CEQA Practice Guide*, and CEQA chapters in Matthew Bender's *California Environmental Law* treatise. He has led numerous courses and presentations on environmental and land use law for University of California Extensions and other providers, and is co-chair of CLE International's annual CEQA Super Conferences. In addition to his legal background, Mr. Herson holds a Master's Degree in Urban Planning from UCLA, is a Fellow of the American Institute of Certified Planners (FAICP), and is a past president of the California Chapter American Planning Association and the California Planning Roundtable.

MATT KLOPFENSTEIN
Legislative Advocate and Legal Advisor
California Advisors, LLC
matt@caladvisorsllc.com

MATT KLOPFENSTEIN is a Legislative Advocate and Legal Advisor at CalAdvisors, representing clients in legislative and regulatory arenas. Matt specializes in technology, energy, environmental, water, transportation, and local government policymaking, covering a wide breadth of high-profile issues. He has been involved in numerous noteworthy policy fights, both sponsoring priority legislation for clients, as well as working to prevent problematic proposals.

Before joining CalAdvisors, Matt worked as a law clerk representing local government agencies. He also managed the successful campaign of a candidate running in El Dorado County. He formerly interned for a Superior Court Judge in Solano County and is active in Sacramento's legal community. Matt is also on the Board of the Sacramento Chapter of Young Professionals in Energy, helping bring together those interested in the energy sector for professional development, networking, and community engagement. Matt obtained his J.D. degree and the Capitol Certificate in Public Law & Policy from the University of the Pacific McGeorge School of Law, where he graduated Order of the Coif with Great Distinction. He received his B.A. degree from the University of California at Santa Barbara where he majored in English.

MATTHEW RICHARDSON
Partner
Best Best & Krieger
Matthew.richardson@bbklaw.com

MATTHEW "MAL" RICHARDSON advises public and private clients on issues related to regulatory and land use law, with a focus on complex land transactions, the First Amendment, election and campaign law, and municipal governance. Mal is the city attorney for the cities of Lake Forest and Stanton. He also serves as special counsel for numerous public agencies throughout California, including cities, counties and special districts. Mal has extensive experience in complex land use issues. Since 2010, Mal has served as lead counsel for the Opportunities Study Project, a large-scale commercial, residential and mixed-use project in Lake Forest, involving the rezoning and development of more than 900 acres. He coordinates BB&K's service teams to acquire and consolidate real estate, review environmental impacts, obtain state and federal permits and licenses, assure water availability, and meet affordable housing goals. With experience as counsel for both public and private entities, Mal employs a collaborative approach to the land use and entitlement process. Mal also focuses on navigating the complexities of the First Amendment on behalf of public and private clients. Mal has drafted numerous sign codes, revamped election sign laws in the wake of *Reed v. Gilbert*, and advised public and private clients on advertising and digital media. Mal also provides regular guidance on free speech in public and non-public venues and the interplay of government regulation and private speech rights, as well as public camping and homeless issues.

LORI SASSOON
Deputy City Manager
City of Rancho Cucamonga
lori.sassoon@cityofrc.us

LORI SASSOON is Deputy City Manager of Administrative Services with the city of Rancho Cucamonga, where she is responsible for operations in Human Resources, Finance, Innovation and Technology, Procurement, and Special Districts administration. Previous roles include serving as City Manager for the City of Villa Park, and as Assistant City Manager for the City of San Bernardino. She has a BA in Political Science from California State Polytechnic University, Pomona, an MPA from California State University, San Bernardino, and is an ICMA Credentialed City Manager.

DAVID SMITH (CONFERENCE CO-CHAIR)
Partner
Manatt, Phelps & Phillips, LLP
dcsmith@manatt.com

DAVID is a partner with Manatt, Phelps & Phillips and splits his time between the firm's Orange County and San Francisco offices. Mr. Smith counsels land developers, conservation companies, for-profit and nonprofit organizations, and individuals at the intersection of law and government on land use entitlement, real estate development and regulatory compliance. He is frequently engaged in entitlement and permitting matters for development projects that are, or have the potential to be, particularly contentious and complicated.

Mr. Smith's expertise includes all facets of land use and related regulatory compliance including the California Environmental Quality Act, the National Environmental Policy Act, the Endangered Species Act, the Clean Water Act, climate change, the McAteer-Petris Act and California's planning and zoning laws. In addition to his practice, Mr. Smith frequently speaks as law schools and conferences throughout the state.

HELENE SMOOKLER (CONFERENCE SCHOLARS ADVISOR)
Attorney at Law
smookler@msn.com

HELENE SMOOKLER has over 30 years' experience in state and local government, policy, planning and environmental and land use law. While at the Sohagi Law Group (SLG), her practice focused on land use and environmental matters, including climate change, CEQA, air quality transportation, housing environmental justice and other local and regional issues. A significant part of her practice included mediation of complex public policy disputes. Prior to joining SLG, Ms. Smookler was Chief Counsel at the Southern California Association of Governments (SCAG). She began her legal career at the Center for Law in the Public Interest, where her cases included Century Freeway (*Keith v. Volpe*) litigation and implementation. Earlier in her career, she was a special consultant to the Court during the Los Angeles School desegregation (*Crawford v. LAUSD*). She has published extensively in public policy and planning areas, including air quality, housing, transportation, education and dispute resolution. In addition to her legal practice, Ms. Smookler was an Adjunct Professor at USC's Price School of Public Policy, where she taught Public Policy Dispute Resolution. She has also taught Sustainability Ethics, local and regional government, and Administrative Law at: UCLA Extension, Claremont McKenna College, Wellesley College, and UNC Chapel Hill. Education: BA in History and Political Science from UC Berkeley, MA and Ph.D. in Political Science from UCLA; and J.D. from UCLA School of Law.

RYAN STENDELL
Director of Community Development
City of Palm Desert
rstendell@cityofpalmdesert.org

RYAN STENDELL's career in the public sector began in in 2002, as a planning technician for the City of Palm Desert. He spent the next 6+ years in in various land-use planning capacities. In 2014, as a Senior Analyst in the City Manager's office, he was tasked with co-leading a transformational General Plan update focused on revitalizing the City's downtown core, and facilitation of the growing Cal State University extension campus in Palm Desert. In December of 2015, he was named the Director of Community Development tasked with stewarding the City's vision for the next 20-years.

On a personal note, he has been a resident of Palm Desert since 1984, graduate of San Diego State University, devoted husband of 14+ years, and father of two beautiful baby girls (Logan 12, Rylee 9). He has always known Palm Desert to be his home, and it is a pleasure to work in service to the community that he loves.

MARK TEAGUE
Associate Principal
PlaceWorks, Inc.
mteague@placeworks.com

MARK TEAGUE, AICP, is an Associate Principal with PlaceWorks in the Folsom office, and has over 30 years of public and private sector experience. Mark has analyzed and evaluated projects including planned communities, shopping center EIR's, General Plan and zoning code updates, impact fees and conducted public outreach for projects highly scrutinized by the public. Mark has experience working throughout California in agencies large and small and is considered an innovative CEQA problem solver. Mark is an excellent public speaker and regularly presents at the California League of California Cities Planning Commissioner's Academy on topics such as design guidelines, CEQA compliance and how to read an EIR. Mark also teaches CEQA to staff with a focus on how new legal decisions affect compliance.

TINA THOMAS
Founding Partner
Thomas Law Group
tthomas@thomaslaw.com

TINA THOMAS specializes in environmental, land use, and natural resource litigation, including compliance with the California Environmental Quality Act, National Environmental Policy Act, Subdivision Map Act, and the California Endangered Species Act. Tina represents both developers and governmental agencies, helping them navigate the complex environmental review and entitlement processes. Much of her practice is focused on infill and mixed-use development throughout California, serving as legal counsel for numerous cutting-edge projects that incorporate smart growth principles.

Tina's work extends beyond the traditional role of attorney, shaping not only land use legislation, but also the way it is practiced and understood. Tina was one of the original authors of the Guide to the California Environmental Quality Act, a text that served as a leading reference on CEQA and an instrumental classroom resource. Tina has also participated in drafting CEQA legislation over the past three decades and in 2007/2008 she played an extensive role in the passage of California Senate Bill 375, authored by Senator Darrell Steinberg, which encourages smart growth and infill development.

Prior to forming Thomas Law Group in 2012, Tina was a founding partner at Remy, Thomas, Moose & Manley, LLP (RTMM), serving as managing partner for 28 years. In 2005, the Sacramento Bar Association named Tina "Distinguished Attorney".

ALISHA WINTERSWYK (CONFERENCE CO-CHAIR)
Partner
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ALISHA WINTERSWYK is a partner in the Environmental and Natural Resources practice group at Best Best & Krieger LLP. She is a CEQA and land use lawyer that advises public and private clients on an array of environmental, planning and municipal laws. Alisha's practice is both transactional and litigation-based as she takes a "soup-to-nuts" approach to representing clients and in the development process. Over the past several years, Alisha has contributed to the UCLA Land Use and Planning Conference as a speaker and she is delighted to now serve as a co-chair for this fantastic event.

SCHOLARS

EXHIBIT A

Hagman Conference Scholars Program

About Donald G. Hagman

(1932-1982)

The late Donald G. Hagman was a Professor of Law at UCLA from 1963 to 1982. Through his teaching, scholarly research and writing, and community activities, he made a sustained contribution to our thinking about relationships among development policy, property rights, planning, law, and environmental protection. His constant concern for fairness gave his work a special sensitivity. His style goaded those around him into addressing a wider set of concerns than is ordinarily possible given the constraints of day-to-day professional roles.

Professor Hagman stimulated creative thinking about ways of using land, the proper functions of government in meeting social and environmental objectives, and about the relationships among citizens, developers and governments. He especially strove to provide better bridges between the academic and practitioner worlds, and between planners and attorneys in the realms of land use law and planning - these are goals always aspired to by this conference series.

During his career, Hagman created and conducted many continuing education programs in public policy, including collaborations with the UCLA Extension Public Policy Program. Following his unexpected death, UCLA Extension and the Lincoln Institute of Land Policy convened several annual commemorative Hagman conferences (1983-1989) addressing subjects that were of keen interest to Don Hagman.

The Hagman Conference Scholars Program was introduced to our annual Land Use Law and Planning Conference series in 2000. It is designed to encourage the participation of faculty members and students from law schools and planning schools at the conference. Funds are raised from law firms and planning consultant firms to underwrite scholarships for faculty and students from law schools and planning programs in Southern and Central California. Each sponsorship funds one professor and one student, or two students, to attend the conference. This means that admission to the conference lunch; refreshments, conference materials and the special Hagman Breakfast are on a complimentary basis. The regular enrollment fee is waived. Our hope is that scholars will benefit from interacting with the practicing professionals attending this conference, and that similarly, practitioners will become more familiar with the ongoing research, resources, and programs available at our prestigious universities.

EXHIBIT A

PLANNING SCHOOLS

University	Faculty	Student
California State Polytechnic University, Pomona College of Environmental Design Department of Urban and Regional Planning	*Dr. Jerry Mitchell*	*Andy Lopez*
California State University, Northridge College of Social and Behavioral Sciences Department of Urban Studies & Planning	*Jared Andrew, J.D.*	*Leo Gharamanian*
University of California, Los Angeles Luskin School of Public Affairs Department of Urban Planning	*Ms. Joan Ling*	*Carla Vasquez-Noriega*
University of California, Santa Barbara Bren School of Environmental Science & Management	*John Jostes, MPA*	*Claire Madden*
Cal Poly San Luis Obispo Department of City and Regional Planning	*Dr. Hemalata C. Dandekar*	*Eric Azriel*
University of Southern California Sol Price School of Public Policy		*Madison Swayne*

LAW SCHOOLS

University	Faculty	Student
Chapman University Fowler School of Law	*Kenneth Stahl, J.D.*	*Miles Dawson*
Pepperdine University Caruso School of Law	*Shelley Saxer, J.D.*	*Rachel Enders*
University of California, Irvine School of Law		*Sarah Salvini*

EXHIBIT A

DONALD G. HAGMAN SCHOLARS

ERIC AZRIEL joined the planning ranks after reflecting on our changing climate and our physical and mental health challenges. He previously worked as a process engineer, a wilderness therapy guide, and a science teacher. From engineering he learned to approach problems rigorously; from leading wilderness expeditions and teaching science, he learned that physical movement is integral to physical and emotional well-being in kids and adults alike. He hopes to simultaneously respond to climate change and our physical and mental health challenges by transforming the ways we interact with and build our cities. Eric believes in the logic of science, the strength of emotion, and the power of a good story.

HEMALATA C. DANDEKAR, PhD is Professor and former Department Head, City and Regional Planning, California Polytechnic State University, San Luis Obispo, a Planning Commissioner, City of San Luis Obispo, and a licensed architect, State of California. She is the author of several scholarly books and articles on topics that include effective communications, qualitative methods, housing, urbanization and international development. She is Professor Emeritius, University of Michigan and served as Associate Vice President for Research and Director, Center for South and Southeast Asia. She is Professor Emeritus Arizona State University where she was Director of the School of Planning and Landscape Architecture.

MILES DAWSON is a current 3L at Chapman University, Fowler School of Law. His primary academic focus is in Environmental Law and Land Use Regulation. During his time in law school he has worked in the private sector, focusing on business litigation, and the public sector with the Santa Ana City Attorney's Office and the Torrance City Attorney's Office, where he currently works.

RACHEL ENDERS grew up in the South Bay and graduated from UCSB with a bachelor's degree in Global Studies. She is the first in her family to attend post-graduate university and is currently a 2L at Pepperdine University, Caruso School of Law. Before attending law school at 23, she worked as a Realtor® specializing in income property transactions, a property manager for commercial and residential properties, and a legal assistant at a plaintiff-side unlawful detainer firm. At Pepperdine, Rachel is pursuing the Real Estate track of the Palmer Center's Certificate for Entrepreneurship and the Law as well as a certificate in Dispute Resolution. During law school she has worked at Realty Trust Advisor Investments, a boutique property development company in Malibu, and Yossi Levy & Co in Tel Aviv. In addition to writing a journal article on incorporating Online Dispute Resolution tools to help address the effects of AB 1482, Rachel is currently externing with District Court Judge Terry Hatter in the Central District of California.

LEO GHARAMANIAN attends California State University Northridge. He is expected to graduate in spring 2020. His major is urban studies and planning and his interests are urban design, architecture and housing. He currently works in real estate as a transaction coordinator. After graduating, he hopes to find a planning career focusing on urban design and real estate development.

JARED ANDREW holds a B.A. in Geography from UCLA ('93), an M.Sc. in Environmental Management from the University of London ('99), and a J.D. from Pepperdine University School of Law ('01). He is a lecturer at California State University at Northridge, teaching courses in Planning Law, and Sustainability and Environmental Analysis. He is a practicing attorney in the field of municipal law, serving as the acting City Attorney for the City of Chico and regularly advises clients throughout California on planning law and other issues of municipal affairs. He served on the Glendora Planning Commission from 2012-19, twice as its Chair, and currently serves on the Editorial Committee for the Municipal Law Handbook (CEB, 2020 Edition).

JOHN JOSTES is a seasoned environmental entrepreneur and nationally recognized mediator of complex policy disputes. He specializes in resolving science-intensive and intractable disputes over water, land use,

and endangered species. His clients include the President's Council on Environmental Quality, water users along the Lower Colorado River, and the State Coastal Conservancy. He is the past CEO and founder of Interface Planning and Counseling Corporation and was a Planning Commissioner for the City of Santa Barbara from 2004 - 2012. In 2018, he established the Jostes Special Opportunities Fund at UCSB's Bren School which supports student leadership and presentation opportunities at professional conferences.

JOAN LING. Real estate advisor and policy analyst in urban planning. Experience in real estate financial analysis, affordable housing and urban mixed use development, and state and local land use and housing policy, legislation and regulation. Board Director, Southern California Association of Non-Profit Housing and MoveLA. Former Treasurer, Community Redevelopment Agency of the City of Los Angeles and Executive Director, Community Corporation of Santa Monica. Current research focus is on the nexus between land use policy and real estate development as well as analysis of community benefits project and program level feasibility.

ANDY LOPEZ is currently a master student at Cal-Poly Pomona in urban and regional planning. His undergraduate degree was in anthropology, from Cal-State San Bernardino. He is originally from a small unincorporated town in Riverside County, and he came into this field through his studies in urban and cultural anthropology. He has found a fascination with how planning can influence and shape lives through the built environment and policy.

CLAIRE MADDEN is a second year master's student studying water resource management and sustainable water markets at the Bren School of Environmental Science & Management at UC Santa Barbara. In her studies, Claire is interested in learning about integrated regional water management and strategies to promote sustainable water management while providing multiple benefits to humans and the environment. With a background in community development and applied economics, Claire's interest in water management is founded in an interest in how to build and maintain sustainable and functioning communities in a world of scarce resources. Currently, Claire is working on completing a master's thesis group project that will produce a decision support tool that can be used by Groundwater Sustainability Agencies in California to understand where to invest in groundwater recharge projects in order to maximize multiple benefits. After graduating from the Bren School, Claire hopes to work in designing more resilient and regionalized water systems throughout the western United States.

DR. JERRY MITCHELL received a J.D. from the University of Illinois and a Ph.D. in Urban and Regional Planning from the University of Michigan. He was staff attorney for a regional planning commission for five years and worked as a citizen group attorney for four years. He has taught at the University of Iowa and Florida State University before coming to Cal Poly in 1990. He teaches planning law courses, environmental courses, and seminars at both the undergraduate and graduate levels. He is a faculty member of the Lyle Center for Regenerative Studies. His research interests are in well being, focusing on subjective well being or happiness.

SARAH SALVINI is a third-year student at UC Irvine School of Law, and she is UCI Law's inaugural Environmental Law Fellow. She is from San Luis Obispo, CA and completed her undergraduate degree at UC Berkeley. While in law school, she has interned at Surfrider Foundation, California Coastkeeper Alliance, and Orange County Coastkeeper. She is interested in the environmental justice implications of planning and development, in state and local responses to sea level rise, and in public policy regarding conservation.

SHELLEY SAXER is a co-author of Contemporary Property, American Casebook Series, Thomson West (4th ed. with Grant S. Nelson, Dale A. Whitman, and Colleen Medill) and a co-author of Land Use, American Casebook Series, Thomson West (7th ed. with David L. Callies and Robert H. Freilich). She is also a co-author with Jonathan Rosenbloom on Social Ecological Resilience & Sustainability, Wolters

Kluwer (2018). While in law school, Professor Saxer served as the chief managing editor of the UCLA Law Review. Upon graduation, she clerked for the Honorable Wm. Matthew Byrne, Jr. of the Federal District Court for the Central District of California and then worked briefly as a corporate associate for the Century City law offices of O'Melveny & Myers. She is a member of the Order of the Coif, the American Bar Association, and the California State Bar. She has also been admitted to practice before the U.S. Supreme Court. Education: J.D., University of California, Los Angeles, 1989; B.S., Pepperdine University, 1980, summa cum laude.

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Joanne L. Freilich Memorial Funds

About Joanne L. Freilich

(1950-2004)

To honor the lifework of Joanne L. Freilich, AICP, a cherished professional, colleague, and friend, UCLA Extension is proud to establish two memorial funds to recognize and extend her legacy. Joanne brought her dedication and expertise to UCLA Extension's Public Policy Program for 15 years. She was deeply committed to ensuring that future generations of planners in the early stages of their careers would have opportunities to further their knowledge of the transactional nature of policy planning through the practitioner-led courses and conferences offered by UCLA Extension. She also recognized the critical need to explore broad, emerging issues and trends that shape our society.

The establishment of the Joanne Freilich Public Policy Memorial Fund and Joanne Freilich Scholarship Fund was first announced on January 28, 2005, at the 19th Annual UCLA Extension Land Use Law and Planning Conference--which was held in Joanne's memory.

The Joanne Freilich Public Policy Memorial Fund will enhance UCLA Extension's ability to continue to open opportunities for examining identified and emerging issues analytically, and to use innovative problem-solving approaches. Under the direction of the Dean of UCLA Extension and the Director of the Public Policy Program, this Fund will support scholarships, lecture series, and other pressing needs that embody the program's mission.

UCLA Extension, with the generous support of the California Planning Roundtable, has established ***The Joanne Freilich Scholarship Fund*** to support the transition of the next generation of planners from a formal education program to the professional field. Complementing UCLA Extension's existing scholarship program which provides a 50% discount on Extension's public policy courses, the Fund will provide additional scholarships to underwrite the remaining 50% tuition fee for these courses and therefore allow recipients to attend with full scholarships. Eligible recipients include new professionals who are within one year of their graduation date from a planning and policy program or students who have completed their coursework and are ready to graduate. Individuals employed by nonprofit organizations in a relevant field also will be considered.

JOANNE FREILICH SCHOLARS

MICHAEL DAMASCO is currently a 2L at the University of California, Irvine School of Law. He was born and raised in Southern California, in the foothills of the San Gabriel Mountains. He attended undergrad at UCLA where he discovered his passion for environmental justice. This desire to help the community in their fight for environmental justice is what drove him to law school. This past summer he interned with The Center on Race, Poverty, & The Environment to help EJ communities be heard. He plans to continue on this path and make a difference in his community.

ELIZABETH DICKSON is an Associate Planner with the City of San Diego's Planning Department working on a range of projects that include long-range community planning, housing policy development, housing data analysis and reporting, municipal code amendments, as well as grant applications and studies. In addition to her work with the City, Elizabeth is a recent recipient of a Master's Degree in City Planning from San Diego State University, where she was recognized as the 2019 Outstanding Student in City Planning. Elizabeth serves as the Communications Coordinator on the Board of the San Diego Chapter of the American Planning Association and is predominantly interested in developing planning policies that promote affordable housing, efficient land use patterns, and resilient communities.

ALLIE HILL has a B.S. in Business from the University of Notre Dame and is a J.D. candidate at Pepperdine Law. She has worked as an appraiser for five years, specializing in valuing Right of Way acquisitions for public infrastructure projects. Her work for government agencies throughout California, including CAHRA, sparked her interest in the policies, laws, and the interplay of interests that shape the initial stages of the projects that will create a better environmental future. She is grateful for the opportunity to attend the 34th Land Use Law and Planning Conference with the support of the Freilich Scholars Program.

TESS HOOPER is a second-year master's student at the Bren School of Environmental Science & Management at the University of California, Santa Barbara. For her graduate thesis group project, Tess is conducting spatial analyses to assess the ecological impacts of environmental education and research on nature preserves. Specializing in Conservation Planning with a focus in Strategic Environmental Communications & Media, Tess is interested in the tradeoffs between public access to nature and the ecological and environmental justice implications surrounding access to public and private lands. Prior to attending the Bren School, Tess spent five years in environmental and science education, most recently teaching middle school Science and STEM in Philadelphia, Pennsylvania. Upon graduating from the Bren School, Tess plans to pursue a career in environmental planning, particularly in regard to managing human-environment interactions in the Los Angeles area.

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A graduate student at the Bren School of Environmental Science & Management, **SAM SMITH** is specializing in Economics and Politics of the Environment and is a Sustainable Forestry Fellow. She recently interned with the Public Policy Institute of California, where she researched Western large-scale forest stewardship projects. Prior to graduate school, Sam served for three years as an Agroforestry Extension Agent with the Peace Corps in Senegal. In her free time, she enjoys hiking and waterskiing.

UPDATE #1

CEQA 2019: The Strength of Exemptions and Other Lessons Learned

MODERATOR:

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Tina Thomas, *Founding Partner, Thomas Law Group*

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CEQA Update

34TH LAND USE LAW & PLANNING CONFERENCE

FRIDAY, JANUARY 24, 2019

Tina Thomas, Founding Partner, *Thomas Law Group*
Kevin Bundy, Attorney, *Shute, Mihaly & Weinberger LLP*
David C. Smith, Partner, *Manatt, Phelps & Phillips, LLP* (Moderator)

Whether Activity is a "Project"

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Questions?

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WHETHER ACTIVITY IS A "PROJECT"

***Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171**

In 2014, the City of San Diego adopted an ordinance amending its zoning code to allow for medical marijuana dispensaries. The ordinance capped the number of dispensaries allowed in each city council district, placed restrictions on where the dispensaries could be located, and required conditional use permits for all dispensaries. The City found that adopting the ordinance was not a project, and therefore, was not subject to CEQA. The findings stated that the ordinance did not have the potential to cause environmental impacts, and noted that future dispensaries would require a discretionary permit and environmental review.

The Union of Medical Marijuana Patients (UMMP) filed a petition, arguing the ordinance should have been considered a project subject to environmental review. The trial court disagreed and denied the petition. On appeal, UMMP reiterated their argument and asserted that section 21080 requires zoning amendments be considered projects under CEQA as a matter of law. The appellate court disagreed, holding that the statute did not require such a finding; and rejected the argument that the City should have found the ordinance to be a project. Thereafter, the California Supreme Court accepted the case for review.

The Court first addressed the question of whether an agency amendment of a zoning ordinance constitutes a project as a matter of law. The Court reiterated the significance of California Public Resources Code section 21065, which defines a 'project' under CEQA. Under section 21065, an activity is a project if it "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" and is subject to agency control in some way (e.g., undertaken by the agency itself, funded by the agency, or subject to licensing or permitting by the agency).

UUMP relied on section 21080's definition of statutory exemptions from CEQA, which states, "[e]xcept as otherwise provided, [CEQA] shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances … unless the project is exempt from this division." UMMP argued that section 21080's statutory reference to zoning amendments means that such ordinances, as a matter of law, are projects under CEQA. This argument was supported by *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, a case concerning the approval of a tentative subdivision map (which is also listed in section 21080).

The Supreme Court disagreed and disapproved the ruling in *Rominger*, holding that section 21080 did not classify all zoning code amendments as projects. Rather, the Court evaluated the plain language of 21080 and 21065 and concluded that, when read together, the language unambiguously allows for zoning amendments that do not meet the definition of a 'project' to be deemed 'not a project'. These zoning code amendments would fall outside of CEQA's obligations. The Court supported this conclusion by noting the needless costs involved in subjecting an ordinance which did not have the potential to impact the environment to additional environmental review.

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In other words, the language of 21080, which lists various types of approvals, does not create a list of projects mandating CEQA review. Rather, 21080 must be read together with 21065 and the listed activities in 21080 must have the potential to result in a direct or indirect physical change in the environment, as described in 21065.

The Court addressed whether the City had properly concluded the zoning ordinance was not a project. The Court's analysis largely centered on *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372. *Muzzy Ranch* involved two issues: whether approval of a transportation and land use plan was a project, and if so, whether the project was exempt under the commonsense exemption. The commonsense exemption states that a project is exempt "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (CEQA Guidelines, §15061(b)(3).) Despite similar language between the commonsense exemption and section 21065's definition of a 'project', the Court in *Muzzy Ranch* held that the approval was a project, yet was exempt from CEQA under the commonsense exemption.

Here, the Court underscored its decision in *Muzzy*, finding that the initial determination of whether an action constitutes a project is a legal inquiry to determine if the "activity's potential for causing environmental change is sufficient to justify the further inquiry into its actual effects". The Court concluded that the somewhat "abstract" nature of defining 'project' was appropriate to the "preliminary role" in "CEQA's three-tiered decision tree." The Court concluded that prior to the ordinance, dispensaries were not allowed, but illegal businesses *did* operate within the City. New retail and closure of prior illegal dispensaries creating different patterns of traffic are sufficiently plausible impacts to find the ordinance may result in a "reasonably foreseeable indirect physical change in the environment." But whether the ordinance will result in "actual" impacts on the environment is a determination best left to later tiers in the CEQA decision tree.

While the Court acknowledged certain impacts alleged by UMMP could turn out to be minimal or nonexistent, it held that both the City and Court of Appeal improperly attempted an evaluation of the actual impacts. The Court held that there were potential impacts of the ordinance, such as construction related to new dispensaries and changes in traffic patterns. On that basis, the Court found that the ordinance was a project.

***Lake Norconian Club Foundation v. Department of Corrections & Rehabilitation*, 39 Cal.App. 5th 1044**

The California Department of Corrections (Department) operates a prison next to the historic Lake Norconian Club, a former resort and hotel constructed in the 1920's. The Department used the building as a drug rehabilitation facility, and later, as prison administrative offices. In 2012, the legislature decided to close the prison, and the Department prepared an EIR for the planned closure. The EIR stated that the Department could not allocate necessary funds to maintain the building due to the Department's other maintenance priorities. The legislature later changed its mind, allowing the Department to continue operating the prison, however, the Department decided that it would not maintain the former hotel.

Beginning in 2006, Lake Norconian Club Foundation (Petitioners) repeatedly advocated for the Department to maintain the hotel. Petitioners sued in 2014, alleging that the Department's willful and

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ongoing failure to maintain the hotel was a continuous discretionary action with significant environmental impacts, and therefore, was a project under CEQA for which no environmental review was conducted. The trial court agreed with Petitioners and found the Department's actions and omissions constituted a project under CEQA, but nevertheless entered judgment in favor of the Department. The trial court concluded that the statute of limitation began to run when the 2013 EIR was certified, rendering the 2014 petition untimely.

Petitioners appealed the judgment, and the Department cross-appealed, arguing that its inaction was not a project under CEQA.

No prior California case has addressed whether an agency's failure to act could be considered a project. In federal NEPA cases, courts have often held that inaction does not constitute 'action' (the NEPA term analogous to a 'project' under CEQA). NEPA guidelines state that inaction may constitute action where the omission would be judicially reviewable under the APA, and case law has held that inaction in the face of a mandatory duty to act creates an omission.

The Court noted that CEQA contains no such guideline and Petitioners failed to identify a statute which created a duty for the Department to maintain the hotel. The Court stated that CEQA defines "project" by describing activities which constitute projects—failure to act is not a project, even if the inactivity would lead to environmental consequences. The Court noted the practical unworkability of deeming inactivity a project, particularly when attempting to determine when the 'inactivity project' commences or receives approval for purposes of CEQA's statute of limitations.

Absent any statutory duty, the Court held that the Department's failure to act could not be deemed a project, nor challenged for noncompliance with CEQA; and that inaction is not a project under CEQA, at least where there is no affirmative duty to act.

EXEMPTIONS

Berkeley Hills Watershed Coalition v. City of Berkeley (2019) 31 Cal.App.5th 880

The City of Berkeley approved the construction of three single-family homes on adjacent parcels. The landowner submitted applications for use permits, including two geotechnical and geological hazard reports. These reports, though they recommended approval, revealed that the western portion of the site was within an earthquake fault zone and potential earthquake-induced landslide area. The zoning adjustments board approved the permits, finding them categorically exempt from CEQA under the class 3 categorical exemption for new construction of small structures, which includes up to three single-family residences in urbanized areas.

Berkeley Hills Watershed Coalition ("Coalition") filed a petition for writ of mandate alleging two exceptions to the class 3 exemption applied: the "location" exception under Guidelines section 15300.2(a), and the "unusual circumstances" exception under Guidelines section 15300.2(c). The trial court denied the petition, and this appeal followed. The First District affirmed the trial court on both counts, holding that the Coalition did not meet its burden showing that the exception to the exemption applied.

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Courts of Appeal have historically disagreed on the proper standard of review applied to the exceptions to categorical exemptions enumerated in CEQA Guidelines section 15300.2(a)-(c). The Court stated that confusion regarding the unusual circumstances exception to the exemption was resolved by the Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086 (*Berkeley Hillside*). There, the Supreme Court held that a bifurcated approach applies to the evaluation of an agency's decision: (1) determine, under section 21168.5's substantial evidence standard of review, if there are unusual circumstances (a factual inquiry deferential to the agency's determination); and (2) if the agency finds unusual circumstances, determine if there is a reasonable possibility that the unusual circumstances would produce a significant effect on the environment under the fair argument standard. In *Aptos Residents Assn. v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039 (*Aptos*)—decided after *Berkeley Hillside* but before *Berkeley Hills Watershed Coalition*—the Court noted that the standard of review applicable to cumulative impact and location exceptions was not as well-settled, but concluded that a *similar* standard of judicial review applies to all three exceptions. *Aptos* implicated the cumulative impacts exception, and held that cumulative impacts must contain more than mere speculation.

The First District extended this interpretation, and held that the *Berkeley Hillside* bifurcated standard of review applies to the "location" exception to a class 3 categorical exemption, as well.

With the standard of review established, the Court examined Coalition's claim that, under the plain language of the location exception, earthquake-induced landslide areas were "environmental resources of *hazardous* or critical concern." The Court stressed that the plain meaning of "environmental resource" in the location exception does not encompass possible earthquake or landslide zones. Instead, a "resource" is a "natural source of wealth or revenue," or a "natural feature or phenomenon that enhances the quality of human life." Earthquakes and landslides are geologic events that—while hazardous—are not "resources." In giving plain meaning to the phrase "environmental resource," the Court found the location exception does not cover all areas subject to potential natural disasters as a matter of law. The Court found the guideline "clear and unambiguous," and stated that the location exception does not apply based solely on Coalition's "undisputed" claim that the project's location rests on a potential earthquake and landslide zone. Instead, the Court granted deference to the City's determination that the site is not located in an environmentally sensitive area.

To satisfy the first prong of the extended *Berkeley Hillside* bifurcated approach, the Court upheld the City's determination that the project is not in an environmentally sensitive area, and noted that the determination was properly supported by substantial evidence. Accordingly, the Court declined to address the second prong of the location exception involving the determination of whether substantial evidence supports a "fair argument" that the project "may impact" the environment. The Court stated that even if they did reach the second prong, they would still affirm the agency's location exemption finding, based on the Coalition's failure to identify substantial evidence to support a fair argument that the project would exacerbate existing hazardous conditions or harm the environment.

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***Holden v. City of San Diego* (2019) Cal. App. LEXIS 1250**

In 2014, IDEA Enterprise, LP (IDEA) submitted an application with the City of San Diego (City) to demolish two single-family homes on adjacent parcels and construct seven detached residential condo units on a half-acre site in the North Park community (the Project). The Project site is an environmentally sensitive 35°- 41° slope. The Project would construct stilts to minimize disturbances to the site. City staff initially notified IDEA that the Project density was too low for the size of the site under the City's General Plan, which called for multifamily housing with a density of 16- to 23-dwelling units. The City recanted and allowed for the seven-unit development, rationalizing that lower density would have a less detrimental effect on the environmentally sensitive nature of the slope than the recommended buildout. In 2017, the City filed a notice of exemption declaring that the Project was categorically exempt from CEQA review under Guidelines section 15332 as an infill development project. Individual petitioners Lark Holden and James Stansell (Petitioners) filed a petition for writ of mandate challenging the City's exemption from CEQA and approval of the Project. The trial court denied the petition, and Petitioners appealed.

Petitioners contended that the City abused its discretion by finding the Project exempt from CEQA under the categorical exemption for infill development. Petitioners alleged that the Project provided for less residential density than required by the General Plan, and, accordingly, did not qualify for the infill development exemption based on General Plan inconsistency. Specifically, Petitioners argued that the City's General Plan Policy LUC 4, which requires "new development [to] meet the density minimums of applicable plan designations", compels rigid application of the minimum density requirement of 16- to 23-dwelling units on the site.

The Court disagreed with Petitioner's interpretation. Instead, the Court noted that Guidelines section 15332(a) requires project consistency with its general plan designation and applicable general plan policies and objectives; and that general plans ordinarily do not establish specific mandates or prohibitions. A project is consistent with a general plan if it furthers the objectives and policies of the general plan. The City relied, in part, on its Community Plan design standards and development regulations to rationalize approving the lower density. The Court stated that the City's action was appropriate because the Community Plan's site-specific land use guidance is integrated and incorporated into the General Plan. This incorporation allows for adjusting or modifying the General Plan's density designations and recommendations for certain sites, as provided in the Community Plan.

The Court found that the City considered the General Plan, the Community Plan, and steep hillside development regulations when approving the Project. In doing so, the City balanced the competing interests of the General Plan and the Community Plan's policies and objectives of providing multifamily housing with a medium-high density at the site against the purpose of the City's steep hillside regulations to protect environmentally sensitive lands. The Court found that the City's finding of consistency between the General Plan and the Community Plan was rational because the City adopted both plans and has "unique competence" to interpret their interaction. Accordingly, there was substantial evidence to support the finding that the Project was consistent with the General Plan and Community Plan. The Court found that the City was entitled to determine that the Project was of appropriate density under the General Plan, and was properly exempted from CEQA as an infill development under Guidelines section 15332.

Petitioners alternatively argued that the General Plan must be amended before the City allows development of a site with a density less than that recommended in the General Plan. The Court rejected

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this argument; holding that if a proposed project is consistent with the General Plan, the Community Plan, and the City's development regulations, the density *recommended* by the General Plan need not be rigidly followed and no amendment is required.

NEGATIVE DECLARATIONS

***Maacama Watershed Alliance v. County of Sonoma* (2019) 40 Cal.App.5th 1007**

In 2015, Knight Bridge Vineyards LLC sought approval from the County of Sonoma to develop a two-story, 5,500 square foot winery, a 17,500 square foot wine cave, tasting room, wastewater treatment and water storage facility, fire protection facility, and mechanical area on an 86-acre parcel zoned for "extensive agriculture" (Project). The extensive agriculture zone allows wineries and tasting rooms as conditional uses. County staff reviewed reports considering the Project's effects on geology, groundwater, wastewater, and biological resources. Staff concluded that, with recommended mitigation, the Project would not have a significant effect on the environment, and recommended the County adopt an MND and approve the Project. On September 17, 2016, the County approved the CUP and adopted the "2015 MND" and mitigation monitoring program.

Maacama Watershed Alliance and Friends of Spencer Lane (collectively, Petitioners) appealed the decision to the County. In response, County staff prepared a revised "2016 MND." After comments were submitted identifying potential groundwater and water quality impacts, the County engaged in further environmental review and subjected their conclusions to two rounds of peer review by independent investigators. The County then adopted the revised "2017 MND" and approved the Project.

Petitioners filed a petition for writ of mandate in the superior court, contending the County should have prepared an EIR instead of an MND. Petitioners alleged there was a fair argument that construction and operation of the winery would cause significant environmental effects. The superior court denied the writ of mandate, and Petitioners appealed to the First District Court of Appeal. The Opinion examined the adequacy of the County's environmental review, focusing on geology and erosion, biological resources, water quality, fire hazards, and visual impacts.

The 2017 MND's geology, water quality, and biological resources sections noted the presence of a large, ancient, and inactive landslide on the Project site; but determined that the winery and caves were outside the landslide area. The study recommended (1) a variety of mitigation measures to ensure that the Project would not result in erosion or landslides and (2) best management practices during construction to minimize erosion and sediment deposits impacting water quality and steelhead or coho salmon habitat in the nearby Bidwell Creek. These measures would result in less than significant impacts to special status species and would prevent substantial erosion by protecting existing drainage patterns on the site.

Petitioners retained a variety of independent researchers to support the argument that the County's review was inadequate and failed to accurately report site conditions. Petitioners' researchers disagreed with the County's geotechnical investigator, and claimed the report did not support the conclusions regarding landslide risk and slope stability. The Court outlined each of researchers' opinions, and determined that the County was entitled to rely on their report. Petitioners also suggested that the County improperly deferred geological impact mitigation by relying on best management practices and

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the County's grading ordinance. The Court disagreed and found that this was not a case of post-hoc mitigation formulation. Rather, there is "nothing improper" about adopting measures to reduce the Project's expected environmental effects while requiring monitoring and adjusting in the event of unanticipated conditions.

Petitioners claimed substantial evidence supported a fair argument that the Project's groundwater use would significantly affect the salmonid population in Bidwell Creek and ground water supply in nearby wells. The Court disagreed. The original Project, as proposed in 2013, would result in increased groundwater use of 5.5 acre-feet a year. The Project, as approved in the 2017 MND, would result in *no* net increase in groundwater use over current conditions through implementation of water reduction measures, documentation of water use, ongoing monitoring, and corrective measures. Petitioners again employed outside experts to challenge the County's reports. After weighing the veracity of their arguments, the Court held that while evidence would support a finding that the Project *will not cause significant effects* on groundwater supplying Bidwell Creek and neighboring wells, that was not the question presented to the Court. Instead, the question before the Court was whether there was substantial evidence to support a fair argument that the Project *will have significant effects*. The Court held that the Project will not have significant effects, and upheld the County's decision making.

The Court similarly dismissed Petitioners' challenge to the adequacy of aesthetic considerations. The 2017 MND stated that the site was not designated as a scenic resource, and that the Project would not cause significant visual impacts. Petitioners claimed that a light-colored unvegetated 10-bedroom residence on the ridgeline near the Project site was visible from scenic highways, and argued that the Project would have similar visual impacts. The Court disagreed on the basis that the Project would not be on the ridgeline, and that to the extent that the roof could be seen from scenic highways, it would be surrounded by vegetation and designed with low-reflective, earthy tones. The Court recognized that while comments from laypersons may constitute substantial evidence supporting a fair argument of significant aesthetic effects, in this case, the opinions of local residents "based largely on the views of a different structure" were not sufficient to show that the Project would have significant aesthetic impacts.

Finally, Petitioners argued a fair argument existed that the MND improperly concluded that the Project's wildland fire risk was less than significant. The Court found that the Project was consistent with the General Plan's Public Safety Element and the County's Fire Marshal's Fire Safe Standards. Although the site is within a very high fire hazard severity zone, the Project would be subject to the County's permit requirements and robust fire suppression measures. The Court concluded that Petitioners failed to point to substantial evidence supporting a fair argument that the Project would significantly increase the risk of wildfires.

The Court concluded that the MND properly analyzed potential environmental effects, and noted that while Petitioners did not "obtain the relief they have sought", they achieved success by forcing Project modifications and extensive analysis of its environmental effects through litigation.

***Hollywoodians Encouraging Rental Opportunities v. City of Los Angeles* (2019) 37 Cal.App.5th 768, 772-773.**

The owner of an occupied, 18-unit rent-stabilized apartment building sought to demolish and replace the structure with a condominium project. After the City adopted a mitigated negative declaration

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finding that the project would not have a significant effect on the environment, the owner withdrew the units from the rental housing market pursuant to the Ellis Act, leaving the building vacant. Shortly thereafter, the developer backed out of the project due to a lack of financing.

Roughly two years later, the owner filed a second application with the City to convert the vacant building into a 24-room boutique hotel (Project). An initial study concluded that the Project would not require further environmental review, as it did not displace housing units or residents. The initial study rationalized that the units had already been withdrawn from the market, so no displacement would result. Following a public hearing, the City adopted another MND and approved the Project.

Petitioners filed suit, alleging that the City was required to prepare an EIR analyzing the Project's potentially significant impacts on the rent-stabilized housing supply and associated tenant displacement. Petitioners argued that the City prepared a legally inadequate initial study and MND by using the structure's vacant status as a baseline for environmental review, rather than adopting a baseline from when it was occupied. The trial court rejected this argument, holding that the proper Project baseline was when environmental review began for the second application. This set the environmental baseline at the point where the building had been vacant for two years. The trial court found Petitioners' entire CEQA claim deficient because it used the wrong baseline, and concluded that physical impacts trigger the preparation of an EIR, not socioeconomic impacts with no secondary physical impacts.

The Court of Appeal agreed, focusing its Opinion on the proper baseline. Petitioners argued that the decision to withdraw the rental units was not irreversible if, for example, the City were to have denied the application. The Court considered this to be a purely speculative argument, given the reality that the units had been withdrawn from the market and the building sat vacant for two years. The Court also rejected Petitioners' argument that the Project should be viewed cumulatively with consideration of prior rental unit withdrawal. Thus, the Court upheld the use of the City's baseline.

SUSTAINABLE COMMUNITIES ENVIRONMENTAL ANALYSIS (SB 375 STREAMLINING)

***Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 704.**

The Yamanee project, a 10-story mixed-use condominium development in Midtown Sacramento, (Project) exceeded both the density and height limits of its parcel's zone. A Sacramento General Plan provision allows the City Council to authorize projects at densities higher than the applicable zoning if they are found to provide a significant community benefit. The City found that the Project would create a number of such benefits, including a reduction of residents' dependence on personal vehicles and the furtherance of the City's goal to construct 10,000 new residential units in the downtown area. Sacramentans for Fair Planning filed a writ of mandate in the superior court, alleging the City violated zoning law and CEQA by approving the Project. The court denied the petition and Sacramentans appealed to the Third District Court of Appeal.

On appeal, the Court found that under SB 375, if a project is statutorily defined as a transit priority project, a lead agency may utilize a streamlined Sustainable Communities Environmental Assessment (SCEA) instead of typical CEQA review methods (an EIR or negative declaration). For a

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project to qualify as a transit priority project, it must, in part, be consistent with the use designation, density, building intensity, and applicable policies specified for the project area in the regional Sustainable Communities Strategy (SCS).

Sacramentans challenged the City's use of a SCEA to approve the Project on the basis that SCS development policies in the area were too vague. For instance, the SCS did not identify specific residential densities or building densities for the area. Sacramentans argued that the lack of specificity rendered the SCS unusable as a basis for justifying streamlined CEQA review with an SCEA.

The SCS forecasts a preferred growth scenario for the region which, if followed, would lead to reduced greenhouse gas emissions. To that end, the SCS divides the region into areas and subareas, each forecasted to receive specified amounts and types of development. The SCS designated the Project site as within the central city subarea of the Center and Corridor Community area. This designation allows for relatively dense mixed-use development. As the Court noted, the SCS forecast for the Project area includes a unique capacity for new office, residential, and mixed-use buildings exceeding 3-4 stories, with the potential to more than double the number of housing units in the subarea.

The Court found that Sacramentans misunderstood the role of the SCS in their argument when alleging that it was too vague. "The strategy's purpose is to establish a regional pattern of development, not a site-specific zoning ordinance." The Court clarified that nothing in SB 375 requires building intensity standards in the SCS more specific than what it contained.

With respect to Sacramentans' allegation that the lack of specificity rendered streamlining improper, the Court noted such concerns should be directed to the Legislature, not the Court. The Court stated there was no dispute that the City's determination of project consistency with the SCS was supported by substantial evidence. Therefore, the Court held that the City was entitled to rely on its consistency determination when using the SCEA.

Sacramentans also asserted that the City erred by relying on EIRs prepared for the General Plan and SCS to avoid analyzing the Project's cumulative impacts. Sacramentans claimed streamlined review was inappropriate because no prior environmental analysis "has ever considered the cumulative impacts of high-rise development in Midtown approved pursuant to the General Plan." The Court rejected this argument, and found that CEQA authorized the City to rely on the prior reports as part of its streamlined review of the Project. CEQA required the City, before drafting its SCEA, to prepare an initial study identifying significant or potentially significant impacts, including cumulative impacts. The initial study had to identify any cumulative effects that had been adequately addressed and mitigated in prior applicable environmental impact reports. The Court held that the City's initial study on the Project, included as part of the SCEA, properly complied with these requirements.

The Court denied the petition and affirmed the decision of the superior court.

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ENVIRONMENTAL IMPACT REPORTS

***South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321**

In 2014, Forest City California Residential Development, Inc. proposed a mixed-use business and residential project known as "5M" in the area bounded by Mission, Fifth, Howard, and Sixth Streets in San Francisco. The 5M site included seven parking lots and eight buildings with office and commercial uses. The San Francisco Planning Department released a DEIR on October 15, 2014, which described two "options" for 5M—an "office scheme" and a "residential scheme". Under both, 5M would result in new active ground floor space, office use, residential dwelling units, and open space. Both schemes would reserve and rehabilitate two existing buildings on the site, and demolish the six remaining structures. The DEIR discussed nine alternatives to 5M, and rejected five as infeasible.

The San Francisco Planning Commission held an informal hearing on the DEIR, accepted public comment until January 2015, and published the FEIR. Following certification of the EIR, South of Market Community Action Network, Save Our SOMA, and Friends of Boeddeker Park (collectively, Plaintiffs) appealed the decision to the San Francisco Board of Supervisors. The Board of Supervisors denied the appeal. Plaintiffs filed a petition for writ of mandate in superior court alleging CEQA violations. The court heard arguments and denied the writ. Plaintiffs appealed to the First District Court of Appeal, arguing deficiencies in the EIR's discussion of the project description, cumulative impacts, traffic and circulation impacts, wind impacts, open space impacts, shade and shadow impacts, area plan consistency, and statement of overriding considerations. (For the purposes of this outline, only the project description portion of the Opinion is analyzed in detail.)

Plaintiffs alleged the EIR failed to provide a stable and accurate project description. They argued that the "office scheme" and "residential scheme" alternatives were "confusing" and hampered commenters' ability to understand the project that was actually proposed and analyzed. The Court found Plaintiffs' claim that the DEIR presented multiple possible Projects (rather than a description of a single project with two possible buildout schemes) "specious". The Court noted that Plaintiffs failed to attack the project description on grounds related to CEQA's technical requirements, or point to erroneously omitted information.

The DEIR's project description stated that 5M is a mixed-use project on a four-acre site in downtown San Francisco featuring two project options with substantially the same overall gross square footage but with a varying mix of residential and office uses. It set forth measurements of gross square footage for each scheme along with site plans, illustrative massing, building elevations, cross sections, and representative floor plans. The DEIR also evaluated the environmental impacts of each scheme independently. The Court found that this level of detail, along with response to public comment when contentions of confusion arose, constituted an appropriate project description and served the informational nature of the document to allow for public participation.

The Court dispensed with Plaintiff's reliance on *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185 and *Washoe Meadows Community v. Department of Parks and recreation* (2017) 17 Cal.App.5th 277, noting that unlike those cases, here, there were no fluctuations in the project description during the EIR process, the initial project description was not misleading and a small fragment of the

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ultimately approved project, and the project description clearly identified what was going to be built in either proposed scheme.

Plaintiffs alternatively argued that the 5M project description was deficient because the FEIR ultimately adopted a proposed plan based not on the two described schemes, but rather, based on a "revised" variant of the preservation alternative identified in the DEIR. The Court found Plaintiffs failed to identify any component of the revised project unaddressed in the DEIR, and stated that the CEQA reporting process is intended to be flexible to allow for the implementation of "unforeseen insights" gained during the project consideration. The Court stated that the whole point of requiring evaluation of alternatives in a DEIR is to allow thoughtful consideration and public participation regarding other options that may be less harmful to the environment. If the approved action must be a blanket approval of the entire project as initially described in the EIR, the informational value of the document would be "sacrificed". The Court concluded that although the project description did not include a verbatim description of the ultimately approved Project, the adopted characteristics came from one of the proposed alternatives; satisfying "one of the key purposes of the CEQA process".

The First District similarly dismissed Plaintiffs' remaining arguments relating to cumulative impacts, traffic and circulation, wind, open space, shade and shadow, area plan consistency, and statement of overriding considerations. Accordingly, the Court upheld the judgement of the superior court in full.

***stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1**

Millennium Hollywood LLC, the City of Los Angeles, and the Los Angeles City Council (Appellants) challenged a trial court holding that a proposed four-and-a-half-acre mixed-use development failed to comply with the requirements of CEQA.

Millennium filed a master land use permit with the City's Planning Department in 2008. In an attachment, Millennium described what it proposed to build and the objectives for the project. Development was abandoned (following a finding that the project violated FAR requirements) until 2011, when Millennium filed another master land use permit, this time lacking any description or detail regarding what they intended to build. The initial study did not include any drawings or renderings; the number of buildings; or their shape, or size, or purpose. The only finite information was the development's size, location, and purposes of existing buildings nearby. The DEIR identified it as a "mixed use development" and stated that the massing characteristics and specific land uses were left vague to allow for flexibility. The DEIR included a conceptual plan (along with two alternatives of similar detail) to illustrate potential scenarios following approval of the development agreement. The FEIR maintained the same project description, and, over public comment noting it would be difficult to "respond to a project that does not include a specific proposal," the Council approved the project.

Stopthemillenniumhollywood.com filed a petition seeking a peremptory writ of mandate directing the City to set aside approval of the Project and EIR certification. The petition set forth three CEQA causes of action, two of which were granted by the trial court. The trial court found that the City abused its discretion by (1) failing to provide an accurate, stable, and finite project description, and (2) declining to conduct a traffic study. The trial court found the project description was inconsistent and failed to describe essential requirements under CEQA: siting, size, mass, or appearance of the proposed building.

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The DEIR didn't describe a stable or finite building development project—rather, it presented conceptual scenarios that Millennium or future developers could follow at the site.

Appellants filed an appeal with the Second District Court of Appeal. The Court upheld the decision of the trial court in full.

First, the Court established that the project description was not "accurate, stable and finite" as required under CEQA. The Court explained that the informative purpose of CEQA is not served through "incessant shifts among different project descriptions", and that vagueness could result in vitiation of the EIR process as a vehicle for public participation. The Court held that the project description provided the public and decision makers little by way of actual information regarding "design features" or a "final development scenario." Rather, they constituted vague and ambiguous regulations which simply limited the range of options for future developers.

The Court rejected the argument that the conceptual "impacts envelope" contemplated in the project alternatives complied with CEQA because it assumed, analyzed, and mitigated worst-case-scenario environmental effects; noting that this exact argument was "made and roundly rejected in *County of Inyo* [*v. City of Los Angeles* (1977) 71 Cal.App.3d 185] and *Washoe Meadows* [*Community v. Department of Parks and Recreation* (2017) 17 Cal.App.5th 277]."

Rather, the Court directed developers to follow the project description requirements enumerated in *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321 (*South of Market*) and the Guidelines, which require a general description of a project's technical, economic, and environmental characteristics. In *South of Market*, the DEIR's project description met Guidelines standards through inclusion of site plans, illustrative massing, building elevations, cross-sections, and representative floor plans for *multiple* schemes—even though the project would ultimately result in *one* scheme.

The Court found that unlike *South of Market*, the project description at issue failed to meet basic Guidelines requirements. Technical characteristics—such as those provided in *South of Market* for multiple schemes—were absent. The DEIR did not contain site plans, cross-sections, building elevations, or illustrative massing to show what buildings would be built, where they would be sited, what they would look like, and how many there would be.

Moreover, as noted by the trial court, there were no practical impediments as to why Millennium could not have provided an accurate, stable, and finite description of what it intended to build. The Court found this case distinguishable from *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, which held that there may be times when a project description setting forth only the physical parameters and maximum environmental impacts may be reasonable—such as when conditions on the site interfere with making any firm commitment as to whether development would be possible and, if so, what type of development would occur. Instead, the Court agreed with the trial court's assessment that those circumstances were not present in this case. In the earliest proposals for the project, prior to temporary abandonment, Millennium could clearly describe what they intended to build on the two parcels. Further, unlike *Treasure Island*, Millennium's future configuration would not be subject to supplemental review before implementing the final Project design. The Court concluded that

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Treasure Island's environmental review process provided for subsequent review when actual projects were proposed. Here, no subsequent review was contemplated.

Identifying that there were no extenuating circumstances on the site which would prevent Millennium's preparation of an accurate, stable, and finite description, the Court found that the City's actions constituted an impermissible impairment of the public's ability to participate in the CEQA process. The Court concluded that because the project description is at the heart of the EIR process, it was not necessary to reach the other allegations of the appeal. Accordingly, the Court affirmed the judgement of the trial court in full.

***Center for Biological Diversity v. Department of Conservation, etc.* (2019) 36 Cal.App.5th 210**

The Legislature passed Senate Bill 4 (SB 4) in 2013, requiring the Department of Conservation, Division of Oil, Gas, and Geothermal Resources (Department) to study the environmental effects of fracking and other types of oil and gas well stimulation in California. Specifically, the statute requires the preparation of an EIR pursuant to CEQA to provide the public with detailed information regarding any potential environmental impacts of well stimulation in the state. The Department prepared and certified a 5,500-page EIR and circulated it for an extended period of 62 days. The certification statement noted that the EIR was potentially unique due to a lack of any accompanying "proposed project," such as fracking activities at particular wells. In part, the EIR provided a programmatic-level analysis of three oil and gas sites in the state. The certification stated, "'well stimulation in the state,' is not a pending 'project' in any ordinary sense." The EIR also addressed a multitude of activities across the state, some of which had been ongoing for decades when SB 4 was passed.

Center for Biological Diversity (Petitioners) filed a writ of mandate challenging the adequacy of the EIR under SB 4 and CEQA. The trial court ruled that Petitioners' CEQA claim was not ripe and sustained the Department's demurrer on the basis that there was no project before the Department requiring approval.

Petitioners appealed to the Third District Court of Appeal. They preliminarily argued that the EIR defined "well stimulation in the state" as the project being analyzed. The Court held that this argument failed to address the ripeness issue raised by the trial court—e.g., the EIR did not describe a project requiring approval. Petitioners claimed that the Department was carrying out a "program" of regulating, overseeing, and permitting well stimulation, in reliance on the EIR, and that this regulatory "program" was itself a "project" within the meaning of CEQA. The Court rejected this argument as well. The Department's regulation of well stimulation activities does not imply that the Department would directly undertake such activities. Because the Department would not directly undertake the activities, there was no project pursuant to Public Resources Code section 21065, subdivision (a). The Court concluded that the Department created the EIR in response to neither a proposed project, nor to a regulatory program constituting a project.

Petitioners alternatively argued that the Department violated both SB 4 and CEQA by failing to (1) adequately consider a fracking study available at the time the EIR was created; (2) analyze indirect impacts of well stimulation treatments; (3) adequately analyze certain area-specific well stimulation treatments; (4) adopt enforceable mitigation measures; and (5) make findings and adopt a mitigation monitoring and reporting plan.

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Before reaching the merits, in the absence of any authority directly on point to assist their review, the Court analyzed the reasoning established in analogous "program" EIR cases. The Court found (1) program EIRs may defer discussion of site-specific impacts and mitigation measures to later project EIRs where the impacts or mitigation measures are not determined by first-tier approval, but are specific to later phases (2) the sufficiency of a program EIR must be reviewed in light of what is reasonably feasible, given the nature and scope of the project, and (3) when considering a challenge to a program EIR, courts must focus on whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and meaningfully consider the issues raised in it.

Turning to Petitioners' first argument, the Court found that the Department did not violate SB 4 or CEQA by failing to incorporate the fracking study into the EIR. The Court held that while SB 4 called for a staggered timeline which could allow for the study to be included in the EIR, nothing in SB 4 suggests that the Legislature intended to link the documents. The Court postulated that the Legislature could have intended for independent production of the fracking study and EIR to effectuate SB 4's remedial purposes of increasing the overall level of existing public information regarding well stimulation treatments.

The Court addressed the second issue, finding the Department adequately addressed indirect impacts of well stimulation treatments. Petitioners contended that the EIR failed to analyze emissions caused by pumping and transporting oil and gas, traffic, and wastewater produced from stimulated wells. The Court found that the Department was not required to analyze these indirect impacts, but nonetheless did so on a programmatic basis, properly deferring in-depth analysis to later project-level EIRs. Nothing in SB 4 requires analysis of indirect impacts caused by additional oil and gas production made possible by well stimulation treatments. The Court refused to adopt a sweeping mandate implied from SB 4's instruction to prepare an EIR "pursuant to CEQA." Instead, the Court reiterated that the purpose of SB 4 was to address the dearth of information about the environmental effects of well stimulation treatments in particular, not oil and gas production in general.

The Center advanced their third and fourth arguments by alleging the Department failed to propose enforceable mitigation measures and failed to mitigate direct impacts of well stimulation treatments. The Court noted that they were "inclined to agree" with the Department that a lead agency has no obligation to adopt formal mitigation measures prior to the approval of a project, but did not conclusively establish as such. Instead, the Court found the Department had committed to specific performance criteria to mitigate direct effects of well stimulation treatments through adoption of its Mitigation Policy Manual and reasonably concluded that potential mitigation measures to remedy indirect effects of well stimulation treatments were infeasible.

Finally, the Court found that the Department did not have to make findings or adopt a mitigation monitoring and reporting plan. CEQA requires findings and mitigation monitoring and reporting plans when an agency approves or carries out a project. As established, there was no project before the Department requiring approval, and the Department was not carrying out a program of well stimulation treatments in the state.

The Court concluded that the Department's EIR had adequately disclosed the conclusions of the study and analyzed indirect impacts on a programmatic basis. The Court found that the Department properly deferred further analysis to project-level EIRs. The EIR was created in response to a legislative

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mandate designed to further understand the effects of fracking. The Court found the EIR adequate under SB 4 and CEQA.

***Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839**

In 2015, Walmart sought approval from the City of Chico (City) to expand its existing store and construct a gas station (Project). In response to the Project proposal, the City prepared an EIR which showed that expanding the existing store would have a significant and unavoidable impact on traffic. The City certified the EIR, approved the Project, and adopted a statement of overriding considerations. Chico Advocates for a Responsible Economy (CARE) challenged the decision based on alleged inadequacies in the EIR and filed a petition for writ of mandate. The superior court denied the petition and CARE filed an appeal with the Third District Court of Appeal.

On appeal, Petitioners alleged that the City's analysis of urban decay impacts was inadequate because the EIR (1) adopted an "unnaturally constrained definition of 'urban decay'" which did not treat the loss of "close and convenient shopping" as a significant environmental impact and (2) failed to support its findings based on substantial evidence.

The EIR defined "urban decay" as:

> "[A]mong other characteristics, visible symptoms of physical deterioration that invite vandalism, loitering, and graffiti that is caused by a downward spiral of business closures and longterm [sic] vacancies. The physical deterioration to properties or structures is so prevalent, substantial, and lasting for a significant period of time that it impairs the proper utilization of the properties and structures, and the health, safety, and welfare of the surrounding community".

CARE argued that this definition erroneously failed to treat the loss of "close and convenient shopping" as a significant environmental impact. The Court viewed the choice of definition as a deferential agency determination establishing a threshold of significance. The Court noted that even if expansion caused the nearest competitor to close, this would not lead to a *loss* of close and convenient shopping for the neighborhood—it would simply substitute one shopping option for another. The Court held that although the replacement of local stores by big-box retailers or the loss of close and convenient shopping could impact residents "psychologically and socially", such impacts are not, by themselves, environmental impacts. The Court held that the City's definition of urban decay was satisfactory, and noted that the chosen definition was supported by substantial evidence and was nearly identical to a definition which had been upheld in *Joshua Tree Downtown Business Alliance v. County of San Bernadino* (2016) 1 Cal.App. 5th 677.

The Court found that CARE's reliance on *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184 (*Bakersfield*) to support the argument that a loss of close and convenient shopping is an environmental impact was misplaced. In *Bakersfield*, the court considered EIRs prepared for the construction of two nearby shopping centers. The *Bakersfield* court did not hold that the absence or loss of close and convenient shopping, by itself, constitutes an environmental impact. Instead, the *Bakersfield* court used the loss of close and convenient local retail stores as an example of the types of

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social problems which result when urban decay occurs; and held that CEQA, under some circumstances, requires urban decay to be considered as an indirect environmental effect.

CARE alternatively argued that the study's methodology was flawed for three reasons. First, CARE argued that the study relied on incorrect assumptions about the Project's anticipated grocery sales based on the use a storewide average of sales per square foot to estimate grocery sales per square foot. Second, CARE argued that the study underestimated the Project's impact on Chico area stores because it assumed shoppers from the Town of Paradise would patronize the store. Third, CARE argued that the study erroneously assumed the economic impact of the Project would be spread among existing stores in the market area, rather than concentrated on the nearest competitor.

The Court dismissed all three arguments, finding that CARE did not offer substantial evidence sufficient to show that they amounted to anything more than differences of opinion about how certain figures should be estimated. The Court reiterated that when reviewing challenges predominantly concerning factual findings and conclusions reached in an EIR, the EIR must be upheld if there is any substantial evidence in the record to support the agency's decisions. Here, the City supported their decision through conducting a thorough urban decay study which (1) identified the Project's market area; (2) estimated the Project's net retail sales; (3) analyzed existing market conditions; (4) analyzed existing retail demand; (5) estimated the additional retail demand from forecasted population growth; (6) evaluated the Project's competitive effects on existing retailers; (7) identified other planned retail projects; and (8) assessed the extent to which the Project and other projects might contribute to urban decay. The report concluded that the Project would have only a negligible impact on local competitors' sales. The Court found that this study constituted substantial evidence to support the City's decision, and noted that while CARE may have preferred the City approach its urban decay analysis differently, their chosen approach did not render the analysis clearly inadequate or unsupported.

Citizens for Positive Growth & Preservation v. City of Sacramento (2019) 2019 Cal. App. LEXIS 1274

In 2009, the City of Sacramento (City) adopted its 2030 General Plan. In October 2012, the City initiated its five-year technical update to the 2030 General Plan (hereafter referred to as "2035 General Plan" or "Plan"). The City released the draft Plan and draft EIR for public review in August 2014. Changes from the 2030 General Plan included a revised traffic threshold of significance from LOS to VMT. On March 3, 2015, the City approved the Plan and certified the EIR with the proposed changes. On April 1, 2015, Citizens for Positive Growth and Preservation (Citizens) filed suit challenging the facial validity of the Plan and raised numerous challenges to the adequacy of the 2035 General Plan EIR including challenges to the impacts analyses related to traffic, greenhouse gas emissions, air quality, cyclist safety, and the "no project alternative". The superior court denied the petition and Citizens timely appealed.

Citizens contended that the Plan was insufficient due to internal inconsistencies between its introductory language and policies. The Third District noted that because the adoption of a general plan is a presumptively valid legislative act, Citizens were required to demonstrate that the City's action was an abuse of discretion. The Court found that Citizens failed to cite evidence sufficient to meet this standard. Even if the City were to "create a hierarchy of General Plan elements, or to approve projects inconsistent with any policy of the General Plan" in the future, it would not render the Plan invalid because a

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determination made separate from the approval of a general plan cannot render the general plan internally inconsistent.

Citizens also challenged the Plan based on its use of the level of service (LOS) metric instead of the vehicle miles traveled (VMT) metric in the transportation impacts section. In enacting Public Resources Code section 21099, the Legislature directed that traffic analyses prepared to comply with CEQA move away from LOS to encourage infill development and focus CEQA's traffic analysis on potential traffic-related environmental impacts, rather than inconvenience associated with traffic congestion. Section 21099(b)(2) defines automobile delay as described solely by LOS as not "a significant impact on the environment pursuant to [CEQA] except in locations specifically identified in the guidelines". In 2018, the Secretary of the Natural Resources Agency promulgated and certified CEQA Guidelines section 15064.3 to implement Public Resources Code section 21099(b)(2). Citizens argued that because CEQA Guidelines section 15064.3 applies prospectively, and because the EIR was certified before the guideline was certified, a LOS impact still constitutes a potentially significant traffic impact of the Plan for the purposes of CEQA.

The Court rejected this interpretation, and held that the plain language of Public Resources Code section 21099(b)(2) provides that "*[u]pon certification of the guidelines* by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion *shall not be considered a significant impact* on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." The Court held that, in mandamus proceedings, "the law to be applied is that which is current at the time of judgment in the appellate court". On that basis, the Court concluded that the Plan's LOS determinations could not constitute a significant environmental impact.

Citizens also argued that if potential automobile delay caused by the Plan's LOS determinations did not constitute a significant impact pursuant to Public Resources Code section 21099(b)(2), then the City should have been required to conduct a VMT analysis pursuant to CEQA Guidelines section 15064.3. The Court disagreed because the City's EIR was certified before CEQA Guidelines section 15064.3 was enacted, and the criteria set forth therein only apply prospectively.

In addition, the Court rejected Citizens' challenge to the no project alterative, greenhouse gas emissions, air quality, and cyclist safety because Citizens failed to cite to substantial evidence to support those arguments. Similarly, the Court rejected Citizens' argument that recirculation was required because Citizens did not cite to substantial evidence of significant new information requiring recirculation.

Covington v. Great Basin Unified Air Pollution Control Dist. (2019) Cal. App. LEXIS 1288

Developers proposed the construction and operation of the Casa Diablo IV geothermal power plant adjacent to three existing geothermal power plants in a federally managed portion of Mono County. The plant would generate power by pumping hot water from a geothermal reservoir, using heat exchangers, and reinjecting the water into the reservoir to be reheated and reused. The heat would vaporize n-pentane in a closed-loop system. The n-pentane vapor would turn a turbine, generating electricity. N-pentane is non-toxic, but it is a Reactive Organic Gas (ROG) and a precursor for ozone. Although the power plant is designed as a closed-loop system, it is expected to produce fugitive n-pentane emissions through valve, connection, and seal leaks.

The federal Bureau of Land Management and the Great Basin Unified Air Pollution Control District (District) prepared a joint EIR/EIS for the plant. Petitioners, including a local laborers union and their individual members, challenged the adequacy of the joint EIR/EIS to estimate the amount of ROG

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fugitive emissions. Petitioners argued that the District's finding that fugitive emissions would be limited to 410 lbs/day was not supported by substantial evidence. Additionally, Petitioners contended that the EIR/EIS failed to adopt all feasible mitigation measures and that the District was not the proper agency to prepare the EIR/EIS. The trial court denied the petition for writ of mandate, and Petitioners appealed.

The Third District Court of Appeal found that there was sufficient evidence in the EIR/EIS to support the fugitive emissions limit estimation. The District had previously adopted a ROG threshold of significance at 55 lbs/day. The plant was expected to produce n-pentane fugitive emissions totaling 410 lbs/day. Plant developers sought a permit to emit 410 lbs/day, and committed to a variety of mitigation measures to achieve the limit, including monitoring and reporting n-pentane emissions and repairing leaks "as soon as practical". These measures satisfy the District's rule 209-A (C)(1), which allows the amount of emissions to be established by a permit applicant's agreement to limit operations as a condition of receiving the permit. Relying on *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal. App. 4th 884 (compliance with a building code provided substantial evidence) and *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 418 (compliance with a city ordinance provided substantial evidence), the Court held that compliance with the District's rule 209-A (C)(1)'s performance standard represented substantial evidence demonstrating that potential environmental impacts associated with ROG emissions were sufficiently mitigated. The plant developer was not required to present additional evidence to support its emissions estimate because compliance with the District's rule 209-A(C)(1), the agreement to limit ROG emissions to 410 lbs/day, and the commitment to the selected mitigation measures were adequate.

The Court found that the trial court erred in its determination that the District adequately analyzed the feasibility of additional mitigation measures limiting ROG emissions. In a comment submitted in response to the power plant DEIR, Petitioners and their expert stated that the power plant would have a significant environmental effect due to fugitive emissions emitted prior to the mitigation measure's intervention protocol addressing leaks "as soon as practical". Petitioners and their expert argued that a mitigation measure used by petroleum and chemical facilities could be feasibly employed at the geothermal plant. This measure, if adopted, would place a lower cap on allowable fugitive emissions before requiring intervention. The Court of Appeal held that the trial court erred by reasoning that the mitigation measure proposed by the *Petitioners* was not supported by substantial evidence. Instead, a court is tasked with determining whether substantial evidence supports the *District's* findings. Applying the correct standard, the Court found that the District failed to explain, based on substantial evidence, why the stricter program proposed by Petitioners and their expert would be infeasible. Similarly, the Court found that the District failed to respond in good faith to the Petitioner's additional comment suggesting the use of leakless and low-leak technology to lower ROG emissions.

The Court concluded that although the US Forest Service manages the surface estate and the Bureau of Land Management manages the subsurface geothermal estate, the District was the proper lead agency for purposes of environmental review. The power plant is almost exclusively on federal land, and, at the outset, it was believed that the District was the only nonfederal agency with jurisdiction. This decision aligns with the principle that the lead agency is either the agency with the greatest responsibility for supervising and approving the project as a whole, or, when there are multiple agencies with an equal stake, the agency which acts first. The preference for a lead agency to be an agency with general governmental powers does not apply where another agency has greater responsibility for supervising the project as a whole, as here.

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In sum, the Court found that while there was substantial evidence to support the fugitive emissions amount sought in the developer's permit, the lack of reasoned or good faith response to comment rendered the environmental review of the power plant deficient. The Court remanded to the trial court, with instruction to provide the proper level of analysis.

PROCEDURAL HOLDINGS

Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador (2019) 33 Cal.App.5th 165

In 2012, the County of Amador (County) certified a final EIR and approved the Newman Ridge Project, a quarry and related facilities near Ione (Project). The Ione Valley Land, Air, and Water Defense Alliance (LAWDA) filed a petition for writ of mandate, claiming that the approval violated CEQA, the State Mining and Reclamation Act, and the Planning and Zoning Law. In the first petition, LAWDA raised seven CEQA issues. The trial court granted the petition, but only insofar as traffic impacts related to surface street and rail lines were concerned. The trial court required the County to vacate certification of the EIR and recirculate the portion of the EIR pertaining to traffic impacts. LAWDA did not attempt to appeal the trial court's denial of the remaining six CEQA issues it had raised.

The County, as instructed by the court, vacated its EIR certification and recirculated the portion of the EIR pertaining to traffic impacts. After responding to comments, the County certified the partially recirculated EIR and approved the Project. In June 2015, the County and Project applicants filed an additional return certifying that they had complied with the writ. The County asked the trial court to uphold certification of the EIR and approval of the Project, and grant a motion to discharge the writ. The court granted the motion in August 2015.

Coterminously, LAWDA filed a second petition challenging the County's certification of the partially recirculated EIR. LAWDA alleged eight violations of CEQA relating to water, traffic, biological resources, air, mitigation measures, recirculation principles, overriding considerations, and responses to public comment. The second petition alleged the County did not change any portions of the EIR in recirculation, even though the entire EIR would be affected by changes in the Project area including the official state drought and approval of significant expansion projects nearby. In response, the County demurred and argued that many of the issues raised in the second petition had already been litigated and resolved in the trial court's judgment on the first petition. The County claimed that these issues were barred from being adjudicated in the second petition by the doctrine of *res judicata*. On that basis, the trial court denied the writ, and LAWDA appealed.

Relying on *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, the Court held that *res judicata* bars (1) relitigation of a previously litigated cause of action adjudicated in another proceeding between the same parties and (2) issues which could have been litigated, but a party failed to raise. Applying the doctrine to the facts at hand, the Court agreed with the County that LAWDA was barred from bringing arguments in the second petition other than those related to the recirculated traffic impact analysis.

EXHIBIT A

LAWDA argued in their reply brief that the seven non-traffic issues should be litigated because "new and different circumstances render[ed] the newly certified EIR factually different from the prior EIR". However, because LAWDA failed to include their counterargument to the application of *res judicata* in their opening brief, they forfeited the argument raised in their reply brief. Thus, the Court declined to consider the merits because "considerations of fairness in argument demand that the appellant present all of his points in the opening brief."

The Court concluded that only those arguments concerning the recirculated traffic impact analysis could be raised and were not precluded. The Court rejected the remaining challenge to the traffic impact analysis in an unpublished portion of the opinion, upholding the trial court's denial of the petition.

PENDING CASES

***Protecting Our Water & Environmental Resources v. Stanislaus County* (S251709)**

This case presents the following issue:

Is the issuance of a well permit pursuant to state groundwater well-drilling standards a discretionary decision subject to review under CEQA or a ministerial action not subject to review?

***County of Butte v. Department of Water Resources* (S258574)**

This case presents the following issues:

(1) To what extent does the Federal Power Act (16 U.S.C. § 791a et seq.) preempt application of CEQA when the state is acting on its own behalf and exercising its discretion in deciding to pursue licensing for a hydroelectric dam project?

(2) Does the Federal Power Act preempt state court challenges to an environmental impact report prepared under CEQA in order to comply with the federal water quality certification under the federal Clean Water Act?

EXHIBIT A

ASSESSMENT #1

The Land Use Implications of Cannabis

MODERATOR:

Matt Burris, *Deputy City Manager, City of Rancho Cucamonga*

PANELISTS:

Ryan Stendell, *Director of Community Development, City of Palm Desert*
Lori Sassoon, *Deputy City Manager, City of Rancho Cucamonga*

CONTENT:

1. Study of Cities in Colorado: Consideration of the Effects of Recreational Marijuana Legalization in California

EXHIBIT A

RANCHO CUCAMONGA

Date: April 7, 2016

To: John R. Gillison, City Manager

From: Marijuana Study Team

Subject: **STUDY OF CITIES IN COLORADO: CONSIDERATION OF THE EFFECTS OF RECREATIONAL MARIJUANA LEGALIZATION IN CALIFORNIA**

BACKGROUND/ANALYSIS:

At the present time, all recreational marijuana uses in California including personal growth, cultivation, possession, transportation, storage, sales and consumption are illegal. In 1996, California became the first state to legalize marijuana for medical use with the passage of Proposition 215, which exempts patients and caregivers who possess or cultivate marijuana for medical treatment from criminal laws. The passage of Proposition 215 was considered a critical turning point in the campaign to legalize marijuana.

There have been several prior attempts to legalize recreational marijuana in California through the ballot initiative process. The most recent attempt was Proposition 19, which was placed before California voters in November 2010 and was rejected by a narrow margin of 53.5% to 46.5%. Since then, states such as Colorado, Washington, Alaska and Oregon and the District of Columbia have legalized marijuana for recreational use and a number of states have decriminalized the possession of small amounts of marijuana. One of the early leaders, often held up as a model, is the State of Colorado. Colorado Amendment 64 was approved by voters on November 6, 2012 and allows adults 21 or older in the state of Colorado to grow up to six marijuana plants for personal use, legally possess up to one ounce of marijuana while traveling, and give as a gift up to one ounce of marijuana to other citizens 21 years of age or older. The amendment also created a dual state and local licensing process which allows local governments to regulate or prohibit commercial marijuana uses including cultivation facilities, product manufacturing facilities, testing facilities and retail stores.

There are several initiatives proposed for the November 2016 ballot in California that attempt to legalize recreational marijuana in the state of California. The “Control, Regulate and Tax Adult Use of Marijuana Act,” also known as the Parker Initiative, is the clear leader and will receive the required signatures by July 2016 to qualify for the November 2016 election. The Parker Initiative has framework and regulations which are similar to Colorado Amendment 64 and proposes to legalize recreational marijuana including retail stores, cultivation facilities, product manufacturing facilities and testing facilities. Personal use and possession (up to 28.5 grams) would also be legal and each single private residence would be allowed to plant, cultivate, harvest, dry or process up to six living plants at any one time. Under the Parker Initiative, local municipalities could regulate or prohibit commercial marijuana uses including cultivation facilities, product manufacturing facilities, testing facilities and retail stores but couldn’t ban personal indoor grows.

There is growing concern and speculation that California could experience similar impacts as the State of Colorado if the Parker Initiative is approved. Because Amendment 64 has been in effect

in Colorado for over two years, the City of Rancho Cucamonga formed a cross departmental team with staff from law enforcement, planning, administration and finance to study the community impacts of marijuana legalization in the state of Colorado. During the week of February 1, 2016, staff held meetings with several municipalities in the Denver area that had wide ranging policies on marijuana use ranging from completely prohibition of all marijuana uses to permissively allowing various forms of medical and recreational marijuana uses. The jurisdictions were purposefully selected to provide a broader perspective on both the positive and negative impacts of Amendment 64 on communities throughout Colorado. The focus of this document is to report on the impacts of marijuana legalization in state of Colorado in the areas of public safety, finance, planning, energy and natural resources, and social and public health.

IMPACTS OF MARIJUANA LEGALIZATION

Planning: In 2014, Colorado's Amendment 64 ballot measure passed leaving local municipalities with the decision to either ban all recreational marijuana land uses including sales, commercial cultivation, manufacturing, and testing, allow certain recreational marijuana land uses, or allow all recreational marijuana land uses.

Initial Land Use Decision: The approach that cities took to make this decision varied widely based on the political climate within each municipality. Some municipalities we met with stated that city officials already knew what the people within their jurisdiction would want for their community and had made the decision to permit recreational marijuana land uses based on this understanding. Other municipalities stated that their elected officials and community members wanted nothing to do with the revenue that recreational marijuana would generate since they considered it "drug money" and decided to ban all recreational marijuana land uses without further consideration. One municipality held a local election to let the community decide on whether or not they should permit recreational marijuana uses, and the community voted to ban all land uses. Another municipality held a large and extensive series of community meetings and gathered input from many groups including businesses, residents and high school aged youth, and decided to ban all recreational marijuana land use after hearing the concerns and opinions of these groups. Several of the municipalities we interviewed stated that many of their citizens voted for the legalization of recreational marijuana when it was on the state ballot, but did not want or intend that those same land uses be placed in their immediate neighborhood.

In speaking with each municipality on how they came to their decision to ban or permit recreational marijuana land uses, we discovered that there are a wide variety of political climates and viewpoints in Colorado, which is not unlike California. Although the process for arriving at their decisions varied, once the municipalities made their decision on whether or not to permit recreational marijuana dispensaries and/or commercial cultivation, the next step for each of them was similar – create an ordinance to either ban or allow recreational marijuana land uses. The staff we spoke with expressed that there was a learning curve and a number of unexpected impacts surfaced that are difficult to control through ordinances. Some staff we spoke with highlighted particular ordinances that had to be revised and now played major roles in allowing building inspectors and law enforcement to shut down unpermitted cultivation warehouses or unpermitted cultivation occurring in homes. Ordinances have also played a major role in limiting the amount of retail dispensaries and cultivation warehouses that are permitted within a given area. Staff and law enforcement officers stated that particular sections of ordinances are now playing vital roles in determining how recreational marijuana land uses are being reviewed,

regulated, inspected and potentially closed down. During one of our meetings with a municipality, our city staff was given the following piece of advice – implement stricter regulations on recreational marijuana land uses from the start because you can always loosen ordinances later, but it is more difficult to tighten regulations once they are already in place.

It should be noted that the decisions discussed here regarding allowing or not allowing are strictly around the land use issue. ***All residents in every city must be allowed to cultivate and consume marijuana on an individual basis***. That in and of itself is creating complexities for law enforcement as well as neighborhood nuisance issues, discussed further in later sections of this report.

Regulation of New Businesses: Planning staff has seen an increase in demand for particular types of businesses as well as new auxiliary uses created as a result of the legalization of recreational marijuana. Cities in Colorado that have chosen to prohibited recreational marijuana are also seeing auxiliary uses surface as well. Armored car businesses are in high demand due to the need to transport the cash that the dispensaries are collecting. Security system and alarm businesses are also in demand and have considerable business due to the need to protect the dispensaries from robberies and theft. Marijuana tourism, including things like “bud tasting” is thriving. Bud tasting is similar to wine tasting in that a shuttle or limousine drives a tourist to a handful of dispensaries where they can sample the different types of marijuana. Planners have had to develop regulations that encompassed “marijuana kitchens” where edibles are made, labs where marijuana products are tested, and hemp manufacturers in their list of allowed or prohibited uses.

Warehouse Space: There has been an impact on warehouse and manufacturing tenant spaces. Cultivation of marijuana in Colorado is very financially lucrative and available warehouse space has become a rarity. Non-marijuana cultivation businesses are finding themselves unable to locate vacant warehouse space to rent at any reasonable price. When warehouse space does become available, many non-marijuana cultivation businesses cannot afford to rent the available space since rental costs have tripled. Some municipalities in Colorado have created specific ordinances to limit the amount of retail dispensaries and cultivation warehouses and to ensure distance between these like uses.

Secondary Impacts: Planning Department staff from the various municipalities stated that the odor from recreational marijuana was creating a big land use impact. Marijuana has a strong distinct odor even as a plant or before it is smoked. Neighboring tenants of both retail marijuana dispensaries and cultivation warehouses have felt the impacts of the odor entering their tenant spaces. One city cited a situation where a clothing retail shop was forced to move locations after their merchandise began to smell like the marijuana product sold in the recreational marijuana dispensary that had just moved into the tenant space next door. City staff stated that the odor of marijuana in plant form can travel hundreds of feet beyond the cultivation warehouse. Some cities have begun to regulate the odor by requiring business to have filters however, it has been difficult to control this land use impact due to the fact that the marijuana dispensaries and cultivation warehouses are so prevalent. Another challenge has been controlling recreational marijuana odor within residential tracts. While residents can permit or prohibit their guests from smoking marijuana inside their own residence, the more typical problems arise because someone else in a nearby residence is legally smoking marijuana but the odor is traveling into a neighbor’s window.

There is little local law enforcement can do in this situation. Odor can also be generated just by growing plants within a residential home and this odor can also travel to neighboring residences.

Public Safety: *Impacts on law enforcement have been significant.* Some challenges were expected such as an increase in marijuana in schools and recreational marijuana being sold to minors, but unexpected impacts in the law enforcement field have also occurred. The interviewed law enforcement officers stated that their investigation case load had ***quadrupled*** and a significant portion of their time was now being spent inspecting home grows and bringing residents into compliance, often using a cross departmental approach which included building inspectors as well as fire prevention specialists. This increased workload for marijuana violations (three to four times the amount) has left the investigations into other forms of narcotics trafficking largely unattended. One jurisdiction reported heroin use and overdose has quadrupled. Of note, none of the jurisdictions visited have increased their narcotics investigators staffing levels, for reasons that are unclear to our team.

The recreational marijuana advocates in Colorado had claimed the new amendment would reduce "home grows" and black market marijuana, but ***the opposite has occurred***. The state's allowable quantities for home grows are frequently subverted and/or residents are ignorant of the limits. Vast quantities of plants are regularly found in home grows and some jurisdictions reported out of state investors making home purchases for the sole purpose of large home grow operations. The seizure of plants has proven daunting for the law enforcement agencies. The collection of samples and seizure of the plants has been argued in Court, with frequent judicial findings in the defendant's favor and the courts ordering the municipalities to reimburse the defendant for the value of the seized plants. The evidence storage for some municipalities has proven costly in order to create drying and storage areas for thousands of plants and the growing equipment. The increased exposures of law enforcement officers to the dangerous indoor grow environments generates additional expense for personal protective equipment.

Officers stated that the "black market" is thriving and marijuana grown in Colorado is being exported to surrounding states and even out of the country. It remains beneficial for criminals to start illegal cultivation uses and retail dispensaries since permit fees and taxes can be avoided. Individuals are moving to Colorado from out of state, growing recreational marijuana, and sending it back to their home states where it is worth more than double its market value. Meanwhile, no decline in other drug use or drug related crime has been observed. Another unexpected consequence is that narcotics detection K9 dogs are now largely irrelevant because they are trained to alert on multiple drugs including the now legal marijuana but do not differentiate between legal and illegal drugs in their alerts. New dogs will need to be trained that do not alert on marijuana, thus creating a large expense.

Another unexpected challenge is preventing robberies and thefts. Law enforcement officers are working with new marijuana dispensary and cultivation business owners to create security plans and review CPTED (Crime Prevention through Environmental Design) plans. These business owners are required to place their money and marijuana products within safes every night. Security cameras are required for these types of business locations. These businesses generate a significant amount of cash which cannot be stored within a bank due to banks being federally backed (marijuana remains illegal on a federal level). Business owners are forced to move large amounts of cash to different locations and often use armored trucks to deliver it to its destination.

Any time there is the storage of large sums of cash there is an increase in accompanying criminal activity.

Law enforcement officers on patrol are seeing new challenges and impacts to the public's well-being. Multiple law enforcement officers stated that they believed there was an increase in recreational marijuana related traffic collisions, however statistics are not typically tracked at the local level. One of the challenges of collecting statistics is that many of the drivers which are involved with these traffic collisions are also under the influence of alcohol. When this situation occurs, it is easier and less expensive to test for the alcohol and pursue that conviction. There is a field test for alcohol blood level content and usually law enforcement headquarters also are equipped with a more accurate alcohol blood level content test as well, but both only require a suspect to breathe into a machine. There is not a field test for marijuana blood level content and the test that does exist is expensive and requires blood from the suspect usually drawn by a person from the medical field. Patrol officers can use field sobriety tests (observing the pulse, pupil dilation, etc.) to determine if someone is under the influence however, not all patrol officers are experts in this area and this method may not be convincing in a court of law. The Courts have established a 5-nanogram quantity of marijuana (THC) is the bloodstream as the legal limit, similar to our .08%BAC, however, there are no medical-legal standards which definitely prove the 5 nng level constitutes impairment. As a result, prosecutors have shown great reluctance to prosecute for impairment in these circumstances. One jurisdiction we spoke to have seen a 50% increase in fatal traffic collisions, but cannot connect them definitively to marijuana intoxication due to a lack of testing. The lack of testing and court prosecutions creates a challenge in the field and Colorado law enforcement officers stated that very few individuals have been prosecuted for driving under the influence of a drug (DUID) even though they are frequently seeing this criminal activity on the streets. While visiting a dispensary, Rancho Cucamonga staff was standing to the rear of the business near the parking lot and we witnessed a group of approximately six individuals walk out of the dispensary with their merchandise, smoke marijuana in their vehicle for approximately 10 minutes and then proceed to drive away.

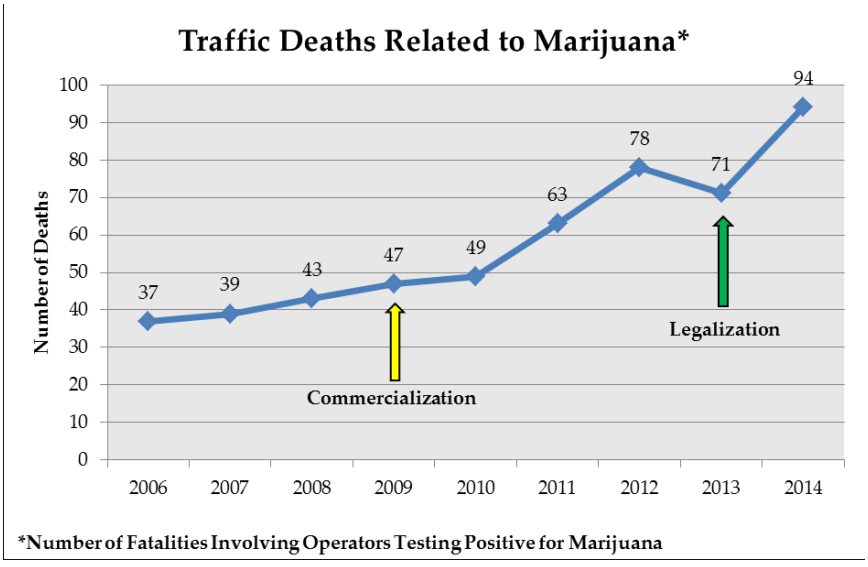
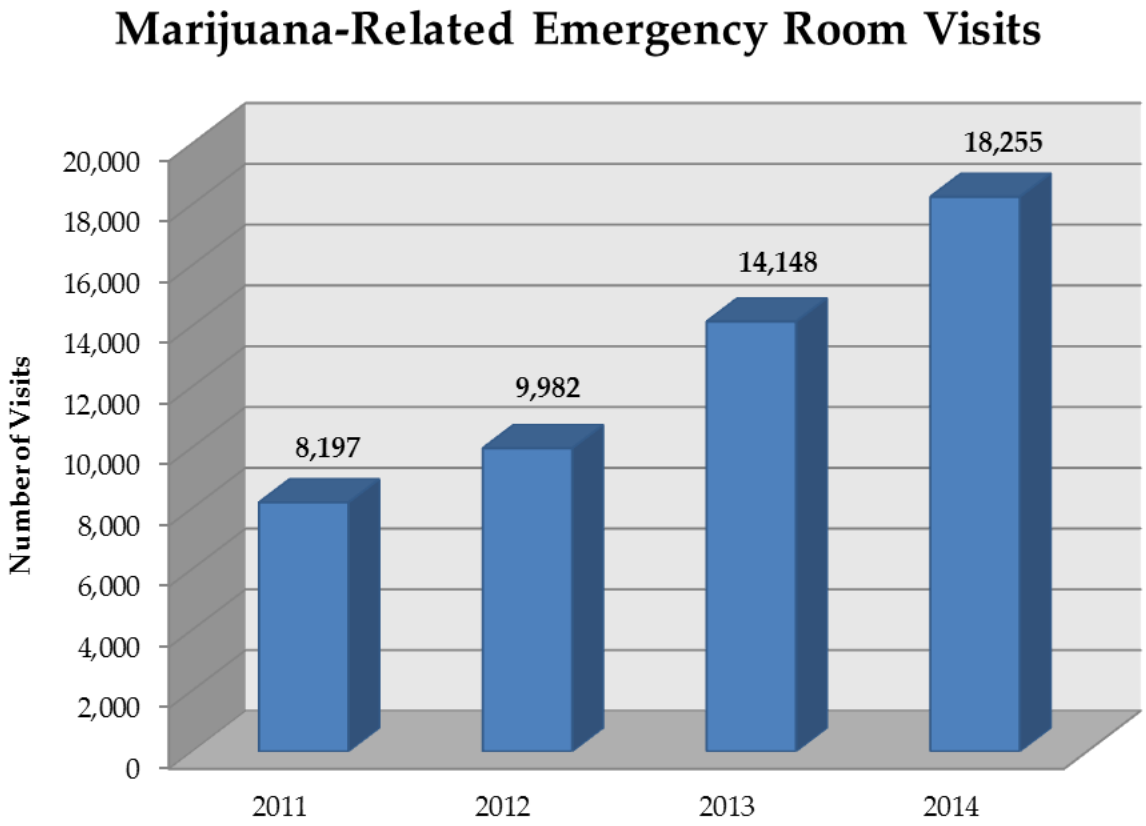


EXHIBIT A



Law enforcement officers are also seeing other types of calls for service related to recreational marijuana but again, these statistics are not being collected and it is not "popular" in Colorado to shine a light on the real public safety impacts. Many municipalities are not or cannot track these calls. The State Chiefs of Police created a statistic mechanism that was so controversial, no one could agree on implementation and it has not been launched. Many municipalities do not want to publicize recreational marijuana related cases because they don't want to be the "stand out" problem city. If they don't publicize the incidents, the negative reputation is thwarted.

Some law enforcement officers within municipalities, which have banned all recreational marijuana land uses, stated that they continue to have crime and negative impacts from surrounding municipalities that do allow recreational marijuana but there are significant benefits to banning recreational marijuana all together. Benefits include being able to clearly define what is and is not legal which makes shutting down unpermitted marijuana cultivation businesses easier. Law enforcement officers in jurisdictions where recreational marijuana is not allowed stated that they felt as if they have more of an ability to improve the quality of life for residents. When a resident or citizen complains of odor from an unpermitted cultivation businesses, law enforcement officers stated that they feel like they can "fix" the problem instead of telling the reporting party that they just had to live with it.

Impacts on Fire Safety have also been significant. Staff interviewed one Assistant Fire Chief within a city which allowed all forms of commercial cultivation and retail sales. Although that particular

city is collecting millions of dollars in annual revenue from marijuana sales, no additional staff has been hired to help with enforcement related to marijuana uses. After allowing recreational marijuana, this city began having Fire Department staff conduct routine fire prevention inspections of marijuana cultivation locations similar to any other business inspections however, unlike other types of businesses, unique problems arose. Fire Department staff conducting these routine inspections were the same first responders who were responding to routine calls for fire and EMS service. When arriving to a call of service after inspecting a cultivation business, the citizen who had called for help didn't trust the Fire Department staff and would not accept care since the first responders smelled like marijuana. To solve this problem, individuals from the Fire Department were assigned to inspect cultivation business as there only task however, these are not new staff members but rather staff pulled from other assignments and reassigned to fire prevention inspections for cultivation businesses. The Assistant Fire Chief stated that this has caused resources to be spread thin within their department.

The Assistant Fire Chief also stated that allowing marijuana cultivation often creates situations where electrical wiring and other structural dangers exist compromising the safety of cultivation business employees as well as firefighters. Although marijuana cultivation is allowed in his jurisdiction, unpermitted "grows" are still occurring and are often creating life safety threats. The Assistant Fire Chief mentioned that a number of dangerous fires had resulted from faulty wiring and non-permitted interior structural work, and first responders had been seriously injured and consequently medically retired after one particular recent warehouse fire.

Finance: If passed and enacted, beginning on January 1, 2018, the initiative in California would impose taxes on recreational marijuana or marijuana products based on gross receipts from retail sales. Colorado municipalities expressed the financial benefits of the sales tax revenue in those cities where retail sales were permitted. One municipality had seen two million dollars in tax revenue in just one year. Colorado staff spoke of city projects (parks, community centers, etc.) under way or in the planning stages which would be funded with this money; however, municipalities had not foreseen the estimated amount of staff time that would be required to create, regulate and enforce ordinances and new laws that came along with the legalization of recreational marijuana. Some municipalities were working with existing staffing while others were hoping to hire more people, especially law enforcement. A drain on staff time and staff resources was expressed in every municipality interviewed. In summary, while the marijuana industry may result in additional gross revenues to local agencies, it is unclear if any net benefit exists when the additional direct and indirect impacts to law enforcement, fire, code enforcement, and neighborhood quality of life are considered.

Energy and Natural Resources: Marijuana cultivation requires a large amount of energy and water use. One municipality stated that Xcel Energy, Colorado's energy company, "could hardly keep up" since a significant percentage of the area's energy is being used for lighting and climate control within marijuana cultivation businesses. In recent news articles, Xcel Energy has stated that upgrades to transformers and power lines have had to be performed in order to accommodate the warehouses cultivating marijuana. In California, where SCE and PG&E often struggle to upgrade their aging infrastructure to keep pace with new businesses, solar panel installations and electric vehicles, it is hard to imagine how they would keep up with a booming marijuana cultivation industry, or the cost impacts we all might be forced to bear.

The average marijuana plant needs about 6 gallons of water every day even when grown inside. There are many cultivation warehouses in Colorado and many of the warehouses grow hundreds of plants and some even grow thousands of plants. The result is thousands of gallons of water being used daily for a single cultivation warehouse. California is already in a drought and does not have the water supply that exists in Colorado. If recreational marijuana is legalized in California, the demand for water to grow these plants would create a significant impact on California's overall water supply. The California Department of Fish and Wildlife has stated that the illegal cultivation of marijuana in northern California is already depleting water resources and using hundreds of thousands of gallons of water per day. "If this activity continues on the trajectory it's on, we're looking at potentially streams going dry, streams that harbor endangered fish species like salmon, steelhead," said Scott Bauer of the California Department of Fish and Wildlife.

Social and Public Health: Tetrahydrocannabinol (THC) is the psychoactive chemical in marijuana that provides a "high" when it is smoked or ingested. Decades ago the level of THC was below 10%. Now the average plant, according to law enforcement in Colorado, is often 30%. Although there is a theoretical system to track marijuana from seed to sale, the system is fundamentally an *honor system* with no real regulatory enforcement. Colorado law enforcement stated that "black market marijuana" was making it to marijuana dispensaries to be legally sold within Colorado as well as outside of the state. When grown improperly, marijuana can also be contaminated with bacteria and chemicals.

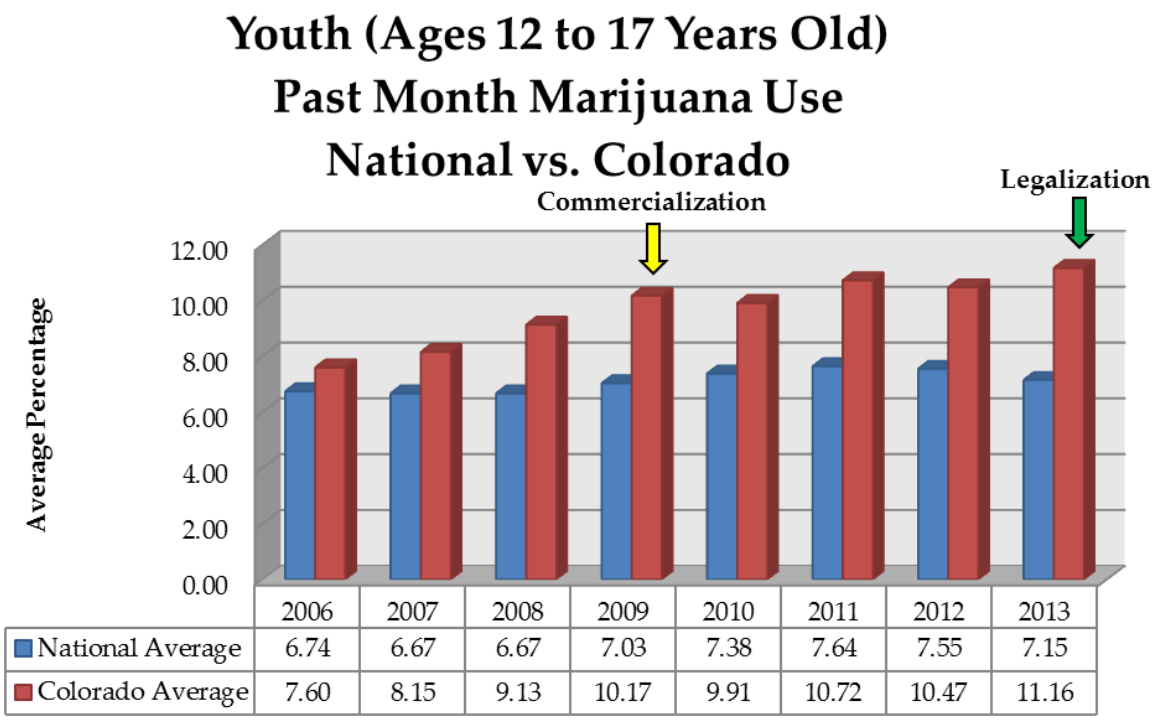
One Assistant Fire Chief stated that people, mostly tourists, were calling "911" after becoming heavily intoxicated and scared. Many of those patients complained of a racing heart rate and anxiety which are common symptoms of marijuana toxicity. In 2014 a 19 year old man passed away from his injuries after jumping from the fourth floor of a hotel in Denver. The coroner had deemed marijuana intoxication as being a significant factor in his death. Many of the toxicity issues are from "edibles" which contain THC but appear in the form of cookies, brownies, candy bars, and even beverages. The Colorado municipal staff that were interviewed were forthcoming about the significant problems surrounding edibles and the solutions that had been created to reduce the health impacts on the community. One dose of an edible is often one bite of a cookie or one square of a candy bar however, many people buying edibles believe that one complete cookie or one whole candy bar is one dose so they inadvertently overdoes. Another challenge is that since these edibles look like normal candy, there has been an increase in accidental ingestion, especially in children. While visiting several dispensaries, Rancho Cucamonga staff observed a wide variety of marijuana edibles and some personal products designed to be topical and reduce pain. They looked and smelled like candy. The marijuana odor was not detected and if placed

Figure 1 THC-infused candy available for sale at an Aurora, CO dispensary.

next to normal candy and cookies, a person would not be able to tell which contained THC. Hospitals in the area have reported a significant increase in marijuana related ER visits and Colorado has recently developed regulations for the labeling of these products in order to educate recreational marijuana uses and provide THC content information.

Many individuals using recreational marijuana are often attempting to reduce anxiety, pain or other medical ailments. In Colorado, Rancho Cucamonga staff was introduced to a term called cannabidiol or CBD. CBD is a compound in cannabis that is not a psychoactive like THC so users do not obtain a “high” when consuming or ingesting CBD. Recreational marijuana plant breeds tend to be lower in CBD levels but scientist are attempting to perform studies and create plant breeds which have high levels of CBD with almost no THC. This could create the medicinal benefit without the mind altering affects. Scientific testing is under way but for now, in Colorado, CBD is still is classified as a drug.

Many argue that marijuana use has been in use in our society for decades and there is no proof of long term affects. Others argue that the long term effects cannot be known since people have only recently started to consume and ingest large amounts of marijuana at high levels of THC. Regardless of the ongoing science, most people can agree that we do not want our youth using marijuana recreationally. An article titled “The Legalization of Marijuana in Colorado: The Impact,” found that in the two year average (2013/2014) since Colorado legalized recreational marijuana, youth (ages 12 to 17) past month marijuana use increased 20 percent compared to the two year average prior to legalization (2011/2012). This article is attached and shows that recreational marijuana use is not only increasing in children but also in young adults. The long term health impacts of consuming recreational marijuana may not be seen for decades to come.



	2006	2007	2008	2009	2010	2011	2012	2013
National Average	6.74	6.67	6.67	7.03	7.38	7.64	7.55	7.15
Colorado Average	7.60	8.15	9.13	10.17	9.91	10.72	10.47	11.16

Licensing Process

Staff also gathered information regarding the licensing processes and procedures in those communities that had legalized recreational marijuana. Colorado requires a dual license (state and local) for each business to operate; however, all city personnel noted that the burden for license granting and enforcement in reality rests with the cities. Cities first issue the local license, and then the state's process is a simple review of the local license; it is in essence a rubber stamp of what the city decides. Similarly, license enforcement really falls to local agencies. According to the HIDTA task force personnel, the state's Bureau of Marijuana Enforcement has approximately 30 field officers to inspect nearly 3,000 dispensaries and cultivation facilities statewide, which is too few personnel to adequately administer the program.

The state's much touted and replicated "track and trace" program was also panned by law enforcement. This program claims to track marijuana "from seed to sale" so that sources are confirmed to be legal, and any contamination or other problems with a batch of marijuana can be traced back to the original plants. However, HIDTA officers shared the actual process at the cultivation facilities is an honor system that remains completely unenforced by the State's Bureau. Plants are tagged, but there is no state-sanctioned or inspected mechanism by which that tag follows buds through the drying, bagging, and distribution process; each cultivator creates its own tags and system through the supply chain. As a result, there is great incentive for illegal marijuana to enter the supply chainfrom Central America, where it can be grown more cheaply, and then be resold at Colorado premium prices.

Other impacts:
As the marijuana industry has grown, it has become well-financed and therefore more politically influential. As one law enforcement group reported to us, the state's Capitol literally smells of pot during the legislative session as the industry lobbies for its causes. The results of this lobbying has been a succession of initiatives and state laws that have steadily liberalized the use and cultivation of marijuana since 2000.

CONCLUSIONS AND OBSERVATIONS:

- Conversations with personnel in various cities were interesting in that **executive staff generally reported fewer negative impacts of legalizing recreational marijuana. Line staff, whether law enforcement, planning, building, or code enforcement, generally reported more negative impacts** on public safety, workload, quality of life in neighborhoods, and societal impacts. This disconnect is fueled by the universal lack of data at the city level regarding marijuana-related calls for service, nuisance complaints, DUI's, and other matters.
- Legalization has not reduced drug trafficking or drug-related crime; data from the area's major drug task force shows the opposite.
- All cities were experiencing impacts even if they had created ordinances to ban recreational marijuana dispensaries in their specific cities. Cities are seeing a negative impact on their staffing and financial resources. The impacts of recreational marijuana do not stay within the boundaries of the cities that have legalized its sale.
- Walking the streets of Denver, where all forms of recreational marijuana are allowed, the odor of marijuana is prevalent. Chatting with locals, it was expressed to us that recreational marijuana has permeated their state. The culture and environment has been permanently changed. The law of unintended consequences has taken over.

In conclusion, based on our hours of interviews with city staffs and our on-the-ground observations over our week in Colorado, our team left concerned regarding the future of marijuana legalization in California and its unanticipated consequences. We recommend that local, regional, and state leaders become more educated about the actual Colorado experience and its real impacts, both intended and unintended, so that this information can be shared with the voters of California as they consider the Parker Initiative in November 2016.

Attachments:

The Legalization of Marijuana in Colorado: The Impact (2015). Author: *Rocky Mountain High Intensity Drug Trafficking Area. (*Graphics in this memo are from this report.)

UPDATE #2

QUICK HITS

PANELISTS:

David Smith, *Partner, Manatt, Phelps & Phillips, LLP*
Alisha Winterswyk, *Partner, Best Best & Krieger LLP*
Matt Burris, *Deputy City Manager, City of Rancho Cucamonga*

CONTENT:

1. Endangered Species: Major Regulatory Reforms by Trump Administration
2. AB 1482: California's Tenant Protection Act of 2019
3. "Waters of the United States" Under the Clean Water Act
4. A Battle Rages for a Breath of Fresh Air: California's Fight to Regulate Vehicle Emissions
5. The Ebb and Flow of Coastal Act Policy: What is Hot Today?

QUICK HITS
UCLA Extension Land Use Law and Planning Conference
Friday, January 24, 2020

*** * ***

Endangered Species: Major Regulatory Reforms by Trump Administration

The Administration Finalizes, and Enviros Immediately Sue Over, Sweeping Regulatory Reforms to the ESA

David C. Smith

Introduction

On August 27, 2019, the Trump Administration finalized and adopted three packages of significant regulatory reforms governing implementation of the Endangered Species Act ("ESA") by the U.S. Fish & Wildlife Service and the National Marine Fisheries Service (collectively "Services"). The effective date of the regulatory reforms was September 26, 2019, though that date was extended to October 28, 2019, for the group of reforms addressing interagency cooperation, as discussed below. Predictably, environmental interests immediately sued to block implementation of the reforms. That suit is pending, though the reforms remain in effect.

Although the reforms are numerous, they fall into three general categories:

- Interagency cooperation under Section 7 of the ESA;
- Listing of species and designation of critical habitat under Section 4 of the ESA; and
- Treatment of species listed as "threatened," as opposed to "endangered," under the ESA.

With the last major statutory amendments to the ESA itself having occurred in 1988, and the last significant regulatory reforms having been adopted in 1986, the Services justified the need for their regulatory revisions as follows:

> "In the years since those changes took place, much has happened: The Services have gained considerable experience in implementing the Act, as have other Federal agencies, States, and property owners; there have been numerous court decisions regarding almost every provision of the Act and its implementing regulations; the Government Accountability Office has completed reviews of the Act's implementation; there have been many scientific reviews, including review by the National Research Council; multiple administrations have adopted various policy

> initiatives; and nongovernmental entities have issued reports and recommendations."

The regulatory reforms apply only prospectively and will not alter the designations of species already listed under the ESA.

Interagency Cooperation Under Section 7 of the ESA

Section 7 of the ESA prohibits any federal agency from funding or taking an action (including authorizing private actions via the issuance of a permit, lease, license, or other federal funding or approval):

- Jeopardizing the continued existence of a listed species, or
- Causing the "destruction or adverse modification" of the given species' designated "critical habitat."

Section 4 of the ESA requires that the Services designate "critical habitat" for a species being listed at the time it is listed or not later than a year thereafter. Regulations relating to the designation of critical habitat are discussed below.

What constitutes "adverse modification" of critical habitat has been the subject of much debate and litigation. In 2001, the Fifth Circuit in *Sierra Club* v. *United States Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001) invalidated the then-existing regulatory definition for adverse modification. Under that regulation, adverse modification was not deemed to have occured until both the recovery and survival of the listed species was implicated. Given the ESA's statutory characterization of critical habitat as areas "essential to the *conservation*" of the species, the *Sierra Club* court differentiated between factors threatening the recovery (an aspect of "conservation") of a species as being implicated well before matters proceed to a more dire point where the very survival of the species is implicated. By requiring both "recovery *and* survival" to be implicated, the regulation effectively read "recovery" out of the standard and left "survival" as the sole standard, contrary to the provisions of the ESA itself, according to the court. Three years later, the Ninth Circuit followed suit in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004).

Notwithstanding judicial invalidation of the "ad mod" regulatory definition, it remained on the books but was the subject of vigorous debate. It wasn't until 2016 that the Obama Administration moved to formally amend the regulatory definition in response to the courts. The Obama revised definition provided:

> Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

The new reforms make two notable changes to this definition. First, the Services added "as a whole" to the end of the first sentence in order to "clarify the appropriate scale of the destruction or adverse modification determination." This change, according to the Services, is to ensure that when evaluating whether "adverse modification" to critical habitat has or has not occurred, Service staff's analysis must be relative to "the value of the designated critical habitat as a whole for the conservation of a species, in light of the role the action area serves with regard to the function of the overall designation." They continue: "a determination of destruction or adverse modification is made at the scale of the entire critical habitat designation. Even if a particular project would cause adverse effects to a portion of critical habitat, the Services must place those impacts in context of the designation to determine if the overall value of the critical habitat is likely to be reduced."

In addition to the contextual scope of the evaluation based on the addition of the phrase "as a whole," the Services went on to delete the entire second sentence of the Obama definition:

> "Many commenters argued that the proposed second sentence established a significant change in practice by appearing to focus the definition on the preclusion or delay of the development of physical or biological features, to the exclusion of the alteration of existing features. A number of commenters believed these concepts were vague, undefined, and allowed for arbitrary determinations."

Additional regulatory reforms related to Section 7 interagency cooperation include categorization of "effects of an action," i.e., "direct," "indirect,' "interrelated," and "interdependent" effects, and how they are evaluated. Additionally, the Services separated consideration of the "environmental baseline" from the "effects of an action" consideration and made it its own consideration. The Services explain:

> "Moving it to a standalone definition clarifies that the environmental baseline is a separate consideration that sets the stage for analyzing the effects of the proposed action on the listed species and critical habitat within the action area by providing the

> foundation upon which to build the analysis of the effects of the action under consultation. The environmental baseline does not include the effects of the action under review in the consultation . . . ."

Listing of Species and Designation of Critical Habitat Under Section 4 of the ESA

Under the statutory terms of the ESA, economics are not a factor to be considered in making listing determinations under Section 4. In fact, Section 4(b)(1)(A) provides: the Services must base their listing determinations "solely on the basis of best scientific and commercial data available after conducting a review of the status of the species."

Under these reforms, the Services struck the phrase "without reference to possible economic or other impacts of such determination" from the existing regulations. With this revision, the state that they Services recognize that they may not consider economics in making substantive listing decisions, but they argue that the information is nonetheless relevant to the public at large in appreciating the consequences of listing decisions by the Services.

The Services also focused on the designation of critical habitat in areas presently not occupied by a species being listed. This issue was the focus of a matter before the United States Supreme Court in 2019 (though the Court largely punted on the regulatory issue be remanding the matter to the Court of Appeal to consider the definition of the term "habitat"). Prior to the Obama Administration, ESA regulations included the following requirement:

> The Secretary shall designate as critical habitat outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

The Services under the Obama Administration deleted this requirement. With the present amendments, the Services are again requiring that the sufficiency of areas currently occupied by the subject species be fully evaluated before proposing inclusion of unoccupied areas.

A relatively recent trend in species listing decisions that has garnered significant litigation challenge involves listing decisions that are based not on actual, present threats to a given species, but rather projections of concerns for the viability of the species based upon future considerations such as climate change. For example, several listing decisions have been made based upon climate-change-related projections of diminishing ice sheets in Artic regions. Today, the quantity of ice sheets would not support a listing decision or designation of critical habitat,

claim the challengers. Nonetheless, litigation challenges to those listing determinations have largely been unsuccessful.

The Services address these projection-based determinations under Section 4 with regard to the designation of critical habitat:

> "In such cases, a critical habitat designation and any resulting section 7(a)(2) consultation, or conservation effort identified through such consultation, could not prevent glaciers from melting, sea levels from rising, or increase the snowpack. Thus, we propose in section 424.12(a)(1)(ii) that designation of critical habitat in these cases may not be prudent because it would not serve its intended function to conserve the species."

Treatment of Species Listed as "Threatened," as Opposed to "Endangered," Under the ESA

One of the most straightforward though potentially broad-sweeping changes is reversal of the longstanding equivalency in protection afforded to species designated as "threatened" as opposed to "endangered" under the ESA. Under the express terms of the statute, only species designated as "endangered" are subject to the protective prohibitions against "take" of a species established in Section 9. And the National Marine Fisheries Service has observed that differentiation in its implementation of the ESA. The Fish and Wildlife Service, however, adopted a blanket rule affording identical protections to species designated as "threatened" as to those designated as "endangered." These regulatory revisions repeal that blanket rule.

Under its existing practice, the Fish and Wildlife Service retained discretion to customize protective provisions for "threatened" species on a case-specific, species-by-species consideration, but the blanket full application of Section 9's "take" prohibition was the starting point across the board. Now, Section 9 will apply only to species designated as "endangered," and species designated as "threatened," in all instances, will require customized provisions for protection.

Resource Links:

Final Rules:

- Interagency Cooperation Under Section 7: https://www.fws.gov/policy/library/2019/2019-17517.pdf

- Listings and Designation of Critical Habitat under Section 4: https://www.fws.gov/policy/library/2019/2019-17518.pdf
- Protective Provisions for "Threatened" v "Endangered": https://www.fws.gov/policy/library/2019/2019-17519.pdf

Delay of Effective Date for Interagency Cooperation Regulations to October 28, 2019:

- https://www.fws.gov/policy/library/2019/2019-20936.pdf

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AB 1482: California's Tenant Protection Act of 2019

Will Strict Limits on Rental Rate Increases and Tenant Occupancy Protections Bring Meaningful Relief to the California Housing Crisis?

David C. Smith

Introduction

After a failed ballot initiative costing stakeholders nearly $100 million failed to reenact rent control in California, the Legislature stepped in to bring it back. AB 1482 – now codified as Civil Code Sections 1946.2 and 1947.12, the "California Tenant Protection Act of 2019" ("Act") – became effective January 1, 2020. The Act imposes strict caps on rental increases and affords significant protections for tenants subject to pressure from landlords to vacate premises against their wishes.

The limiting provisions of the Act, though highly technical, are relatively straightforward. But the heart of the public policy controversy underlying this and all other rent control regimes remains – will the protective provisions bring relief to an already over-burdened and under-supplied rental housing stock or will it dissuade developers from producing new supplies of sorely needed housing given the Act's limitation on investment return? This dispute was the heart of the campaign that ultimately defeated rent control on the 2018 ballot.

Background

Due to the 1995 Costa-Hawkins Act, rent control in California was significantly restricted, present only in select cities such as San Francisco, Los Angeles, Santa Monica, San Diego, and others that predated Costa-Hawkins. The $100 million 2018 ballot effort, Proposition 10, sought to repeal that limiting law. But a robust and vigorous coalition of business interests soundly defeated Prop. 10. In light of a crushing housing crisis in the state and conspicuous paucity of rental units in major metropolitan areas, legislators led by Assembly Housing and Community Development Committee Chair David Chiu of San Francisco brought forward AB 1482.

AB 1482's Provisions

Application

Most important is to highlight what AB 1482 does *not* do: AB 1482 does not restrict a landlord's ability to set rents for a vacant unit at whatever rate the landlord believes is

appropriate for the market, provided that unit did not become vacant in violation of AB 1482 or any other local tenant protection ordinance. However, as to any unit that has been "occupied" continuously for at least 12 months, whether or not such occupancy is pursuant to a written lease, AB 1482 affords tenants significant protections to maintain that occupancy and imposes strict limitations on landlords' ability to increase rental rates, regardless of market pressures.

The Act has a sunset provision and remains in effect until January 1, 2030, unless extended or otherwise re-enacted by the Legislature.

Tenant Protections

Once a tenant has been in occupancy of a rental unit continuously for at least 12 months, a landlord can only evict the tenant or terminate the tenancy for "just cause." [1] The Act breaks down "just cause" into two types: "at-fault" and "no-fault" just cause.

"At-Fault Just Cause"

The Act does not prohibit a landlord from terminating a tenancy and evicting an occupant where the tenant's own conduct provides cause for the eviction. Subject to referenced opportunities for notice and opportunities to cure, the Act identifies the following as bases for "at-fault just cause" termination of a tenancy otherwise subject to the Act: [2]

- Non-payment of rent;
- Breach of lease provisions;
- Nuisance, waste, criminal activity or otherwise using the unit for unlawful proposes;
- Failure to sign renewal of a lease after the current lease expires;
- Assigning or subletting without landlord consent;
- Failure to allow landlord access to the unit; and
- Failure to actually leave unit after giving landlord Notice of Intent to Vacate.

[1] Civil Code Section 1946.2 provides:

(a) Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this subdivision shall only apply if either of the following are satisfied:

(1) All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.

(2) One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

[2] Civil Code Section 1946.2 (b).

"No-Fault Just Cause"

The Act also provides for circumstances in which a landlord may vacate premises by terminating tenancies and evicting occupants where the occupant's own conduct has not provided cause for the termination and eviction. The Act provides for "no-fault just cause" termination and eviction,[3] subject to referenced notice provisions,[4] in the following instances:

- Owner or family member move-in, provided the lease reserves this option;
- Withdrawal of the unit from the rental market;
- Compliance with a government order; or
- Intent to demolish or substantially remodel unit.

Note that "no-fault just cause" terminations and evictions are subject to payment of a relocation fee. The fee is either one month's rent at the rate in force at the date of issuance of the termination notice or waiver of the final month's rent, at the choice of the landlord.[5]

Rental Increase Limitations

Additionally, the Act limits rental rate increases to five percent plus the Consumer Price Index increase per year, but in no event can rents be increased more than 10 percent annually.[6]

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[3] Civil Code Section 1946.2(b)

[4] Civil Code Section 1946.2(c)

[5] Civil Code Section 1946.2(d)

[6] Civil Code Section 1947.12 (a) provides:

(1) Subject to subdivision (b), an owner of residential real property shall not, over the course of any 12-month period, increase the gross rental rate for a dwelling or a unit more than 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower, of the lowest gross rental rate charged for that dwelling or unit at any time during the 12 months prior to the effective date of the increase. In determining the lowest gross rental amount pursuant to this section, any rent discounts, incentives, concessions, or credits offered by the owner of such unit of residential real property and accepted by the tenant shall be excluded. The gross per-month rental rate and any owner-offered discounts, incentives, concessions, or credits shall be separately listed and identified in the lease or rental agreement or any amendments to an existing lease or rental agreement.

(2) If the same tenant remains in occupancy of a unit of residential real property over any 12-month period, the gross rental rate for the unit of residential real property shall not be increased in more than two increments over that 12-month period, subject to the other restrictions of this subdivision governing gross rental rate increase.

. . .

"Percentage change in the cost of living" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California

Exemptions:

Properties Exempted from the Tenant Protection Provisions

The Act exempts numerous categories of properties from its "just-cause" tenant protection provisions,[7] including:

- Transient and tourist hotel occupancy;
- Housing units in a nonprofit hospital, religious facility, extended care facility, or licensed residential care facility for the elderly;
- Student dormitories for higher education institutions or K-12 schools;
- Housing units where a tenant shares a bathroom or kitchen with the owner, where the home is the primary residence of the owner;
- Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit;
- Owner-occupied duplex provided that the owner occupied the unit at the inception of the tenancy;
- Properties for which the Certificate of Occupancy was issued in the immediately preceding 15 years;
- Affordable housing that satisfies statutory definitions as restrict for "very low," "low," or "moderate" income residents;
- Units subject to an existing to a local rent control provision; and
- Single-family homes, condominiums, and townhomes unless owned by a corporation, real estate investment trust, or a limited liability corporation as one of its managing members.

Properties Exempted from Rental Increase Limitations

The Act exempts numerous categories of properties from its rental increase limitation provisions,[8] including:

- Affordable housing that satisfies statutory definitions as restrict for "very low," "low," or "moderate" income residents;

Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply.

[7] Civil Code Section 1946.2(e)

[8] Civil Code Section 1947.12(d)

- Student dormitories for higher education institutions;
- Properties already subject to local rent control provisions;
- Properties for which the Certificate of Occupancy was issued in the immediately preceding 15 years;
- Single-family homes, condominiums, and townhomes unless owned by a corporation, real estate investment trust, or a limited liability corporation as one of its managing members;
- Owner-occupied duplex units so long as the owner occupied the unit at the beginning of the tenancy; and
- Units where the tenant's occupancy has been less than 12 months continuously.

Resource Links:

- https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1482

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EXHIBIT A

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"Waters of the United States" Under the Clean Water Act

The D.C. Swamp Proves Itself Incapable of Defensibly Defining a "Swamp" for Clean Water Act Implementation

David C. Smith

Introduction

Unfortunately, in the 12 months since we covered this topic at the 2019 Conference, very little has changed, other than even more litigation. Accordingly, there is nothing "quick" about the saga of defining Waters of the United States ("WOTUS") for purposes of implementation of the Clean Water Act, and the "hits" just keep coming. To indicate the current state of chaos, both the 2015 Obama-era re-definition of WOTUS ("2015 Rule") as well as the present Administration's procedural attempts to repeal it are the subject of active litigation throughout the country making the 2015 Rule operative in just 22 states, the District of Columbia, and U.S. territories. The remainder are governed by the regulations in place prior to adoption of the 2015 Rule. But the latest round of litigation in 2019 challenges utilization of the previous regulations in place since 1986. Even the United States Supreme Court had to weigh in on which court even has authority to hear the challenges! How did we get here are where are we going?

Which Rule In Which State?

Challenges to the 2015 [Obama] Rule

The Obama Administration finalized the 2015 Rule and it went into effect on June 29, 2015. It took just over three months for the 2015 Rule to be enjoined nationwide. Upon its adoption, multiple interest groups challenged the 2015 Rule in numerous District Courts in several states. However, the Obama Administration took the position that procedural provisions in the Clean Water Act afforded original jurisdiction to Circuit Courts of Appeal, not District Courts. The Sixth Circuit agreed and ordered all of the pending District Court cases consolidated before it. However, in a move the Obama Administration certainly didn't anticipate, the Sixth Circuit granted a nationwide injunction staying implementation of the 2015 Rule nationwide, finding that it likely exceeded the agencies' authority under the Clean Water Act and/or Congress' authority under the Commerce Clause.

Those seeking to challenge the 2015 Rule in local District Courts appealed to the United States Supreme Court purely on the procedural issue of which court has jurisdiction to hear the

challenge(s). The High Court reversed the Sixth Circuit and ordered the challenges returned to the respective District Courts.

Since that time, over a variety of rulings and time periods, several of the respective challenges to the 2015 Rule prevailed in efforts to enjoin enforcement of the 2015 Rule, but no court would issue and injunction nationwide. Rather, where granted, the challenges were only applicable in the various states that were parties to the respective challenges. Most recently, however, on December 23, 2019, the Tenth Circuit Court of Appeal granted a request of the State of Oklahoma and others to dismiss their challenge to the 2015 Rule, presumably satisfied with application of the prior regulations and in anticipation of the new replacement WOTUS Rule by the Administration in 2020.

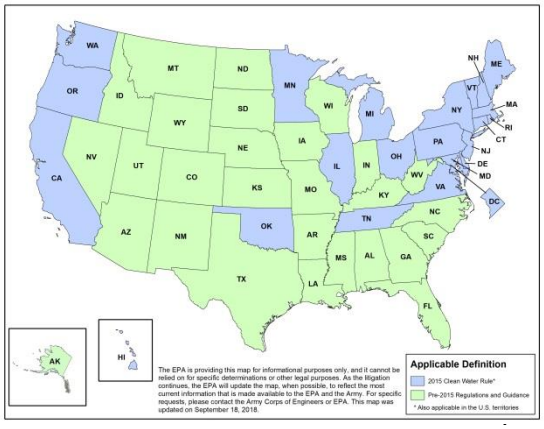
Trump Administration Efforts to Delay Implementation of 2015 Rule

In an order to contain the confusion of different rules being applicable in different states, the Trump Administration announced a so-called "Two Step" process by which it would repeal the 2015 Rule, reinstate the preexisting regulatory regime, and institute a comprehensive rule-making process for the drafting and adoption of a new rule. In conjunction with these efforts, the Administration purported to apply a delayed implementation date for the 2015 Rule, pushing out its effective date to February 6, 2020.

Environmental interests and other supporters of the 2015 Rule sued to invalidate the administrative delay of the effective date of the 2015 Rule. Several courts found the means by which the Administration attempted to carry out its repeal-and-replace efforts procedurally defective under the Administrative Procedures Act and invalidated the delayed effective date, rendering the 2015 Rule operative and applicable. Unlike the District Courts considering the substantive challenges to the 2015 Rule, the courts procedurally invaliding the Trump Administration's delayed-implementation efforts extended their rulings nationwide.

Where Are We?

It is these two distinct groups of challenges that have resulted in the patchwork quilt of WOTUS Rule applicability across the country. On the one hand, you have multiple District Courts enjoining implementation of the 2015 Rule based on substantive challenges of the rule exceeding agency and/or congressional authority. The Trump Administration sought to counter that inconsistency by delaying the implementation of the 2015 Rule administratively. A round of separate lawsuits found those efforts procedurally invalid and



WOTUS Rule application state-by-state in 2019

EXHIBIT A

issued nationwide injunctions. Thus, we are back to the hodge-podge of District Court injunctions. And, predictably, everyone is appealing everything. The most recent round of litigation filed in mid- and late-2019 challenge the Administration's reinstatement of the 1986 regulations. Both blue states and some private property rights advocates oppose reinstatement of those prior regulations.

What Is the Difference Anyway?

A line-by-line comparison of the 2015 Rule and the Trump Administration's proposed rule is beyond the scope of this overview. Briefly, the purported "confusion" that both the 2015 Rule and the new proposed rule purport to rectify stems from a series of United States Supreme Court rulings grappling with the appropriate scope of the term "waters of the United States" as used in the Clean Water Act. While the rulings to date have only dealt with whether the agencies are regulating beyond the scope of authority conveyed to them by Congress, there is a consistent tension and concern expressed by at least some on the Court that the breadth of regulation today may also exceed the breadth of Congress' Constitutional authority under the Commerce Clause.

The most recent of these cases was *Rapanos v. United States*, 547 U.S. 715 (2006). In *Rapanos*, the final decision was a fractured 4-1-4 split, resulting in great confusion. A plurality of four conservative justices, authored by Justice Antonin Scalia, generally held that a water had to be "relatively permanent" in order to qualify as WOTUS, with continuous surface flow most of the time except in limited exceptions. Conversely, four liberal justices would largely defer to the agencies' more expansive views as to what qualifies as WOTUS under the Clean Water Act.

Justice Kennedy sided with the conservatives, but only as to the ultimate conclusion that the agencies had exceed their authority in extending jurisdiction based upon the facts before the Court. But rather than joining the Scalia rationale, Justice Kennedy, and Justice Kennedy alone, formulated a new standard whereby an aquatic feature could be found jurisdictional if it bore a demonstrable "significant nexus" to some other clearly jurisdictional water. A majority of lower courts attempting to apply *Rapanos* found that either the Scalia or Kennedy standards were sufficient to support the exertion of jurisdiction. But establishing what is and what is not sufficient to find Kennedy's "signficiant nexus" proved a very fact-intensive investigation necessitating much field work and personnel hours of agency staff in the field.

The 2015 Rule, proponents would argue, is an attempt to standardize to some degree the types of resources that can be categorically determined to meet the Kennedy "significant nexus" standard. It identifies categories of resources that are clearly "in." As the analysis approaches more attenuated resources with less direct connections to undisputedly jurisdictional features, the 2015 Rule implemented objective criteria, including linear distances and possible subsurface hydrologic connections, to defend extension of jurisdiction. The 2015 Rule also expands the notion of jurisdiction based upon "adjacency" to another jurisdictional water as well.

The proposed Trump Administration rule, conversely, takes a much more restrictive view of jurisdiction. Some contend it is the regulatory equivalent of Scalia's "relatively permanent water" standard from *Rapanos*. But a close comparison of the two show that the Trump proposal is more inclusive than Scalia. It is, though, certainly more narrow than the 2015 Rule.

For example, the Trump proposal would largely exclude features that only flow as a result of rain runoff, so-called "ephemeral" features. It would include, however, features that may flow only intermittently.

The proposed Trump Administration replacement rule reportedly has undergone some minor revision in the wake of public comment. The final issuance of that replacement rule is expected in 2020, as is an entirely new round of litigation.

Resource Links:

- U.S. E.P.A./Corps of Engineers Joint Pre-Publication Release of Public Comment Draft of Proposed Rule Re-Defining Waters of the United States (12/11/2018): https://www.epa.gov/sites/production/files/2018-12/documents/wotus_2040-af75_nprm_frn_2018-12-11_prepublication2_1.pdf
- U.S. E.P.A. Website on status of WOTUS: https://www.epa.gov/wotus-rule

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A Battle Rages for a Breath of Fresh Air

California's Fight To Regulate Vehicle Emissions

Alisha Winterswyk
Ali Tehrani

I. For decades, California has set motor vehicle emissions standards.

The Clean Air Act (42 U.S.C. § 7401, *et seq*; "CAA") provides a national system of air quality standards overseen by the Environmental Protection Agency ("EPA"). The CAA generally preempts states and local jurisdictions from enacting emission standards and other emission-related requirements for new motor vehicles and engines, but it also includes provisions (1) allowing California to obtain a waiver of this federal preemption from the EPA, which would allow California to enact its own, stricter emission standards; and (2) allowing other states to adopt California's emission standards. (42 U.S.C. §§ 7507, 7543.)

The EPA must grant California the federal preemption waiver allowing California to set emissions standards if the EPA finds the following:

1. California's standards are at least as protective as federal standards, and California's determination of that fact is not arbitrary and capricious.

2. California's standards are needed to meet compelling and extraordinary conditions.

3. California's standards are not inconsistent with certain CAA provisions related to technical feasibility and lead time to manufacturers.

Since 1967, California has applied for, and the EPA has granted, dozens of waivers allowing California to set more stringent emissions standards for motor vehicles. Moreover, thirteen states and the District of Columbia have elected to adopt California's more stringent standards in lieu of federal requirements under the CAA. For more information regarding these waivers, see: https://ww2.arb.ca.gov/resources/fact-sheets/california-waiver-facts

II. The Trump Administration Seeks To Hamstring California's Ability To Regulate Vehicular Emissions.

In September 2019, the Trump Administration finalized portions of its proposed SAFE Vehicles Rule—a National Highway Traffic Safety Administration ("NHTSA") rule that, among other things, provides that (1) only the federal government may set fuel economy standards; (2) federal law preempts state and local tailpipe greenhouse gas ("GHG") emissions standards; and (3) federal law preempts state and local zero emission vehicle ("ZEV") mandates, which require the sale of a rising number of electric or other zero-emission vehicles. The Trump Administration

attempted to justify its action by claiming that the preemption set forth in SAFE Vehicles Rule is required under the Energy Policy and Conservation Act of 1975 ("EPCA")—a law that provides the Department of Transportation with sole authority to set standards "relating to fuel economy."

In addition, the EPA withdrew its 2013 CAA waiver that authorized California to pursue its own tailpipe greenhouse gas emission standard and its ZEV mandate, in effect providing that these two programs are prohibited by the CAA. The Trump Administration claimed these actions would "help ensure that there will be one, and only one, set of national fuel economy and greenhouse gas emission standards for vehicles."

III. California Fights Back.

California, along with 22 other states and several major cities, has filed two separate lawsuits challenging the SAFE Vehicles Rule and the Trump Administration's efforts to abolish California's right to set motor vehicle emissions standards.

First, in September 2019, California filed a Complaint for Declaratory and Injunctive Relief against the U.S. Department of Transportation and the NHTSA (among others) to have the SAFE Vehicles Rule declared unlawful and be set aside on the basis that it exceeds the NHTSA's authority, contravenes Congressional intent, and is arbitrary and capricious, and because NHTSA failed to conduct the analysis required under the National Environmental Policy Act ("NEPA") for the SAFE Vehicles Rule.

In its lawsuit, California notes the distinction between standards "relating to fuel economy" under the EPCA, and California's standards relating to vehicular emissions that the Trump administration declared preempted via the SAFE Vehicles Rule. California notes that courts have already considered the issue of whether the EPCA preempts emissions standards for which California has a waiver, and the courts have unanimously held that EPCA has no such preemptive effect. (See *Cent. Valley Chrysler-Jeep Inc. v. Goldstone*, 529 F. Supp. 2d 1151 (E.D. Cal. 2007) [rejecting challenge to California's adoption of GHG standards]; *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295 (D. Vt. 2007) [rejecting challenge to Vermont's adoption of California's GHG standards]; see also *Massachusetts v. EPA*, 549 U.S. 497 (2007) [the Supreme Court held that the CAA authorizes GHG standards for new motor vehicles, and that NHTSA's mandate to promote fuel efficiency by setting fuel economy standards in no way curtailed EPA's Clean Air Act authority and responsibility with respect to air pollution].) Because EPCA does not preempt emissions standards for which California has a waiver, and because California's GHG standards are not "related to fuel economy standards" under the EPCA, California contends that the Trump Administration's contention that California's emissions standards are preempted by EPCA is legally baseless. A copy of California's September 2019 lawsuit can be found here: https://oag.ca.gov/system/files/attachments/press_releases/California%20v.%20Chao%20complaint%20%2800000002%29.pdf

Second, in November 2019, California and its coalition of other states filed a lawsuit against the EPA challenging the EPA's September 2019 decision to revoke the 2013 waiver that allowed California to set its own, tougher emissions standards under the CAA. A copy of California's November 2019 lawsuit can be found here:

https://oag.ca.gov/system/files/attachments/press-docs/Waiver%20PFR%20file.pdf

These lawsuits challenging the Trump Administration's efforts to curtail California's efforts to reduce emissions remain in their infancy, and they likely will not be resolved until they reach the Supreme Court.

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EXHIBIT A

QUICK HITS
UCLA EXTENSION LAND USE LAW AND PLANNING CONFERENCE
Friday, January 24, 2020

***

The Ebb and Flow of Coastal Act Policy – What is Hot Today?
What Happened in 2019 and What to Expect in 2020

Alisha Winterswyk

I. 2019 Bills

Please see PZDL materials for more thorough coverage of these bills.

A. **AB 1011** – allows the Coastal Commission ("Commission") to waive the filing fee associated with certain coastal development permit applications. Special consideration is afforded private nonprofits if the nonprofit is seeking a permit for a project that is for habitat restoration or a project that provides public access to coastal resources.

According to the author, even though the Coastal Act regulations allow any applicant to request a fee waiver, the new law makes it clear to nonprofits that they can qualify for a fee waiver for specific types of projects. The goal is to incentivize completion of critical projects that further the Commission's mission and key goals.

B. **AB 1644** – makes a minor change to Public Resources Code section 30006.5 to add agriculture to the list of issues on which the Commission may receive technical advice and recommendations from scientific and academic experts. It also removes the words "the question of" from the description of the issue of sea level rise, since sea level rise is now a fact not a question.

According to the author, even though the Commission regularly consults with outside experts when needed – and it has consulted with experts on agricultural issues in the past – enumerating agriculture experts in the statute will make it clear that the Commission has authority to engage these experts and to convene advisory panels of experts on this topic going forward.

C. **AB 1680 –** special legislation that memorializes an interagency collaboration agreement between the Commission, the Director of the State Coastal Conservancy, the Director of the Department of Parks and Recreation, and the Director of the State Lands Commission to establish effective and efficient communication and collaboration to achieve the goal of opening the Gaviota Coast. The bill requires the Commission, the State Coastal Conservancy, the Department of Parks and Recreation, and the State Lands Commission to develop a new coastal access plan for the Hollister Ranch subdivision (an 8.5 mile section of the shoreline within the Gaviota Coast) that will replace the existing program that the Commission adopted in 1982. To bill also increases the public access program in-lieu fee amounts for permits that are pulled for Hollister Ranch, and requires the Coastal Conservancy to make findings and provide recommendations to the Commission regarding any legislation that may be needed to adjust the in-lieu fees every five years.

EXHIBIT A

According to the author, the goal of this bill is to further collaborative efforts that would lead to the creation of an effective and actual coastal access program for Hollister Ranch. The 1982 program was never fully implemented, involved years of litigation, and public access to the shoreline in front of Hollister Ranch is still largely unavailable. In an effort to make the goals of the 1982 program a reality, the bill was designed to set deadlines and milestones for action to ensure that the Legislature's goal becomes a reality, and that the public access would gain access to this restricted portion of the California coast.

II. 2019 Cases

A. ***Fudge v. City of Laguna Beach*** *(2019) 32 Cal.App.5th 193*. This case concerns the procedural intersection of the California Environmental Quality Act ("CEQA") and the California Coastal Act ("Coastal Act") when a project opponent seeks review of a CDP issued by a local government.

In particular, the appellate court held that a petitioner cannot challenge a coastal development permit ("CDP") on CEQA grounds after (i) the petitioner has already appealed the issuance of the CDP to the Commission, and (ii) the Commission has accepted the appeal. The appellate court based its decision on previous case law, which provides that when the Commission accepts an appeal from the issuance of a CDP, the only issue is whether the CDP complies with the standards set forth in the Local Coastal Program and the Coastal Act's public access policies. The Commission need not determine whether the CDP complies with CEQA's traditional requirements because CEQA itself provides that the Commission's appeal procedure is the functional equivalent of the EIR process. Only after the Commission makes its decision can parties attack the Commission's decision – as opposed to the decision of the local agency that issued the CDP – in court by writ of mandate.

Please see PZDL materials for more thorough coverage of this case.

B. ***Hubbard v. Coastal Commission*** (2019) 38 Cal.App.5th 119. This case addresses the interpretation of section 13105 of the Coastal Act regulations (14 Cal. Code Regs. §13001 et seq.[1]). Section 13105 establishes the grounds upon which the Commission may revoke a CDP when a CDP application contains inaccurate, erroneous or incomplete information. Specifically, section 13105 says that grounds for revocation of a permit include:

> "[i]ntentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the [C]ommission finds that accurate and complete information would have caused the [C]ommission to require additional or different conditions on a permit or deny an application."

In this case, the project applicant's CDP application contained intentional misrepresentations. However, the Commission found that the misrepresentations were corrected with complete and accurate information, and the misinformation would not have caused the Commission to add new or different conditions or to deny the CDP.

The trial and appellate courts upheld the Commission's decision and found that the decision did

[1] All undesignated section references are to Title 14, California Code of Regulations.

not violate section 13105 regulations because the project opponent had failed to demonstrate that accurate and complete information would have caused the Commission to either impose additional or different conditions, or deny the permit altogether. The plain language of section 13105 indicates that the Commission shall revoke if the misinformation would have caused the Commission to act differently.

Moreover, the way that the court interprets the plain language of section 13105 is consistent with other provisions of the Coastal Act, including Chapter 3. According to the court, if the misinformation would have caused the Commission to act differently in connection with its obligations under Chapter 3 of the Coastal Act, then the misinformation would have been material and would have given the Commission grounds to revoke under section 13105. Here, because the misinformation would not have caused the Commission to act differently, the grounds for revocation were not triggered.

And, finally, the court held that the Commission's findings were supported by substantial evidence.

Please see PZDL materials for more thorough coverage of this case.

C. ***Lindstrom v. California Coastal Commission*** (2019) 40 Cal.App.5th 73. In this case, a private property owner filed a petition for writ of mandate against the Commission to challenge special conditions that the Commission imposed on a CDP that the Commission granted to the private property owner, authorizing the private property owner to build a house on the bluff of a vacant oceanfront lot.

The four special conditions that the Commission imposed on the CDP, and that were at issue in this case, were as follows:

1. **Setback**. The home had to be set back 60-62 feet from the edge of the bluff, instead of the 40-foot setback that the City of Encinitas had approved. The City of Encinitas had approved the 40-foot setback because under its LCP, the structure need be set back only so far as to "be reasonably safe from failure and erosion over its lifetime". (*Lindstrom*, 40 Cal.App.5th at 98.) But, the Commission computed the setback using a formula that it derived from piecing together various portions of the City's LCP, to require the house to be safe from erosion for 75 years plus a safety factor of 1.5. This formula translated into a setback of 60-62 feet.

2. **Shoreline Protection**. The property owner waived any right to construct a shoreline protective device, such as a seawall, to protect the home from damage or destruction from natural hazards at any time in the future.

3. **Future Abatement**. The property owner shall remove the home from the lot if any government agency ordered in the future that the home <u>not</u> be occupied due to a natural hazard.

4. **Bluff Recession**. The property owner would be required to perform remediation or removal of any threatened portion of the home if a geotechnical report prepared in the event the edge of the bluff recedes to within 10 feet of the home concludes that the home is unsafe for occupancy.

The trial court disapproved the setback and shoreline protection conditions, but upheld the future abatement and bluff recession conditions. As a result, the Commission appealed the trial court's disapproval of the setback and shoreline protection conditions. The Lindstroms cross-appealed the trial court's affirmation of the future abatement and bluff recession conditions.

The appellate court disagreed with the trial court. The appellate court upheld all of the special conditions that the Commission imposed, except for one: the **future abatement** condition. The appellate court found the future abatement condition to be overly broad to achieve the Commission's purpose.

With respect to the **setback** condition, the appellate court found that the Commission did not abuse its discretion when it imposed the condition. The appellate court found that the plain language of the City's LCP required the City to take into account not only the distance to "be reasonably safe from failure and erosion over its lifetime" but also a safety factor against slope failure of 1.5 over the time period of 75 years. According to the appellate court, this means that the City should have considered the safety factor of 1.5 at the end of the 75 year time period, not at the present time.

With respect to the **shoreline protection** condition, the appellate court upheld the Commission's condition of approval. It has become fairly routine for the Commission to require this type of condition prohibiting shoreline protection devices for new development when the Commission grants a CDP to a project applicant.

In this case, the Commission argued, and the appellate court agreed, it had authority to impose these types of special conditions even when it is considering an appeal of the issuance of a CDP by a local government that has a certified LCP.

Here, the appellate court held that the shoreline protection condition was consistent with the City's LCP. Even though the City's LCP contains provisions for bluff stabilization and ocean bluff protection, those provisions apply to existing development, not new development. In the case of new bluff development, the appellate court found that the LCP did not automatically authorize bluff protection and instead required the new development to assure stability and structural integrity in a way that would require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Since the Lindstroms proposed new development, the appellate court found that they had to demonstrate that their home could be built without protective devices over its lifetime. Thus, the Commission's condition of approval prohibiting shoreline protection devices into the future was appropriate.

The court further held that this condition did not result in a taking of the Lindstrom's property. This is likely the most significant holding in this case, with far reaching implications for those who wish to develop oceanfront lots.

Finally, with respect to the **bluff recession** condition, the appellate court upheld the Commission's condition of approval for all of the same reasons it upheld the shoreline protection condition.

III. Looking Forward to 2020

- **Coastal Resources Planning and Management Policies**. Chapter 3 of the

California Coastal Act ("Chapter 3") identifies the minimum contents of Local Coastal Programs in California, and establishes the standards by which the adequacy of Local Coastal Programs are judged. In large part, the Chapter 3 policies exist to "protect the ecological balance along California's coastline by assuring environmentally sensitive development." (*Hubbard v. Coastal* Commission (2019) 38 Cal.App.5th at 126.) Among other things, Chapter 3 establishes the standards for regulating public access, recreation, the marine environment, land resources and land development within the coastal zone. A core question emerging in this space is to what extent local governments must comply with Chapter 3 of the Coastal Act when the local government considers zoning ordinances outside of a Local Coastal Program. The fundamental relationship between the Coastal Act and local police power is at issue and there is real tension between the local government's ability to protect its residents through the exercise of police power and the Coastal Commission's directive to protect and enhance California's coast and ocean.

One prime example of this tension involves local governments' efforts to regulate short term lodging units. A copy of a letter that the Commission sent recently to many coastal cities in California is attached and summarizes the Commission's position on this topic.

- **Draft 2020-2025 Strategic Plan**. On December 6, 2019, the Commission released the public review draft of its 2020-2025 Strategic Plan. According to the Commission, the draft plan identifies a series of action items and priorities that the Commission intends to undertake over the next five years relating to the Commission's permanent responsibilities. The Commission invites comments on the draft strategic plan. If interested, you may submit comments on the draft plan to the Commission by February 14, 2020. Details on how to submit comments are available here: https://www.coastal.ca.gov/strategicplan/spindex-2.html

  A copy of the draft report is available here:
  https://www.coastal.ca.gov/strategicplan/spindex-2.html

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December 6, 2016

TO: Coastal Planning/Community Development Directors

SUBJECT: Short-Term/Vacation Rentals in the California Coastal Zone

Dear Planning/Community Development Director:

Your community and others state and nationwide are grappling with the use of private residential areas for short-term overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals), has recently elicited significant controversy over the proper use of private residential stock within residential areas. Although vacation rentals have historically been part of our beach communities for many decades, the more recent introduction of online booking sites has resulted in a surge of vacation rental activity, and has led to an increased focus on how best to regulate these rentals.

The Commission has heard a variety of viewpoints on this topic. Some argue that private residences should remain solely for the exclusive use of those who reside there in order to foster neighborhood stability and residential character, as well as to ensure adequate housing stock in the community. Others argue that vacation rentals should be encouraged because they often provide more affordable options for families and other coastal visitors of a wide range of economic backgrounds to enjoy the California coastline. In addition, vacation rentals allow property owners an avenue to use their residence as a source of supplemental income. There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals. The purpose of this letter is to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward.

First, please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.

The Commission has experience in this arena, and has helped several communities develop successful LCP vacation rental rules and programs (e.g., certified programs in San Luis Obispo and Santa Cruz Counties going back over a decade; see a summary of such LCP ordinances on our website at:
https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals

.pdf). We suggest that you pay particular attention to the extent to which any such regulations are susceptible to monitoring and enforcement since these programs present some challenges in those regards. I encourage you to contact your local district Coastal Commission office for help in such efforts.

Second, the Commission has not historically supported blanket vacation rental bans under the Coastal Act, and has found such programs in the past not to be consistent with the Coastal Act. In such cases the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act. However, in situations where a community already provides an ample supply of vacation rentals and where further proliferation of vacation rentals would impair community character or other coastal resources, restrictions may be appropriate. In any case, we strongly support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems, and that the end result can be an appropriate balancing of various viewpoints and interests. For example, the Commission has historically supported vacation rental regulations that provide for all of the following:

- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation rental occupancies.
- Limits on the amount of time a residential unit can be used as a vacation rental during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the vacation rental.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of transient occupancy tax (TOT).
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of vacation rental requirements, including providing for revocation of vacation rental permits in certain circumstances.

These and/or other provisions may be applicable in your community. We believe that vacation rentals provide an important source of visitor accommodations in the coastal zone, especially for larger families and groups and for people of a wide range of economic backgrounds. At the same time we also recognize and understand legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, including with respect to community character and noise

and traffic impacts. We also recognize concerns regarding the impact of vacation rentals on local housing stock and affordability. Thus, in our view it is not an ‘all or none’ proposition. Rather, the Commission’s obligation is to work with local governments to accommodate vacation rentals in a way that respects local context. Through application of reasonable enforceable LCP regulations on such rentals, Coastal Act provisions requiring that public recreational access opportunities be maximized can be achieved while also addressing potential concerns and issues.

We look forward to working with you and your community to regulate vacation rentals through your LCP in a balanced way that allows for them in a manner that is compatible with community character, including to avoid oversaturation of vacation rentals in any one neighborhood or locale, and that provides these important overnight options for visitors to our coastal areas. These types of LCP programs have proven successful in other communities, and we would suggest that their approach can serve as a model and starting place for your community moving forward. Please contact your local district Coastal Commission office for help in such efforts.

Sincerely,

STEVE KINSEY, Chair
California Coastal Commission

EXHIBIT 6

ASSESSMENT #2

Finding the Shortcuts: Entitlement Strategies for Siting and Approving Housing

MODERATOR:

David Smith, *Partner, Manatt, Phelps & Phillips, LLP*

PANELISTS:

Mark Teague, *Associate Principal, PlaceWorks, Inc.*
Al Herson, *Of Counsel, Sohagi Law Group*

CONTENT:

1. Presentation- CEQA for Project Streamlining: A Practitioner's Perspective (Teague)
2. Presentation- CEQA Streamlining for Housing Projects (Herson)
3. Technical Advisory- CEQA Exemptions Outside of the CEQA Statute
4. Technical Advisory- CEQA Review of Housing Projects
5. Pritzker Environmental Law and Policy Brief

CEQA for Project Streamlining

A Practitioner's Perspective

Purpose of the presentation…

- Planner's decision process for project
  - Does CEQA even apply?
  - CEQA applies, so is the project exempt?
  - Not exempt, so an Addendum?
  - What now if nothing 'streamline' applies?

For Our Purposes Streamlining…

- Avoids CEQA all together
  - Not a project
  - Covered by previous document(s)
- Shortens review time
  - Exemption
  - Addendum
- Tiers from a previous document
  - Supplement
  - Subsequent

Does CEQA Even Apply?

- What is a discretionary Act?
- How is discretion interpreted?
- Can an Agency change its mind?

Initial review

15060. PRELIMINARY REVIEW

...

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an *initial study*. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(3) The activity is not a project as defined in Section 15378.

Discretionary Defined

15357. DISCRETIONARY PROJECT

"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.

Start with the code

- Check the municipal code procedures
- Sometimes these are not in the Zoning chapter
- Look for restrictions on level of review
  - Focus on design
  - Are there objective findings?

Contextual Discretion?

17.164.040 Limitations of review.

A. The commission shall not design or assist in the design of any buildings or projects submitted for approval except on request of the proponent or his or her architect. The commission shall restrict its considerations to a reasonable and professional review of the proposal and plans, leaving full responsibility for the design and development to the applicant.

B. Individual initiative and experimentation are to be encouraged.

C. Only the proponent's failure to take reasonable account of the items discussed in Sections 17.164.010 through 17.164.030 shall justify the commission's disapproving a proposal solely on the basis of design.

D. In its endeavor to improve the quality of a design, the commission shall keep considerations of cost in mind. But consideration of cost shall not override the other objectives of this title.

E. The commission is not to use design review intentionally or inadvertently to exclude housing for minority groups or housing for low and moderate income persons.

F. The commission is not to use design review intentionally or inadvertently to prohibit or unduly restrict building types, materials or methods or to vary the specific allowances or other development controls.

Codified Application Requirements

B. DESIGN REVIEW. For multiple family dwellings and apartment houses, a site design plan shall be submitted to the Planning Director for review and shall include the following:

1. Building footprint
2. Floor plans
3. Landscape plan
4. Wall and fencing plan
5. Elevation plan
6. Architectural design
7. Photometric plan, as necessary
8. Traffic analysis

C. PUBLIC REVIEW PERIOD. A thirty (30) day public review period shall be provided prior to the Planning Director considering the site design plan submitted for multiple family dwellings or apartment homes. Notice of the public review period shall be given in the same manner as provided in Section 18.26.c. subsections (2), (4), (5), (6) and (7) of this ordinance. The notice shall include the mailing address to send comments to, the dates for the public review period, location where the site design plan may be reviewed, and ***explain that the public may comment on the site design plan for the multiple family dwellings or apartments***. The Planning Director shall consider any public comments received on the site design plan. [emphasis added]

Findings for Approval

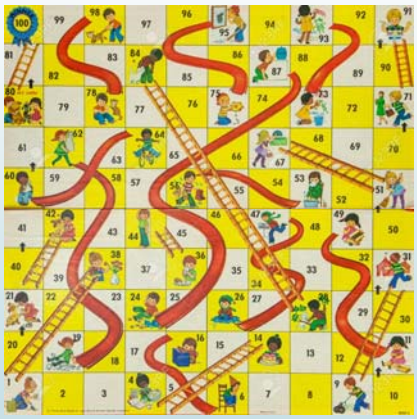
D. DESIGN APPROVAL. The above referenced **site design plan shall be approved** by the Planning Director if the site design plan is consistent with all of the following:

1. The County General Plan;
2. This Ordinance;
3. The Countywide Design Guidelines;
4. There is no specific, adverse impact upon the public health or safety. A specific adverse impact means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete; or
5. If there is a specific adverse impact upon the public health or safety, the development has been conditioned to develop at a lower density which removes the specific adverse impact.

CEQA applies, so is the project exempt?

15061. REVIEW FOR EXEMPTION

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.



Well, maybe.

- Review 15300.2 EXCEPTIONS
  - Determine if any of the exceptions apply
  - Provide substantial evidence that none apply
  - Include the evidence in the record supporting the exemption

The Exemption Fine Print

15300.2. EXCEPTIONS

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock

outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Raining Exemptions...and Fine Print

- Not all exemptions in PRC or CEQA
- OPR Has Technical Advisories
- Most of the newer exemptions have lots of fine print
- Remember the need for substantial evidence!

Not exempt, so an Addendum?

15164. ADDENDUM TO AN EIR OR NEGATIVE DECLARATION

(a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

(c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.

(d) The decision making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

(e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

Thinking about an Addendum?

15162. SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

Addendums Can Make Agencies Nervous

Concern over age of the lead document

- Age isn't a factor, change in circumstances is more important

Misunderstanding of the benefit of an addendum

- Provides same level of challenge as the lead document

Underestimate the level of effort needed for the addendum

- Cover all of the environmental issues
- Provide a summary of previous impacts
- Ensure that the adoption process mirrors that of the original document

Choose Wisely

General Plan EIR

- Difficult but not impossible to get from program to project
- Remember the rest of the development process

Specific Plan

- Age is not a factor, covering the subject is
- Check the approval process to ensure the findings still apply

Regional Plan

- Not out of the question, and occasionally an excellent source of cumulative
- Be sure to confirm the regional plan assumptions

Prior Project(s)

- Be careful of converting one project for another
- Check the findings and assumptions carefully

In Preparing the Addendum

- Compare project assumptions for on and off-site improvements
- Ensure consistency with regional plans
- Verify that the document is certified or adopted
- Make sure the agency has everything
  - Entire EIR
  - Supporting Studies
  - Findings

Substantial Evidence

If an older document is to be used:

- Document how it still applies
- Evaluate changes in regulatory environment

Remember you only gain the level of protection afforded by the original approval.

So, CEQA Streamlining?

- Eliminating discretionary actions
  - Removes the CEQA trigger
  - Essentially creates an exemption
- Tier from CEQA to Adopt Ordinance/Standards
  - Objective environmental review
  - Establish standard 'mitigation' as law
- Site specific CEQA
  - Focused on site (i.e. bio, cultural, wetlands, drainages)
  - Assumes off-site addressed in other ways (i.e. CIP, DIF, Regional Plans)

What now if nothing 'streamline' applies?

15163 SUPPLEMENT TO AN EIR

(2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.

- NOP scopes out most issues
- Usually doesn't need new cumulative or alternatives

What now if nothing 'streamline' applies?

15162 SUBSEQUENT EIR & NEGATIVE DECLARATION

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Parting Thoughts.

CEQA Already has streamlining

Exemptions are powerful

Substantial evidence is essential

Addendums are your friend

CEQA Portal: https://ceqaportal.org/ceqa.cfm

- Topic Papers
- Case Law Database

Thank You

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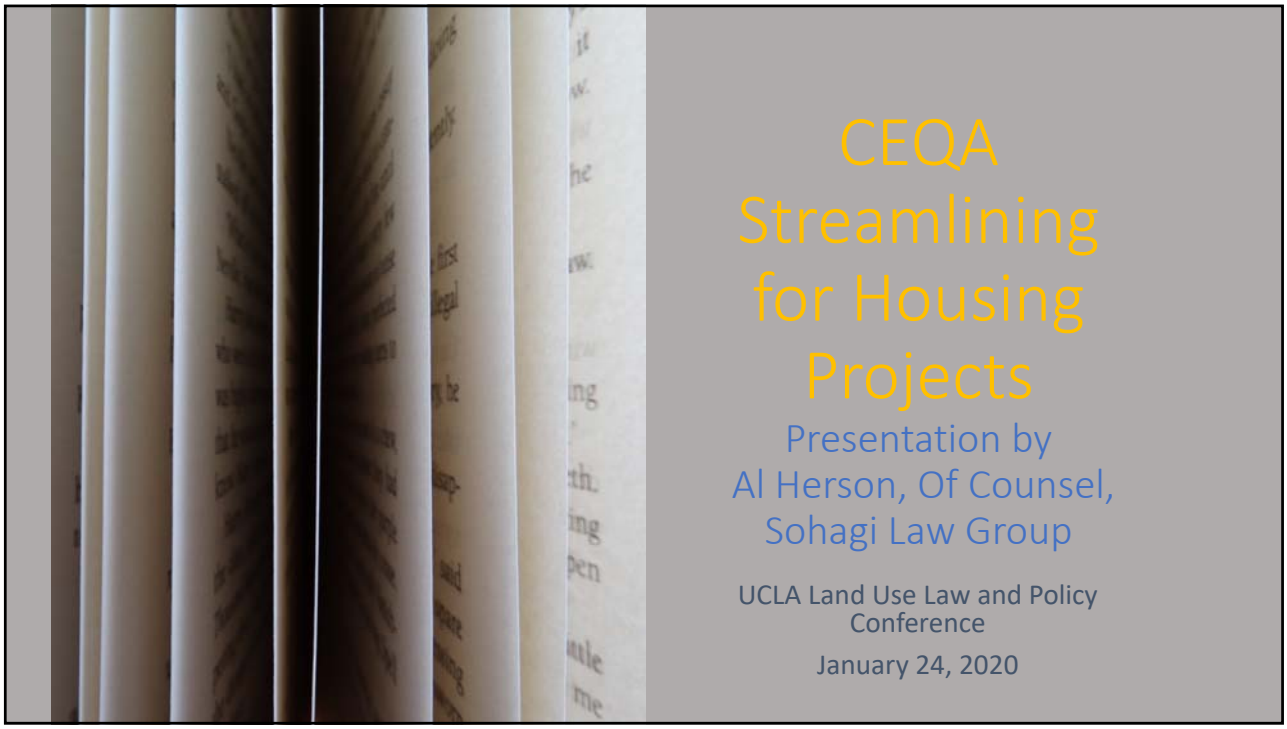


CEQA Streamlining for Housing Projects

Presentation by
Al Herson, Of Counsel,
Sohagi Law Group

UCLA Land Use Law and Policy Conference

January 24, 2020

Presentation Outline

- California's Housing Crisis and CEQA's Role
- Overview of Streamlining Tools: Traditional and New
- SB 375 and Related SCS Streamlining
- SB 35 Streamlining
- Local By Right and Ministerial Initiatives
- Conclusion

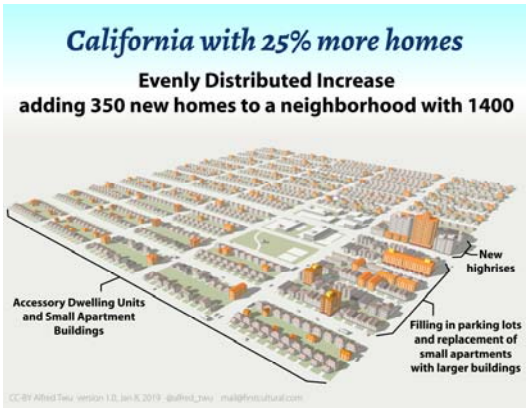
SLG

Presentation Objectives

- Provide overview of CEQA streamlining tools
- Explore CEQA streamlining success stories and why they worked

California Housing Crisis

- California's housing is in crisis
  - Too few homes for too many people, not enough new homes being built, severe affordability problems in coastal areas leads to sprawl, rising homelessness
  - Gov. Newsom goal: 3.5 million new homes by 2025



CEQA's Role?

- CEQA plays some role in slowing housing production
  - How big a role is controversial: competing studies
    - Relative few lawsuits, but many are high-visibility
    - Fear of litigation increases costs and time
  - Other causes include
    - Local government and NIMBY opposition to growth and denser development
    - High labor and construction costs
    - High impact fees (response to Prop 13)
    - Death of redevelopment agencies
    - Lack of funding for infrastructure
    - Lack of funding for affordable housing

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Introduction, cont'd

- Legislature every year has been passing bills to streamline CEQA and approvals for housing projects
- These new tools add to a large arsenal of more traditional CEQA streamlining tools

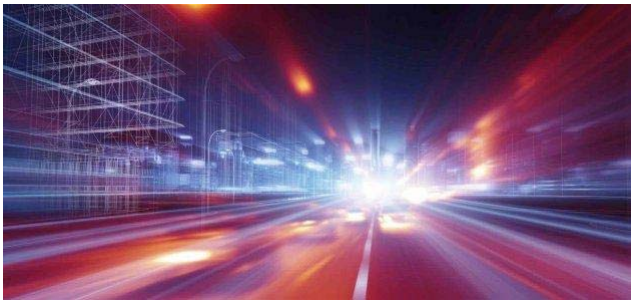
CEQA Streamlining Arsenal: Traditional Tools

- Statutory ministerial project exemption: Guidelines § 15268
  - Locally-developed ministerial and by right programs expanding
- Statutory infill exemption for cities: Guidelines § 15195
- Statutory affordable housing exemption: Guidelines § 15194
- Class 32 categorical infill exemption: Guidelines § 15332
- Projects consistent with General Plan, Specific Plan, or Zoning: Guidelines § 15183
- Projects consistent with Specific Plan: Guidelines § 15182
- Tiering through Program EIRs

CEQA Streamlining Arsenal: Emerging Tools

- SB 375 streamlining for projects consistent with SCS
- SB 743 streamlining for TPPs: PRC § 21155 et seq.
- SB 226 infill checklist: Guidelines § 15183.3
- SB 35 ministerial review: Gov. Code § 65913.4
- Statutory infill exemption for counties: PRC § 21159.25
- Statutory exemptions for supportive housing: 2018 and 2019 legislation
- AB 2923: BART surplus property
- Future SB 50 by right approvals???

SB 375 and Related SCS Streamlining



SB 375 Streamlining

- SB 375 envisioned CEQA streamlining as a way to incentivize local implementation of Sustainable Community Strategies (SCSs)
- SB 375 establishes the SCEA option
  - For Transit Priority Projects (TPPs) (PRC § 21155.2)
  - For residential or mixed use projects (PRC § 21159.28)
- Transit Priority Project qualifiers
  - Consistent with the density and intensity and land use established by the RTP/SCS
  - At least 50% residential use, based on total building square footage and, if the project contains between 26% and 50% nonresidential uses, an FAR of not less than 0.75
  - A minimum net density of at least 20 dwelling units per acre
  - Within ½ mile of a high quality transit corridor or major transit stop

SB 375 Streamlining, cont'd

- Analysis is built upon "prior EIRs"
  - Not specified in statute – could be GP EIR, SP EIR, or RTP/SCS EIR
  - Select that which best covers the site and its development
- Project must incorporate pertinent feasible mitigation measures, performance standards, or criteria from the prior EIRs
- The SCEA relies upon an Initial Study
- However – City or County's significance determinations are not subject to the "fair argument" standard
  - This is the streamlining incentive in the legislation
- IS must:
  - Evaluate all significant or potentially significant impacts of the TPP
  - Identify cumulative effects adequately addressed and mitigated in the prior EIRs

Sacramentans for Fair Planning v. City of Sacramento (2019) 37 CA 5th 698

- The City approved a 15-story mixed-use development that did not comply with either its general plan or zoning standards on the basis of a Sustainable Communities Environmental Assessment (SCEA)
  - City determined the proposal qualified as a transit priority project under SB 375
- Sacramentans alleged that the SCS was too vague to support the use of an SCEA and analysis failed to look at growth inducement
- Court held in the City's favor

Sacramentans for Fair Planning, cont'd

- Court deferred to City on questions of general plan consistency and qualification as a transit priority project
  - City's GP policies allows greater density when in the public interest
  - City had substantial evidence to support public interest conclusion
- SCS was properly prepared and ratified by ARB as to GHG reduction potential
  - SCS is not intended to be as specific as a general plan or zoning
- SB 375 limits range of CEQA analysis
  - No analysis of growth-inducement required
  - Cumulative was examined in City's initial study
  - Initial study properly considered impacts already disclosed in related EIRs

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Practical Implications of Sacramentans for Fair Planning

- Courts will defer to agency determinations of SCS consistency
- This applies to SB 226 and SB 743 CEQA streamlining
  - Also require SCS consistency
- Consult MPO RTPs that provide good guidance on SCS streamlining
  - E.g., SCAG Draft Connect SoCal (2019) identifies TPAs and High Quality Transit Areas
  - E.g., SACOG 2020 MTP SCS (2019) identifies High Frequency Transit Areas

SB 35 Streamlining

Some SB 35 overview slides courtesy Barb Kautz, Goldfarb & Lipman

Monarch Apartments slides courtesy Vince Nicholas, Community Housing Opportunities Corp.

Ministerial Review: SB 35

Determine if Jurisdiction is Subject to SB 35

Not enough building permits to satisfy RHNA **OR** No Annual Report

Determine if Project is Eligible for Streamlining

2 or more units in urbanized area zoned or planned for residential **&** Meets all objective standards **&** Meets affordable housing and labor requirements

Determine if Exclusion Applies

Project site may not be on list of exclusions

SB 35 CEQA Streamlining Process

- Requires ministerial approval of housing if Housing and Community Development (HCD) determines city has not issued enough building permits to satisfy its RHNA by income category or no annual report for 2 years ("highest priority" for HCD)
- Eligible Projects:
  - Two or more units proposed
  - In urban area with 75% of perimeter developed
  - Site zoned or planned for residential use
  - Consistent with "objective" planning standards
  - Must meet affordable housing requirements
    - New Bay Area eligible projects added by AB 1485 of 2019
  - Projects must pay prevailing wages
  - Certain projects must use "skilled and trained workforce"

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SB 35 Advantages

- No CEQA review
- Ministerial review ONLY based on 'objective' standards
- Review can't last more than 90 – 180 days from submittal
  - (G.C. Section 65913.4)

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Case Study: The Monarch Apartment Homes, Palm Springs

- A 60 Unit Multifamily Affordable Housing Development for Working Families
- The Design is Contemporary with a Mid Century Modern Influence

- The Community is a High Resource Area

The Monarch Apartments, cont'd

Challenges

- SB 35 Education – Learning a new tool in affordable housing and how to implement it.
- Zoning and General Plan Consistency
- Prevailing Wage

Evaluation

- SB 35 Eligibility Requirements
- Planning Application, Density and Concessions
- Streamline Ministerial 90 Day Review
- Regional Housing Needs Assessment (RHNA)

Insights

- CHOC Leadership and Guidance
- Participation from City Staff
- Neighborhood Community Support
- Political Will
- Unanimous Planning Commission and City Council Approval

Success!

- In Feb 2019, CHOC was successful in completing the SB 35 process receiving Planning Approvals,

Local By Right and Ministerial Projects

Is the best CEQA streamlining no CEQA?

Menlo Park slides courtesy Mark Muenzer, Community Development Director, Redwood City

LA Measure JJJ slides courtesy Barb Kautz, Goldfarb & Lipman

Menlo Park – High Density Residential District (R-4-S)

- 2007-2014 Housing Element created R-4-S and AHO
- 5 sites in City rezoned to R-4-S
- CEQA: Non-discretionary/ministerial processes are exempt
- Specific development regulations and design standards
- Multi-family units are permitted and not subject to discretionary review
- Planning Commission advisory design review
- Community Development Director determines final compliance
- Decision is not appealable to City Council

Menlo Park Case Study in R-4-S: Anton Menlo

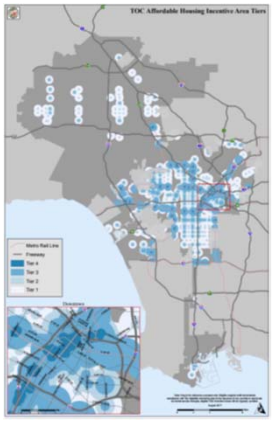
- Developer: St. Anton
- 394 residential units
- 37 affordable units (state density bonus and Facebook off-site)
- 9.6 acre former light industrial zoned site
- Close proximity to 101 and Facebook
- Approved by CD Director
- Heavily occupied by Facebook and Stanford-affiliated staff
- 1 BR Average Rent: $3,700
- Land use compatibility issues (kennel)

Menlo Park Case Study in R-4-S: 777 Hamilton

- Developer: Greenheart
- 195 residential units
- No affordable units
- 6.5 acre former light industrial zoned site
- **Close** proximity to 101 and Facebook
- Approved by CD Director
- Heavily occupied by Facebook staff
- 1 BR Average Rent: $3,300 (2 BR $4000+)
- 2019 unsuccessful affordable housing conversion

LA Measure JJJ (TOC Incentive Program)

- Does not affect s-f zoning
  - Only half of land within ½ mile of transit
- Benefits for many:
  - Prevailing wage for upzoning
    - But not for TOC projects
  - Requires ELI/VLI/LI housing
  - Replacement housing required
  - Balanced equity with development

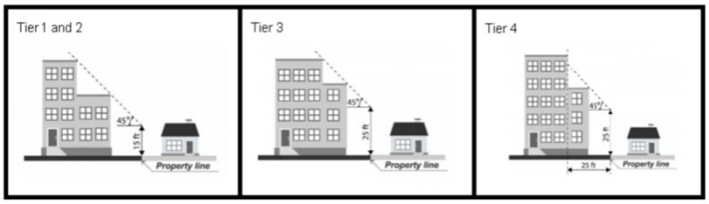


JJJ Key Provisions:

- Incentives and affordability requirements vary by distance to transit and type of transit
- Base incentives: ministerial review
  - 50 – 80% density bonus
  - 40 – 55% FAR increase
  - 0.5 per bedroom – no parking required
  - Reduction in required ground floor commercial

JJJ Key Provisions, cont'd:

- Discretionary review for additional incentives or base density greater than 50 units (up to 5)
  - Height (must meet transitions)
  - Setback reduction
  - Open space, lot coverage, lot width



JJJ Key Provisions, cont'd

- Simplified discretionary review
  - Must conform with adopted design guidelines [as of 1-1-20, must be 'objective']
  - Planning Director makes decision
    - If conform, must approve unless not required for affordable rents or adverse impact on publish health & safety
  - Adjacent property owners and Certified Neighborhood Council noted and may appeal to Planning Commission

JJJ Implementation

- See LA City Housing Progress Dashboard for results
  - 4600 by right and 17,700 discretionary units proposed through September 2019
  - https://planning.lacity.org/resources/housing-reports
- See Pritzker brief included in materials for challenges and opportunities

Ministerial Approvals: Design Review

- McCorkle Eastside Neighborhood Group, et al. v. City of St. Helena (2018) 31 Cal.App.5th 80
- CEQA not triggered when scope of design review does not give decisionmakers authority to mitigate environmental impacts unrelated to project design
- In this case, City's ordinances did not give the authority to mitigate environmental impacts outside of the design review

Closing Thoughts

- Legislature will continue to develop new by-right and ministerial programs
- Locally-initiated by right/ministerial programs can be better than state top-down solutions
  - Local governments now have multiple examples to consider
  - Discretion can be limited by developing local "objective standards"

BRING CA HOME
HOUSING WE CAN AFFORD

Closing Thoughts, cont'd

- The best CEQA streamlining may be no CEQA
  - But to be successful should be supported by good planning and public engagement
- Developers can look for sites:
  - In jurisdictions that embrace ministerial/by right development
  - Near transit
  - With prior CEQA clearance, e.g., through prior EIR, Specific Plan, or Program EIR

Thank You!

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TECHNICAL ADVISORY

CEQA EXEMPTIONS OUTSIDE OF THE CEQA STATUTE

June 2018

EXHIBIT A

CEQA Exemptions Outside of the CEQA Statute

Purpose

The purpose of this technical advisory is to provide guidance to public agencies regarding exemptions from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) that are located outside of Division 13 of the Public Resources Code. This technical advisory is one in a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials, and CEQA practitioners. (Gov. Code, § 65040, subds. (g), (l), (m).) OPR issues technical guidance on issues that broadly affect the practice of land use planning and CEQA. Users of this document may use it at their discretion. This document is not be construed as legal advice.

CEQA requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts if feasible. The Legislature has established CEQA exemptions for a wide range of reasons. A number of these exemptions are found outside of the CEQA statute, and most are not contained in the CEQA Guidelines.

CEQA Exemptions

The following list includes exemptions from CEQA located outside of Division 13 of the Public Resources Code. Please be aware that this technical advisory does not provide an exhaustive list; there may be other potentially applicable CEQA exemptions depending on the nature of the project. The full text of the exemptions is provided in **Appendix A**.

Public Resources Code

- § 2770(h)(1): Interim management plans for idle surface mining operations
- § 2773.4(f): Review of financial assurance for reclamation plans and conduct of surface mining operations
- § 5097.98(g): Agreements related to addressing Native American human remains
- § 6307.1(g): Land exchange agreements with Arizona
- § 8710: School Land Bank Act
- § 25985: Ordinances exempting jurisdiction from solar shade control provisions
- § 42812: Existing waste tire facilities
- § 44203(g): Agreements for solid waste management facilities on Indian Country

Water Code

- § 1729: Proposed temporary changes; water appropriation

EXHIBIT A

- § 1841(c): Adoption of regulations for measuring and reporting water diversion
- § 10652: Urban water management planning
- § 10728.6: Groundwater sustainability plans
- § 10736.2: Interim plans for probationary basins
- § 10851: Agriculture water management planning
- § 13389: Adoption of waste discharge requirements
- § 13552.4(c): Authority to require use of reclaimed water for residential landscaping
- § 13554(c): Authority to require use of reclaimed water for toilet and urinal flushing

Penal Code

- § 2915: Agreements to obtain secure housing capacity within state or in another state
- § 4497.02: Board of Corrections

Government Code

- § 11011(k): Disposition of state surplus real property
- § 15455(a): Method for issuing and refunding bonds for health facilities
- § 51119: Zoning a parcel as timberland production
- § 51191(d): Department of Conservation determinations relating to solar-use easements
- § 64127(a): California transportation financing
- § 65361(g): Time extensions for the preparation and adoption of local general plans
- § 65457(a): Residential development projects that are consistent with a specific plan
- § 65583(a)(4)(B): Housing element permitting, development, and management
- § 65583.2(i): Design review for owner-occupied or multifamily residential housing
- § 65584(f): Determination of housing needs
- § 65759(a): Compliance with court orders
- § 65863(h): Obligations to identify and make available additional residential sites
- § 65995.6(g): School facilities needs analysis
- § 65996: Methods of considering and mitigating impacts on school facilities
- § 65997(b): Methods of mitigating effects relating to adequacy of school facilities
- § 66207(a): Design review of development within a housing sustainability district
- § 91543: Industrial development authorities

Business and Professional Code

- § 26055(h): Adoption of ordinances, rules, or regulations requiring discretionary review and authorizations for commercial cannabis activity

Education Code

- § 17196(a): California School Finance Authority
- § 17621(a): Authorization for fee, charge or dedication to fund school construction
- § 94212(a): California Educational Facilities Authority Act; issuance and refunding of bonds

Fish and Game Code

- § 1617(g): General agreements for cannabis cultivation
- § 2301(c): Aquatic invasive species
- § 2810(c): Approval of agreements for the preparation of natural community conservation plans
- § 7078(e): Implementing regulations for fishery plans
- § 15101(c): Annual registration of aquaculture facilities

Health and Safety Code

- § 1597.46(c): Large family day care homes
- § 25198.3(g): Cooperative agreements for hazardous waste management facilities on Indian Country
- § 33492.18(a): Military base conversion redevelopment plans
- § 44561(a): California Pollution Control Financing Authority
- § 116527(j)(3): Notice of compliance with certain requirements for new public water systems

Military and Veterans Code

- § 435(g): Sale of real property for armory purposes

Welfare and Institutions Code

- § 749.33(e): Board of Corrections

Appendix A: Full Text of the Exemptions

Public Resources Code

Section 2770(h)(1)

Within 90 days of a surface mining operation becoming idle, as defined in Section 2727.1, the operator shall submit to the lead agency for review and approval an interim management plan. The review and approval of an interim management plan shall not be considered a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)). The approved interim management plan shall be considered an amendment to the surface mining operation's approved reclamation plan for purposes of this chapter. The interim management plan shall provide measures the operator will implement to maintain the site in compliance with this chapter, including, but not limited to, all permit conditions.

Section 2773.4(f)

The review and approval of financial assurances pursuant to this chapter shall not be considered a project for the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

Section 5097.98(g)

Notwithstanding Section 5097.9, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (*l*) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

Section 6307.1(g)

Any land exchange made pursuant to this section shall be subject to the exemption from the California Environmental Quality Act contained in Section 21080.11.

Section 8710

An action under this chapter is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), or the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

Section 25985

(a) A city, or for unincorporated areas, a county, may adopt, by majority vote of the governing body, an ordinance exempting their jurisdiction from the provisions of this chapter. The adoption of the ordinance shall not be subject to the California Environmental Quality Act (commencing with Section 21000).

(b) Notwithstanding the requirements of this chapter, a city or a county ordinance specifying requirements for tree preservation or solar shade control shall govern within the jurisdiction of the city or county that adopted the ordinance.

Section 42812

Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the issuance of a permit for the operation of an existing waste tire facility pursuant to this chapter, except as to any substantial change in the design or operation of the waste tire facility made between the time this chapter becomes effective and the permit is initially issued by the board and as to any subsequent substantial changes made in the design or operation of the waste tire facility.

Section 44203(g)

Neither the approval of any cooperative agreement nor amendments to the agreement, nor any determination of sufficiency provided in Section 44205, shall constitute a "project" as defined in Section 21065 and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

Water Code

Section 1729

A proposed temporary change under this article shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 1841(c)

The adoption of the initial regulations pursuant to this article is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 10652

The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part or to the implementation of actions taken pursuant to Section 10632. Nothing in this part shall be interpreted as exempting from the California Environmental Quality Act any project that

would significantly affect water supplies for fish and wildlife, or any project for implementation of the plan, other than projects implementing Section 10632, or any project for expanded or additional water supplies.

Section 10728.6

Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the preparation and adoption of plans pursuant to this chapter. Nothing in this part shall be interpreted as exempting from Division 13 (commencing with Section 21000) of the Public Resources Code a project that would implement actions taken pursuant to a plan adopted pursuant to this chapter.

Section 10736.2

Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any action or failure to act by the board under this chapter, other than the adoption or amendment of an interim plan pursuant to Section 10735.8.

Section 10851

The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part. This part does not exempt projects for implementation of the plan or for expanded or additional water supplies from the California Environmental Quality Act.

Section 13389

Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto.

Section 13552.4(c)

(1) Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project that only involves the repiping, redesign, or use of recycled water for irrigation of residential landscaping necessary to comply with a requirement prescribed by a public agency under subdivision (a).

(2) The exemption in paragraph (1) does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

Section 13554(c)

Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to any project which only involves the repiping, redesign, or use of recycled water by a structure necessary to comply with a requirement issued by a public agency under subdivision (a). This exemption does not apply to any project to develop recycled water, to construct conveyance facilities for recycled water, or any other project not specified in this subdivision.

Penal Code

Section 2915(c)

The provisions of Division 13 (commencing with Section 21000) of the Public Resources Code do not apply to this section.

Section 4497.02(b)

The Board of Corrections shall not itself be deemed a responsible agency, as defined by Section 21069 of the Public Resources Code, or otherwise be subject to the California Environmental Quality Act for any activities under this title, the County Jail Capital Expenditure Bond Acts of 1981 or 1984, or the County Facility Capital Expenditure Bond Act of 1986. This subdivision does not exempt any local agency from the requirements of the California Environmental Quality Act.

Government Code

Section 11011(k)

(1) The disposition of a parcel of surplus state real property, pursuant to Section 11011.1, made on an "as is" basis shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code. Upon title to the parcel vesting in the purchaser or transferee of the property, the purchaser or transferee shall be subject to any local governmental land use entitlement approval requirements and to Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(2) If the disposition of a parcel of surplus state real property, pursuant to Section 11011.1, is not made on an "as is" basis and close of escrow is contingent on the satisfaction of a local governmental land use entitlement approval requirement or compliance by the local government with Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code, the execution of the purchase and sale agreement or of the exchange agreement by all parties to the agreement shall be exempt

from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(3) For the purposes of this subdivision, "disposition" means the sale, exchange, sale combined with an exchange, or transfer of a parcel of surplus state property.

Section 15455(a)

This part shall be deemed to provide a complete, additional, and alternative method for doing the things authorized by this part, and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this part need not comply with any other law applicable to the issuance of bonds, including, but not limited to, Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 51119

Any action of the board or council undertaken to zone a parcel as timberland production pursuant to Section 51112 or 51113 is exempt from the requirements of Section 21151 of the Public Resources Code.

Section 51191(d)

A determination by the Department of Conservation pursuant to this section related to a project described in Section 21080 of the Public Resources Code shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 64127(a)

This division shall be deemed to provide a complete, additional, and alternative method for doing the things authorized by this code, and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds and the financing or refinancing of projects or the imposition and collection of tolls under this division need not comply with any other law applicable to the issuance of bonds or the collection of tolls, including, but not limited to, Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 65361(g)

An extension of time granted pursuant to this section for the preparation and adoption of all or part of a city or county general plan is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 65457(a)

Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. However, if after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code. After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.

Section 65583(a)(4)(B)

The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

Section 65583.2(i)

For purposes of this section and Section 65583, the phrase use by right shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a project for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that use by right does not exempt the use from design review. However, that design review shall not constitute a project for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

Section 65584(f)

Notwithstanding any other provision of law, determinations made by the department, a council of governments, or a city or county pursuant to this section or Section 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, 65584.06, 65584.07, or 65584.08 are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

Section 65759(a)

The California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, does not apply to any action necessary to bring its general plan or

relevant mandatory elements of the plan into compliance with any court order or judgment under this article.

(1) The local agency shall, however, prepare an initial study, within the time limitations specified in Section 65754, to determine the environmental effects of the proposed action necessary to comply with the court order. The initial study shall contain substantially the same information as is required for an initial study pursuant to subdivision (c) of Section 15080 of Title 14 of the California Code of Regulations.

(2) If as a result of the initial study, the local agency determines that the action may have a significant effect on the environment, the local agency shall prepare, within the time limitations specified in Section 65754, an environmental assessment, the content of which substantially conforms to the required content for a draft environmental impact report set forth in Article 9 (commencing with Section 15140) of Title 14 of the California Code of Regulations. The local agency shall include notice of the preparation of the environmental assessment in all notices provided for the amendments to the general plan proposed to comply with the court order.

(3) The environmental assessment shall be deemed to be a part of the general plan and shall only be reviewable as provided in this article.

(4) The local agency may comply with the provisions of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, in any action necessary to bring its general plan or the plan's relevant mandatory elements into compliance with any court order or judgment under this section so long as it does so within the time limitations specified in Section 65754.

Section 65863(h)

An action that obligates a jurisdiction to identify and make available additional adequate sites for residential development pursuant to this section creates no obligation under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to identify, analyze, or mitigate the environmental impacts of that subsequent action to identify and make available additional adequate sites as a reasonably foreseeable consequence of that action. Nothing in this subdivision shall be construed as a determination as to whether or not the subsequent action by a city, county, or city and county to identify and make available additional adequate sites is a "project" for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

Section 65995.6(g)

Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

Section 65996

(a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions

shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorum taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

Section 65997(b)

A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

Section 66207(a)

A city, county, or city and county may, in accordance with the regulations adopted by the department, adopt design review standards applicable to development projects within the housing sustainability district to ensure that the physical character of development within the district is complementary to adjacent buildings and structures and is consistent with the city's, county's, or city and county's general plan, including the housing element. For purposes of this section,

"design review standard" means the reasonable application of qualitative design requirements that are clear and concise and consistently applied to all types of development applications, with specific terms defined or generally accepted word definitions. Design review of a development within a housing sustainability district shall not constitute a "project" for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

Section 91543

All general or special laws or parts thereof inconsistent with this title shall be inapplicable to the exercise of any of the powers conferred under the provisions of this title. Without limiting the generality of the foregoing, the provisions of Divisions 3 (commencing with Section 11000), 4 (commencing with Section 16100), and 5 (commencing with Section 18000) of Title 2 of this code, relating to the executive department of the state, and of Division 13 (commencing with Section 21000) of the Public Resources Code, shall not be applicable to authorities.

Business and Professional Code

Section 26055(h)

Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. This subdivision shall become inoperative on July 1, 2019.

Education Code

Section 17196(a)

This chapter shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized in this chapter, and shall be deemed as being supplemental and additional to the powers conferred by other applicable laws, except that the issuance of revenue bonds and refunding bonds and the undertaking or projects or financings under this chapter need not comply with the requirements of any other laws applicable to the issuance of bonds, including, without limitation, Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 17621(a)

Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 17620, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7 of the Government Code. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 17620 shall not be subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

Section 94212(a)

This chapter shall be deemed to provide a complete, additional, and alternative method for doing the things authorized by this chapter, and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with any other law applicable to the issuance of bonds including, but not limited to, Division 13 (commencing with Section 21000) of the Public Resources Code.

Fish and Game Code

Section 1617(g)

Regulations adopted pursuant to this section, and any amendment thereto, shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 2301(c)

(1) Except as provided in paragraph (2), Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the implementation of this section.

(2) An action undertaken pursuant to subparagraph (B) of paragraph (2) of subdivision (a) involving the use of chemicals other than salt or hot water to decontaminate a conveyance or a facility is subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 2810(c)

The approval of the planning agreement is not a project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 7078(e)

The commission shall adopt any regulations necessary to implement a fishery plan or plan amendment no more than 60 days following adoption of the plan or plan amendment. All implementing regulations adopted under this subdivision shall be adopted as a regulation pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission's adoption of regulations to implement a fishery management plan or plan amendment shall not trigger an additional review process under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

Section 15101(c)

The annual registration of information required by subdivision (b) is not a project for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

Health and Safety Code

Section 1597.46(c)

A large family day care home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 25198.3(g)

Neither the approval of any cooperative agreement nor amendments to the agreement, nor any determination of sufficiency provided in Section 25198.5, shall constitute a "project" as defined in Section 21065 of the Public Resources Code and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

Section 33492.18(a)

Notwithstanding subdivision (k) of Section 33352, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to the adoption of a redevelopment plan prepared pursuant to this article if the redevelopment agency determines at a public hearing, noticed in accordance with this section, that the need to adopt a redevelopment plan at the soonest possible time in order to use the authority in this article requires the redevelopment agency to delay application of the provisions of the California Environmental Quality Act to the redevelopment plan in accordance with this section.

Section 44561(a)

This division provides a complete, additional, and alternative method for the doing of the things authorized by this division, and is supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this division need not comply with any other law applicable to the issuance of bonds including, but not limited to, Division 13 (commencing with Section 21000) of the Public Resources Code. In the construction and acquisition of a project pursuant to this division, the authority need not comply with any other law applicable to the construction or acquisition of public works, except as specifically provided in this division. Pollution control facilities and projects may be acquired, constructed, completed, repaired, altered, improved, or extended, and bonds may be issued for any of those purposes under this division, notwithstanding that any other law may provide for the acquisition, construction, completion, repair, alteration, improvement, or extension of like pollution control facilities or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

Section 116527(j)(3)

The state board shall promptly acknowledge receipt of a written notice described in paragraph (2). The state board shall have 30 days from the acknowledgment of receipt of the written notice to issue a written notice to the applicant that compliance with the requirements of this section is necessary and that an application for a permit of a new public water system under this chapter is not complete until the applicant has complied with the requirements of this section. A determination by the state board that compliance with the requirements of this section is necessary shall be final and is not subject to review by the state board. A determination by the state board pursuant to this subdivision is not considered a project subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

Military and Veterans Code

Section 435(g)

The sale of an armory shall be made on an “as is” basis and is exempt from Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code. Upon vesting title of the armory to the purchaser or transferee of the armory, the purchaser or transferee shall be subject to any local governmental land use entitlement requirements and to Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code.

Welfare and Institutions Code

Section 749.33(e)

The board shall not be deemed a responsible agency, as defined in Section 21069 of the Public Resources Code, or otherwise be subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for any activities undertaken or funded pursuant to this title. This subdivision does not exempt any local agency from the requirements of the California Environmental Quality Act.

TECHNICAL ADVISORY

CEQA REVIEW OF HOUSING PROJECTS TECHNICAL ADVISORY

EXHIBIT A

CEQA Review of Housing Projects Technical Advisory

This technical advisory is one in a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials, and California Environmental Quality Act (CEQA) practitioners. OPR creates and updates technical advisories as needed on current issues in environmental law and land use planning that broadly affect the practice of CEQA and land use planning in California. The purpose of this technical advisory is to provide a list of statutes and regulations related to the CEQA review of housing projects. This document should not be construed as legal advice.

This technical advisory covers the following statutes and regulations:

Government Code, § 65457

Public Resources Code, § 20181.3

Public Resources Code, § 21094.5

Public Resources Code, § 21099

Public Resources Code, § 21155.1

Public Resources Code, § 21155.2

Public Resources Code, § 21155.4

Public Resources Code, § 21159.22

Public Resources Code, § 21159.23

Public Resources Code, § 21159.24

Public Resources Code, § 21159.25

Public Resources Code, § 21159.28

CEQA Guidelines, § 15183

CEQA Guidelines, § 15303

CEQA Guidelines, § 15332

A chart comparing the various requirements is included as Appendix A.

PRC § 21159.25 (NEW – AB 1804; Effective January 1, 2019) – Infill Housing in Unincorporated Counties

- Applies only to multifamily housing and mixed use projects in unincorporated counties within the boundaries of an urbanized area or urban cluster, as designated by the Census Bureau.
- The project is substantially surrounded (75%) by qualified urban uses; remaining area must be designated for qualified urban uses.
- The project is consistent with general plan and zoning.
- The project site is less than 5 acres.
- The project contains at least 6 units.
- The density of the residential portion of the project is not less than the greater of the following:
    - The average density of the residential properties that adjoin, or are separated only by an improved public right-of-way from, the perimeter of the project site, if any.
    - The average density of the residential properties within 1,500 feet of the project site.
    - Six dwelling units per acre.
- The project site does not have any value as habitat for endangered, rare, or threatened species and can be served by public utilities and services.
- The project will not cause significant effects relating to transportation, noise, air quality, greenhouse gas emissions, or water quality.
- Subject to the exceptions to the categorical exemptions (unusual circumstances, cumulative impacts, scenic resources, historical resources, hazards, etc.).

PRC § 21159.24 – Infill Housing in Urbanized Areas near Transit

- The project is 100 percent residential or up to 25 percent of the building square footage of the residential project includes primarily neighborhood-serving goods, services, or retail uses.
- Project site is an infill site.
- The project is located within an urbanized area.
- The project is consistent with an applicable general plan, specific plan, local coastal plan, and any mitigation measures required by a plan or program.
- The project and other prior approved projects can be adequately served by existing utilities.
- The project has paid, or has committed to pay, all applicable in-lieu or development fees.
- The site does not contain wetlands, does not have any value as wildlife habitat, and the project does not harm species protected by local ordinance or the state and federal endangered species acts.
- The site is not included on any list of facilities and sites compiled by the Department of Toxic Substances Control pursuant to Section 65962.5 of the Government Code.
- The project is subject to a preliminary endangerment assessment prepared to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity and, if any such release or exposure is identified, it must be mitigated to a level of insignificance in compliance with state and federal requirements.
- The project does not have a significant effect on historical resources.

- The project is not subject to a wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.
- Materials storied or used near the project site do not create an unusually high risk of fire or explosion.
- The project site would not create a risk of public health exposures at a level that exceed standards established by any state or federal agency.
- The project site is not located within a delineated earthquake fault zone or seismic hazard zone unless the applicable general plan or zoning ordinance contains provision to mitigate the risk.
- The project site is not located in a landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk.
- The project is not located on developed open space.
- The project site is not located within the boundaries of a state conservancy.
- Within five years of the date that the project application is deemed complete, community-level environmental review was certified or adopted.
- The site is less than four acres.
- The project contains less than 100 residential units.
- The project either:
    - provides at least 10 percent of the housing for sale to families of moderate income, or not less than 10 percent of the housing for rent to families of low income, or not less than 5 percent for rent to families of very low income, and the developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs with an affordable housing cost determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code; or
    - has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units as under the prior bullet.
- The project is within ½ mile of a major transit stop.
- The project does not include any building that exceeds 100,000 square feet.
- The project promotes higher density infill housing, as defined.
- None of the following apply:
    - There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.
    - Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.
    - New information becomes available regarding the circumstances under which the project is being undertaken that was not known, and could not have been known, at the time the community-level environmental review was certified or adopted.

See also **PRC § 21159.21 – Criteria to Qualify for Housing Project Exemptions; PRC § 21159.22 – Agricultural Employee Housing; PRC § 21159.23 – Low-Income Housing**

PRC § 21155.1 (SB 375) – Transit Priority Projects

- The project is consistent with the general use designation, density, building intensity, and applicable polices in an ARB accepted SCS or APS.
- The project and projects approved prior to the project can be adequately served by existing utilities.
- The project has paid or committed to pay to any in-lieu development fees.
- The site does not contain wetlands or riparian areas and does not have significant value as wildlife habitat, and the project does not harm species protected by local ordinance or the state and federal endangered species acts.
- The site is not included on any list of facilities and sites compiled by the Department of Toxic Substances Control pursuant to Section 65962.5 of the Government Code.
- The project is subject to a preliminary endangerment assessment to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity and, if any such release or exposure is identified, it must be mitigated to a level of insignificance in compliance with state and federal requirements.
- The project does not have a significant effect on historical resources.
- The project is not subject to a wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.
- Materials storied or used near the project site do not create an unusually high risk of fire or explosion.
- The project site would not create a risk of public health exposures at a level that would exceed standards established by any state or federal agency.
- The project site is not located within a delineated earthquake fault zone or seismic hazard zone unless the applicable general plan or zoning ordinance contains provision to mitigate the risk.
- The project site is not located in a landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk.
- The project is not located on developed open space.
- The buildings proposed as part of the project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations.
- The buildings and landscaping proposed as part of the project are designed to achieve 25 percent less water usage than the average household use in the region.
- The site is not more than eight acres in total area.
- The project does not contain more than 200 residential units.
- The project does not result in any net loss in the number of affordable housing units within the project area.
- The project does not include any single level building that exceeds 75,000 square feet.
- The project implements all applicable mitigation measures or performance standards or criteria set forth in the prior EIR, and adopted in findings.
- The project is determined not to conflict with nearby operating industrial uses.

- If the project is not located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan (RTP), then the project must be located within one-quarter mile of a high-quality transit corridor included in an RTP.
- The project meets at least one of the following three additional criteria:
    - At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income, and the developer shall provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs with an affordable housing cost or affordable rent for the period required by the applicable financing. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.
    - The project has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units as under the prior bullet.
    - The project provides public open space equal to or greater than five acres per 1,000 residents of the project.

See also **PRC § 21159.28 (SB 375) – Residential or Mixed-Use Project Streamlining re Growth-Inducing Impacts, GHGs, and Regional Transportation Network; PRC § 21155.2 (SB 375) – Streamlined environmental analysis for Transit Priority Projects**

PRC § 21094.5, CEQA Guidelines 15183.3 (SB 226) – Infill Housing

- Covers residential and mixed-use projects that are located in an urban area on a site that either has been previously developed or that adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter.
- The project satisfies all applicable statewide performance standards set forth in Appendix M of the CEQA Guidelines.
- The project meets one of the three criteria:
    - Are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in a qualifying Sustainable Communities Strategy (SCS) or Alternative Planning Strategy (APS).
    - Where a project is located within the boundaries of a metropolitan planning organization (MPO) for which an SCS or APS is required but has not yet been adopted, this streamlining applies to residential infill projects with a density of at least 20 units per acre or mixed-use projects with a floor area ratio (FAR) of at least 0.75.
    - Where a project is outside the boundaries of an MPO, the infill project must be a small walkable community project, as defined by PRC § 21094.5(e)(4).
- The lead agency prepares a written checklist that demonstrates all potential effects of the project are either:
    - Addressed in a prior EIR for a planning level decision even if that effect was not reduced to a less than significant level in the prior EIR; or

- Addressed by uniformly applicable development policies or standards, adopted by the lead agency or a city or county.

PRC § 21155.4 (SB 743) – Transit-Oriented Housing

- Covers residential and mixed-use development projects.
- The project is proposed within a transit priority area.
- The project is consistent and undertaken to implement a specific plan for which an EIR has been certified.
- The project is consistent with the general use designation, density, building intensity, and applicable policies for the project area in either an SCS or APS.
- None of the events below as set forth in PRC section 21166 requiring supplemental review have occurred:
  - Substantial changes are proposed in the project which will require major revisions of the EIR.
  - Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR.
  - New information, which was not known and could not have been known at the time the EIR certified as complete, becomes available.

PRC § 21099 (SB 743) – Transit-Oriented Housing; Streamlined Review

- Aesthetic and parking impacts of a residential or mixed-use residential project on an infill site within a transit priority area shall not be considered significant impacts on the environment.

See also **PRC § 21081.3 (NEW; Effective Jan. 1, 2019) –** Not required to analyze aesthetic impacts for infill housing projects converting abandoned or dilapidated buildings

CEQA Guidelines § 15183; PRC § 21083.3 – Projects Consistent with Applicable Zoning and Planning

- The zoning, community plan, or general plan policies must have been approved based on a certified EIR and all agencies required to implement mitigation measures identified in the EIR have committed to undertake the measures.
- The lead agency should prepare an initial study or other analysis limited to determining whether any impacts:
  - are peculiar to the project or the parcel on which the project would be located;
  - were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent;
  - are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action; or
  - are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

- The lead agency must hold a hearing and make findings that the feasible mitigation measures in the prior EIR will be implemented.
- An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

Government Code § 65457 – Housing Covered by a Specific Plan

- Covers any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980.
- If after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with CEQA.
- After a supplemental environmental impact report is certified, the exemption applies to projects undertaken pursuant to the specific plan.

Categorical Exemptions

CEQA Guidelines § 15303 (Class 3 Categorical Exemption) – New Construction of a Small Number of Housing Units

- Outside Urbanized Areas:
    - One single-family residence, or a second dwelling unit in a residential zone.
    - A duplex or similar multi-family residential structure totaling no more than four dwelling units.
    - A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances and not exceeding 2,500 square feet in floor area.
- In Urbanized Areas:
    - Up to three single-family residences may be constructed or converted.
    - Apartments, duplexes and similar structures designed for not more than six dwelling units.
    - Up to four commercial buildings not involving the use of significant amounts of hazardous substances and not exceeding 10,000 square feet in floor area on sites zoned for such use where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

CEQA Guidelines § 15332 (Class 32 Categorical Exemption) – Infill Housing

- The project is consistent with the applicable general plan designation and all general plan policies, as well as with zoning designation and regulations.
- The project occurs within city limits.
- The site is 5 acres or less.
- The site is substantially surrounded by urban uses.
- The project site does not have any value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- The site can be adequately served by all needed utilities and public services.

Note: The categorical exemptions are limited by the exceptions contained in CEQA Guidelines § 15300.2.

CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

	Infill Housing PRC 21159.24	**SB 375** PRC 21155.1	**SB 226** PRC 21094.5	**SB 743** PRC 21155.4	**Specific Plan** GC 65457	**Tiering** Guideline 15183	**Class 32** Guideline 15332	**AB 1804** PRC 21159.25	**Class 3** Guideline 15303
Type of Housing Covered	Residential or mixed-use (up to 25% commercial)	Residential or mixed-use	Residential or mixed-use	Residential or mixed-use	Residential	Residential or mixed-use	Residential or mixed-use	Must be multifamily; residential or mixed-use (up to 33% commercial)	Residential; single family and multifamily
Location Requirements	"Urbanized area" as defined by PRC 21071[i]	N/A	"Urban area" as defined by PRC 21094.5[ii]	N/A	N/A	N/A	Within city limits	Unincorporated urbanized area or urban cluster, as designated by the Census Bureau	Different requirements depending on whether urbanized or non-urbanized area. "Urbanized area" as defined by PRC 21071
Transit-Proximity Requirements	Within ½ mile of major transit stop	If the project is not located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan (RTP), then the project must be located within	Within ½ mile of existing major transit stop or transit corridor; OR In "low vehicle travel area"; OR	Transit priority area as defined by PRC 21099[iii]	N/A	N/A	N/A	N/A	N/A

EXHIBIT A

CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

	Infill Housing PRC 21159.24	**SB 375** PRC 21155.1	**SB 226** PRC 21094.5	**SB 743** PRC 21155.4	**Specific Plan** GC 65457	**Tiering** Guideline 15183	**Class 32** Guideline 15332	**AB 1804** PRC 21159.25	**Class 3** Guideline 15303
		one-quarter mile of a high-quality transit corridor included in an RTP	100% affordable with 300 or fewer units						
Infill Requirements	"Infill site" as defined by PRC 21061.3[iv]	N/A	Site either has been previously developed or that adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter	N/A	N/A	N/A	Substantially surrounded by urban uses (not defined)	Substantially surrounded (75%) by qualified urban uses; remaining area must be designated for qualified urban uses; Qualified urban uses as defined by PRC 21072[v]	N/A
Density Requirements	20 du/acre or 10 du/acre depending on surrounding area; No building can exceed 100,000 square feet	Based on SCS; Does not include any single level building that exceeds 75,000 square feet	Based on SCS; For areas outside of MPO, density of at least 8 units per acre or a FAR of not less than 0.50	Based on SCS	N/A	Must be consistent with the development density established by existing zoning, community plan, or general plan policies for which	N/A	At least 6 du/acre but could require more based on density of surrounding area	N/A

EXHIBIT A

CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

	Infill Housing PRC 21159.24	**SB 375** PRC 21155.1	**SB 226** PRC 21094.5	**SB 743** PRC 21155.4	**Specific Plan** GC 65457	**Tiering** Guideline 15183	**Class 32** Guideline 15332	**AB 1804** PRC 21159.25	**Class 3** Guideline 15303
						an EIR was certified Consistency defined by subd. (i)(2)[vi]			
Plan Consistency Requirements	Local plan and zoning consistency required, see PRC 21159.21(a); must have a community-level environmental review[vii] within the last 5 years	Consistent with SCS	Consistent with SCS	Consistent with SCS; Must be consistent with a specific plan with an EIR	Must be consistent with a specific plan adopted after Jan 1, 1980	Must be consistent with zoning, community plan, <u>OR</u> general plan	Local plan and zoning consistency required	Local plan and zoning consistency required	N/A
Minimum or Maximum Number of Units	Less than 100	Less than 200	Less than 300 (but only if not near transit or in low VMT area)	N/A	N/A	N/A	N/A	More than 6	<u>In Urbanized Areas:</u> Up to 3 single-family residences Up to 6 units of apartments, duplexes and similar structures <u>Outside Urbanized Areas:</u>

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CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

	Infill Housing PRC 21159.24	**SB 375** PRC 21155.1	**SB 226** PRC 21094.5	**SB 743** PRC 21155.4	**Specific Plan** GC 65457	**Tiering** Guideline 15183	**Class 32** Guideline 15332	**AB 1804** PRC 21159.25	**Class 3** Guideline 15303
									1 single-family residence, or a second dwelling unit in a residential zone Up to 4 units of a duplex or similar multi-family residential structure
Acreage Limitations	Less than 4	Less than 8	N/A	N/A	N/A	N/A	Less than 5	Less than 5	N/A
Affordability Requirements	Yes, inclusionary or in lieu	Inclusionary, in lieu, OR public open space; plus no net loss of affordable units	100% (but only if not near transit or in low VMT area)	N/A	N/A	N/A	N/A	N/A	N/A
Environmental Limitations	Wetlands, habitat, species, hazards, historical resources, wildfire or fire hazard, public	Wetlands, habitat, species, hazards, historical resources, wildfire or fire hazard, public	Must do soil and water remediation; must comply with air district requirements if	N/A	N/A	Must analyze impacts that are peculiar to the project; If an impact is not peculiar to	Habitat, utilities, “traffic”, noise, air quality, water quality	Habitat, utilities, transportation, noise, air quality, GHG, water quality	None

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CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

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	health, earthquake, landslide, flood plain, open space	health, earthquake, landslide, flood plain, open space Utilities, 15 percent more efficient than Title 24, 25% less water usage than average household, no conflict with nearby industrial uses	near high-volume roadway			the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact			
Exceptions	Unusual circumstances, or new information		Environmental impacts must be analyzed in plan-level decision[viii] prior EIR[ix]	Must be covered by a specific plan with an EIR; PRC 21166	PRC 21166; if 21166 is triggered, can't use exemption unless update to specific plan is prepared	Substantial new information shows that the uniformly applied development policies or standards will	All Cat Ex exceptions See Guideline 15300.2	All Cat Ex exceptions (codified in statute)	All Cat Ex exceptions See Guideline 15300.2

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CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

	Infill Housing PRC 21159.24	**SB 375** PRC 21155.1	**SB 226** PRC 21094.5	**SB 743** PRC 21155.4	**Specific Plan** GC 65457	**Tiering** Guideline 15183	**Class 32** Guideline 15332	**AB 1804** PRC 21159.25	**Class 3** Guideline 15303
						not substantially mitigate the environmental effect			

[i] **"Urbanized area"** means either of the following:
(a) An incorporated city that meets either of the following criteria:
(1) Has a population of at least 100,000 persons.
(2) Has a population of less than 100,000 persons if the population of that city and not more than two contiguous incorporated cities combined equals at least 100,000 persons.
(b) An unincorporated area that satisfies the criteria in both paragraph (1) and (2) of the following criteria:
(1) Is either of the following:
(A) Completely surrounded by one or more incorporated cities, and both of the following criteria are met:
(i) The population of the unincorporated area and the population of the surrounding incorporated city or cities equals not less than 100,000 persons.
(ii) The population density of the unincorporated area at least equals the population density of the surrounding city or cities.
(B) Located within an urban growth boundary and has an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.
(2) The board of supervisors with jurisdiction over the unincorporated area has previously taken both of the following actions:
(A) Issued a finding that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that does both of the following:
(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.
(ii) Protects the environment, open space, and agricultural areas.
(B) Submitted a draft finding to the Office of Planning and Research at least 30 days prior to issuing a final finding, and allowed the office 30 days to submit comments on the draft findings to the board of supervisors.

[ii] **"Urban area"** includes either an incorporated city or an unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:
(A) The population of the unincorporated area and the population of the surrounding incorporated cities equal a population of 100,000 or more.
(B) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

[iii] **"Transit priority area"** means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

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[iv] **"Infill site"** means a site in an urbanized area that meets either of the following criteria:
(a) The site has not been previously developed for urban uses and both of the following apply:
(1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.
(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.
(b) The site has been previously developed for qualified urban uses.

[v] **"Qualified urban use"** means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

[vi] **"Consistent"** means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

[vii] **"Community-level environmental review"** means either of the following:
(1) An environmental impact report certified on any of the following:
(A) A general plan.
(B) A revision or update to the general plan that includes at least the land use and circulation elements.
(C) An applicable community plan.
(D) An applicable specific plan.
(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.
(2) Pursuant to this division and the implementing guidelines adopted pursuant to this division that govern subsequent review following a program environmental impact report, or pursuant to Section 21157.1 , 21157.5 , or 21166 , a negative declaration or mitigated negative declaration was adopted as a subsequent environmental review document, following and based upon an environmental impact report on any of the projects listed in subparagraphs (A), (C), or (D) of paragraph (1).

[viii] **"Planning level decision"** means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

[ix] **"Prior environmental impact report"** means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

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POLICY BRIEF NO. 13
NOVEMBER 2019

Pritzker Briefs
PRITZKER ENVIRONMENTAL LAW AND POLICY BRIEFS

Los Angeles's Transit-Oriented Communites Program: Challenges and Opportunities

By Julia E. Stein

Executive Summary

In recent years, municipalities throughout California have struggled to meet housing needs, and construction of new housing units in the state has not kept apace of demand, resulting in increased housing costs that rank among the highest in the nation. At the same time, California faces pressure to achieve ambitious greenhouse gas (GHG) reduction goals in the relatively near term. Meeting those goals will require significant decreases in transportation sector emissions, which represent about 40 percent of the state's GHG emissions. Particularly impacted by both the affordability and climate change crises are low-income Californians, whose communities suffer disproportionate impacts from lack of housing availability and vulnerability to climate change—and who also are California's most reliable transit riders.

Lawmakers seeking to tackle both housing and greenhouse gas reduction goals have turned to transit-oriented development programs—zoning programs that promote increased housing density close to mass transit options like bus and rail—as one way to address both issues. This paper focuses on one such transit-oriented development program, the City of Los Angeles' Transit Oriented Communities Affordable Housing Incentive Program (TOC Program). The TOC Program offers density and other development incentives to projects within a half-mile radius of major transit stops, in exchange for developer commitments to provide a set percentage of deed-restricted affordable housing units within those projects.

The TOC Program has been a major driver of affordable housing production in the City of Los Angeles since its adoption in late 2017, but certain structural and legal constraints may be impeding its full capacity to augment affordable housing supply. This paper explores those potential constraints and offers recommendations to increase the program's efficacy. It also explores how the program can provide data and lessons learned to lawmakers considering similar inclusionary transit-oriented development programs within their jurisdictions, or even at the state level.

UCLA School of Law
Emmett Institute on Climate Change & the Environment

To that end, this paper's recommendations include:

- Alterations to the TOC Program itself to address existing structural and legal hurdles to its full implementation, including through better interagency coordination, adoption of a pilot program to test limited streamlining efforts, and expansions of its applicability;
- Better data collection and analysis to assess the program's performance to date, including data regarding discretionary and non-discretionary program applications, legal challenges to applicant projects, neighborhood patterns and demographics in program incentive areas, and trends in vehicle miles traveled (VMT) and transit ridership among applicant project occupants; and
- Lawmaker attention to lessons learned from TOC Program implementation, including stakeholder experiences, the relationship of the discretionary approval process to the program's efficacy, financial constraints impacting developer utilization of the program, and a critical review of affordability designations and requirements associated with the program.

Introduction

Los Angeles is the third most rent-burdened metropolitan area in the country and ranks second in the country for the percentage of severely rent-burdened residents.

In recent years, California has found itself at the epicenter of a nationwide housing affordability crisis.[1] The median price of a home in California rose to $570,000 in 2018, up 6 percent from the prior year, and more than 2.5 times higher than the median home price nationwide.[2] Los Angeles is the third most rent-burdened metropolitan area in the country and ranks second in the country for the percentage of severely rent-burdened residents, defined as residents who spend 50 percent or more of their income on rent.[3] Earlier this year, Governor Newsom called for the state to add 3.5 million new homes by 2025. The Governor has proposed a $1.75 billion housing package to attempt to meet that goal, but at the current pace of construction, the state is on track to reach only half that number.[4] Low-income residents are most impacted: housing for households that earn less than 50 percent of the area median income (AMI) in their region is at a 1.5 million unit deficit.[5]

1 Only about 30 percent of Californians could afford to purchase a median-priced home in the first quarter of 2019. California Association of Realtors, Housing Affordability Index – Traditional, *available at* https://www.car.org/marketdata/data/haitraditional Jul. 8, 2019). At the beginning of 2019, California was home to 17 of the country's 25 least affordable housing markets. Michael B. Sauter, USA Today, America's 25 least affordable housing markets: California home to 17 of them, *available at* https://www.usatoday.com/story/money/2019/06/20/americas-25-least-affordable-housing-markets/39579711/ (Jun. 20, 2019).

2 *See* California Association of Realtors, Housing Market Forecast (Oct. 11, 2018), *available at* https://www.prnewswire.com/news-releases/car-releases-its-2019-california-housing-market-forecast-300729605.html; Matt Levin, et al., CALMatters, Californians: Here's why your housing costs are so high (Aug. 21, 2017), *available at* https://calmatters.org/explainers/housing-costs-high-california/.

3 *See* FreddieMac Multifamily, *Rental Burden by Metro* (Apr. 2019), *available at* https://mf.freddiemac.com/docs/rental_burden_by_metro.pdf.

4 *See* California Office of the Governor, Governor Newsom Announces Legislative Proposals to Confront the Housing Cost Crisis (Mar. 11, 2019), *available at* https://www.gov.ca.gov/2019/03/11/governor-newsom-announces-legislative-proposals-to-confront-the-housing-cost-crisis/; Michael Hiltzik, Los Angeles Times, California's housing crisis reaches from the homeless to the middle class—but it's still almost impossible to fix (Mar. 29, 2018), *available at* https://www.latimes.com/business/hiltzik/la-fi-hiltzik-housing-crisis-20180330-story.html.

5 Hiltzik, *supra* note 4. While many argue that the methodology for calculating the extent of the housing deficit itself requires improvement, it is clear that there is a dearth of housing available in the state. *See, e.g.*, Paavo Monkonnen, et al., UCLA Lewis Center, Issue Brief, *A Flawed Law: Reforming California's Housing Element* (2019) at 2-3, *available at* https://www.lewis.ucla.edu/wp-content/uploads/sites/17/2019/05/2019_RHNA_Monkkonen-Manville-Friedman_FF.pdf.

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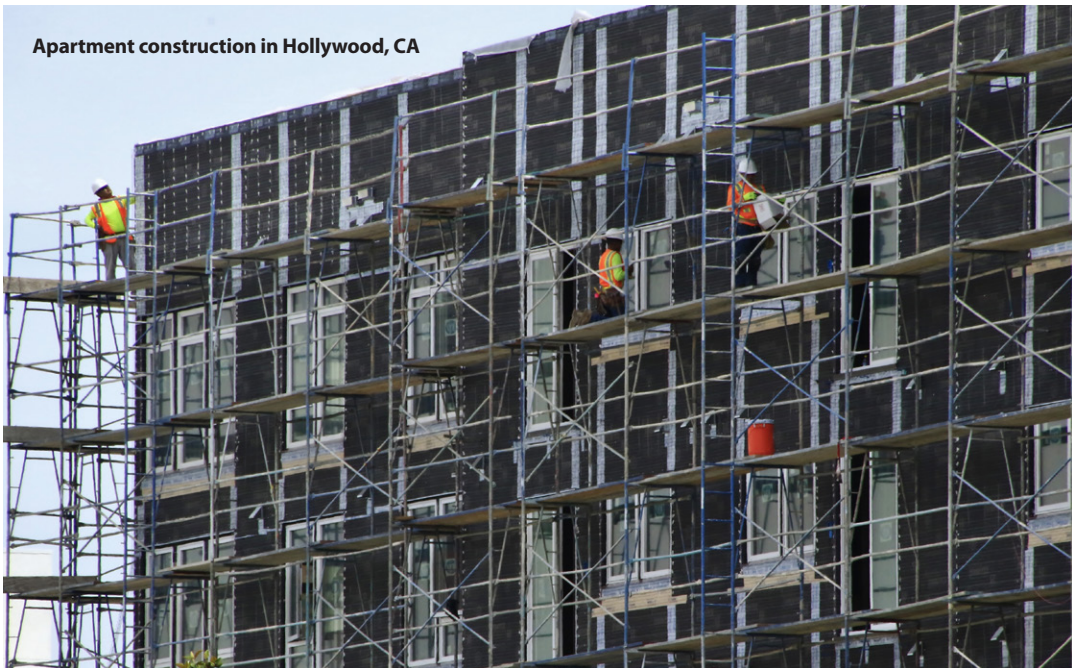
Apartment construction in Hollywood, CA

In theory, "transit-oriented development" would result in infill development that produces additional housing units in areas where residents will need to be less reliant on cars for transportation.

Lawmakers have pushed through a bevy of new measures aimed to address the problem. During the past two legislative sessions, the California Legislature passed, and the Governor signed into law, a total of 31 housing-related bills, and 13 more were introduced during this session.[6] On the regional and local level, cities and counties have also been exploring options to ease the housing shortage. This summer, San Francisco's Board of Supervisors unanimously voted to place a $600 million bond measure on the November ballot that would support the building or rehabilitation of more than 2,000 affordable housing units, with support from other San Francisco politicians, construction unions, and nonprofit developers.[7] And in addition to the ordinance that is the subject of this paper, the City of Los Angeles has been moving forward with a long-term effort to establish Transit Neighborhood Plans focused on land use planning near four Metro rail lines, with a goal of enhancing transit ridership in part through siting development of new housing close to mass transit.[8]

One tool under consideration at both the state and local levels has been the concept of upzoning—or allowing for more dense development—near existing mass transit, such as rail stations or bus lines with frequent service. In theory, this type of development, known as "transit-oriented development," would result in infill development that produces additional housing units in areas where residents will need to be less reliant on cars for transportation. Proponents of transit-oriented development argue that it serves both housing and environmental goals. Densifying in select areas allows for more residential units than would otherwise be permitted, and those units are situated in already-developed areas. This avoids the environmental impacts

6 California Department of Housing and Community Development, California Housing Package Launched January 1 with a Resolution to Ease Housing Costs, Shortage (Jan. 3, 2018), *available at* http://www.hcd.ca.gov/about/newsroom/docs/2018-CA-Housing-Package.pdf; Central City Association of Los Angeles, Summary of California Housing Bills (Mar. 2019), *available at* https://www.ccala.org/clientuploads/comms/2019/2019_Housing_Bills_Summary_v2.pdf.

7 Joshua Sabatini, San Francisco Examiners, SF places $600M bond on November ballot to address affordable housing crisis (Jul. 9, 2019), *available at* https://www.sfexaminer.com/the-city/sf-places-600m-bond-on-november-ballot-to-address-affordable-housing-crisis/.

8 City of Los Angeles Department of City Planning, Los Angeles Transit Neighborhood Plans: About the Project, *available at* https://www.latnp.org/.

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of building on undeveloped land in the suburbs or exurbs, including greenhouse gas (GHG) emissions from increases in vehicle miles traveled (VMT) to get to and from home, as well as species, air quality, and other impacts associated with "greenfields" development.[9]

Indeed, climate change-related goals are a topic of significant concern at the state level as well. California has adopted the most ambitious GHG emission reduction policies in the country, with laws mandating reductions to 40 percent below 1990 emission levels by the year 2030 and 100 percent use of net-zero electricity by 2045.[10] Transportation plays a key role in the state's ability to meet emission reduction targets, because emissions from the transportation sector represent nearly 40 percent of California's total GHG emissions.[11] In discussing methods to reduce transportation sector emissions, lawmakers and regulators have increasingly emphasized the need to consider modifying land use patterns that contribute to increased VMT, and thereby, increased GHG emissions.[12] Transit-oriented development is one way to achieve more climate-friendly land use patterns.

In discussing methods to reduce transportation sector emissions, lawmakers and regulators have increasingly emphasized the need to consider modifying land use patterns that contribute to increased VMT, and thereby, increased GHG emissions.

But transit-oriented development is not necessarily a silver bullet. Some housing advocates express concerns that as rents rise due to an influx of market-rate transit-oriented housing, low-income residents in infill areas—often communities of color—will be displaced to suburban and exurban areas far from their jobs and current neighborhoods.[13] Such a displacement

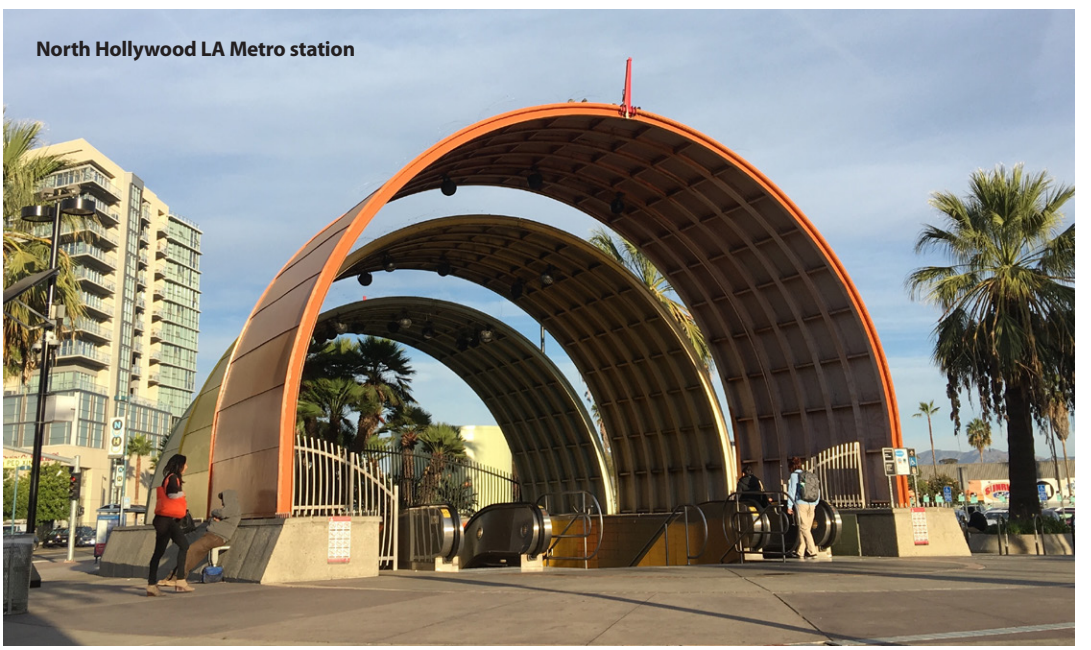
9 *See, e.g.*, U.S. Environmental Protection Agency, *Encouraging Transit Oriented Development; Case Studies that Work* (May 2014), *available at* https://www.epa.gov/sites/production/files/2014-05/documents/phoenix-sgia-case-studies.pdf; Joel Epstein, StreetsBlog LA, Los Angeles and the Case for Transit-Oriented Development (May 23, 2012), *available at* https://la.streetsblog.org/2012/05/23/los-angeles-and-the-case-for-transit-oriented-development-part-1-of-3/.

10 Sen. Bill 32, 2016 Reg. Sess., Ch. 249, 2016 Cal. Stat.; Sen. Bill 100, 2018 Reg. Sess., Ch. 312, 2018 Cal. Stat.; California Air Resources Board, *California's Climate Change Scoping Plan (Scoping Plan)* (Nov. 2017) at ES1, *available at* https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf; Alexei Koseff, The Sacramento Bee, California approves goal for 100% carbon-free electricity by 2045 (Sept. 10, 2018), *available at* https://www.sacbee.com/news/politics-government/capitol-alert/article218128485.html.

11 *Scoping Plan*, *supra* note 10.

12 *Id*. at ES5-6.

13 *See, e.g.*, Alliance for Community Transit—Los Angeles, *Transit for All: Achieving Equity in Transit-Oriented Development* at 3, *available at* http://www.allianceforcommunitytransit.org/wp-content/uploads/2015/02/ACT-LA-Transit-for-All-Achieving-Equity-in-Transit-Oriented-Development.pdf.



North Hollywood LA Metro station

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pattern would be concerning: these communities are at the highest risk of the housing insecurity the state is attempting to tackle, and also represent the state's most reliable transit ridership base.[14] And some proponents of transit-oriented development also urge streamlining under the California Environmental Quality Act (CEQA), a public disclosure and mitigation statute that environmental justice communities—low-income communities of color that are overburdened by pollution and other environmental harms—have historically used to protect themselves in the face of unwanted development. CEQA streamlining, if not thoughtful, could have serious unintended consequences for these communities.

The TOC Program allows for certain projects to increase both the number of residential units in a building and the building's footprint beyond that which would be permitted by-right, as long as developers agree to build a set percentage of deed-restricted affordable housing.

Against this backdrop, this paper will explore one effort to boost transit-oriented development: the City of Los Angeles's Transit Oriented Communities Ordinance (hereinafter referred to as the TOC Program).[15] Adopted about two years ago, the TOC Program is an upzoning measure that allows for increased density in projects built close to mass transit, provided that the project developer agrees to include a set percentage of deed-restricted affordable housing as part of the project and replace any existing affordable or rent stabilized units.[16] The density increase provided by the TOC Program is reflected in a boost to two different density-related metrics employed by Los Angeles' zoning code: (1) the number of units that may be sited on a property; and (2) the floor-area ratio (FAR) of the property, which reflects a building's or buildings' total floor area in relation to the size of the lot upon which the building or buildings are constructed. Unit count increases allow for additional residential construction beyond what would otherwise be permitted, while FAR increases can impact both the size and number of residential units and the type of commercial space that can be built in a mixed-use project.[17] The program also provides additional menu incentives that can increase building envelope beyond FAR and number of units, including height increases and reductions in yard and setback requirements.

In other words, the TOC Program allows for certain projects to increase both the number of residential units in a building and the building's footprint beyond that which would be permitted by-right by the project site's zoning, as long as developers agree to build a set percentage of deed-restricted affordable housing. As discussed below, the TOC Program also offers another transit-oriented incentive by right if the conditions of the program are met: a reduction in the amount of required parking for a project.

This paper aims to assess how the TOC Program is working, challenges to the TOC Program's implementation, and some potential implications of a wider-scale adoption of TOC-like mea-

14 Michael Manville, et al., *Falling Transit Ridership: California and Southern California* (Jan. 2018) at 5, *available at* https://www.its.ucla.edu/2018/01/31/new-report-its-scholars-on-the-cause-of-californias-falling-transit-ridership/

15 Los Angeles Municipal Code (L.A.M.C.) 12.22. A.31; *see also* City of Los Angeles Department of City Planning, *Transit Oriented Communities Affordable Housing Incentive Program Guidelines (TOC Program Guidelines)* (revised Feb. 26, 2018), *available at* https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf.

16 Inclusionary housing programs like the TOC Program are one way of addressing the need for deed-restricted affordable housing but have the effect of placing the responsibility to build such housing on private developers, who are beholden to investors. Due to financial constraints private developers face, in some cases, the requirements of inclusionary housing programs can result in reduced production of affordable housing. *See* David Garcia, Terner Center for Housing Innovation, University of California Berkeley, *Making It Pencil: The Math Behind Housing Development* (Aug. 2019) at 1, *available at* http://ternercenter.berkeley.edu/uploads/Making_It_Pencil_The_Math_Behind_Housing_Development.pdf. There are other alternatives to augmenting affordable housing production—for example, applying increased property taxes to landowners and utilizing the revenue to build government-subsidized housing—which, some argue, would more properly align costs and responsibilities of providing affordable housing. This paper does not address the relative merits of increasing property taxes (an exercise which is politically challenging) as contrasted with inclusionary housing programs. Instead, recognizing that inclusionary housing programs are used as a tool to increase affordable housing stock, this paper assesses possible improvements to such programs through the lens of the TOC Program.

17 While the TOC Program Guidelines restrict project developers from applying FAR increases to uses other than residential, the bonus residential FAR can mean that a project can become a draw for certain types of commercial tenants; in some cases this can impact project financials, making it easier to offset the costs of providing additional affordable housing units, and allowing developers to add neighborhood amenities that will support residential uses.

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sures. As similar proposals are considered on the state level—through legislation like SB 50 and its predecessor, SB 827—and by other local jurisdictions, it is important to take stock of lessons learned through Los Angeles's experiences.

As similar proposals are considered on the state level and by other local jurisdictions, it is important to take stock of lessons learned through Los Angeles's experiences.

At the outset of this assessment, it is important to note that while implementation of the TOC Program has led to the production of both market-rate housing units and deed-restricted affordable housing units, this paper will focus primarily on TOC's efficacy at producing affordable housing units. An ongoing debate rages in California (and nationally) about the extent to which production of market-rate housing alone contributes to the alleviation of the housing shortage. This paper does not seek to answer that question, but instead focuses on the ways that the TOC Program, and potential future programs like it, could enhance production of deed-restricted affordable housing units more likely to relieve housing pressure for low-income Californians while simultaneously providing a GHG emission reduction benefit.

This paper will proceed in four additional parts: first, it will explain the mechanics of the TOC Program; next, it will offer an assessment of the TOC Program's efficacy to date and hurdles[18] curbing a more robust implementation of the program; then, it will discuss the potential implications of a TOC-like program writ large; and finally, it will summarize recommendations and concluding thoughts.

What is the Transit-Oriented Communities Program?

In November 2016, Los Angeles voters approved Measure JJJ, a ballot initiative intended to promote the development of affordable housing stock, by an overwhelming 64 percent of the vote. Measure JJJ codified a requirement that projects seeking general plan amendments or certain zone changes both include a set percentage of affordable housing or pay a fee to an affordable housing trust fund, and meet prevailing wage and labor standards in their construction. Separately, the measure also required the City to create an affordable housing incentive program for developments located near major transit stops.

Pursuant to Measure JJJ's mandate, the City's TOC Program Guidelines, effective September 22, 2017, created new obligations and a new incentives system for residential and mixed-use projects located within a half-mile radius of a major transit stop (defined as a rail station or the intersection of at least two bus routes with frequent service during peak commute times). Projects qualify for the program only if they meet certain affordable housing requirements. Developments that seek to take advantage of the TOC Program are required to provide a set percentage of Extremely Low Income (ELI) (defined as households earning 30 percent of AMI), Very Low Income (VLI) (defined as earning 50 percent AMI), and Lower Income (LI) (defined as earning 80 percent AMI) units based on their proximity to particular types of transit.[19] The TOC Program is unique among density bonus programs in its provision of incentives specifically

18 This paper will primarily focus on legal hurdles baked into the structure of the existing TOC Program or resulting from its interface with already existing zoning and land use approval regimes in the City of Los Angeles. There are other limitations on TOC Program implementation that are economics-driven—for example, materials costs for high-rise buildings—but this paper will not concentrate on those.

19 *TOC Program Guidelines*, *supra* note 15, at 7.

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for ELI units. For example, California's Density Bonus Law, more typical of these programs, provides incentives starting at the VLI level and ranges up to the moderate income (MI) level. The TOC Program is therefore specially positioned to create dedicated housing for the ELI segment of the population. That has borne out as the TOC Program has been implemented, with ELI units representing a significant portion of those proposed in program applications.

The TOC Program Guidelines establish four tiers of major transit stops. Higher tiers provide nearer access to high-quality transit, and therefore receive the greatest incentives under the program. A project's tier is based on the shortest distance between its lot and a qualified transit stop, as well as the type of stop the lot is proximate to, as follows[20]:

The TOC Program Guidelines establish four tiers of major transit stops. Higher tiers provide nearer access to high quality transit, and therefore receive the greatest incentives under the program.

TIER 1	TIER 2	TIER 3	TIER 4
750-2640 feet from the intersection of two regular bus lines[21]	0-749 feet from the intersection of two regular bus lines (non-rapid buses with service at 15 min. intervals during peak hours)	0-749 feet from the intersection of a regular bus line and a rapid bus line	0-749 feet from a Metro rail station that intersects with another rail line or a rapid bus
1500-2640 feet from the intersection of a regular bus line and a rapid bus line[22]	750-1499 feet from the intersection of a regular bus line and a rapid bus line	0-1499 feet from the intersection of two rapid bus lines	
1500-2640 feet from a Metrolink rail station	1500-2640 feet from the intersection of two rapid bus lines	0-749 feet from a Metrolink rail station	
	750-1499 feet from a Metrolink rail station	0-2640 feet from a Metro rail station	

20 *Id*. at 5.
21 Regular buses are non-rapid buses with service at intervals of at least an average of 15 minutes during peak hours.
22 A rapid bus line is higher quality service bus line with attributes that can include dedicated bus lanes, branded vehicles/stations, high frequency service intervals, limited stops at major intersections, intelligent transportation systems, possible off-board fare collection, and/or all door boarding. Rapid buses include the Metro Rapid 700 lines, the Metro Orange and Silver Lines, the Big Blue Rapid lines, and the Metro Bus Rapid Transit lines, among others.

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Base incentives—a density bonus, a FAR bonus, and relaxed parking requirements—are available by tier to projects that meet the percentage affordable housing requirements (calculated using the project's total number of units) set by the TOC Guidelines, as follows[23]:

	TIER 1	TIER 2	TIER 3	TIER 4
Min. % On-Site Restricted Affordable Units	8% ELI, 11% VLI, or 20% LI	9% ELI, 12% VLI, or 21% LI	10% ELI, 14% VLI, or 23% LI	11% ELI, 15% VLI, or 25% LI
Max. % Increase to No. of Dwelling Units	50% unless RD Zone, then 35%	60% unless RD Zone, then 35%	70% unless RD Zone, then 40%	80% unless RD Zone, then 45%
FAR[24]	Greater of up to 40% increase or 2.75:1 in commercial zones	Greater of up to 45% increase or 3.25:1 in commercial zones	Greater of up to 50% increase or 3.75:1 in commercial zones	Greater of up to 55% increase or 4.25:1 in commercial zones
Residential Parking	No more than 0.5 spaces/ bedroom required	No more than 0.5 spaces/ bedroom or 1 space/ residential unit required	No more than 0.5 spaces/ residential unit required	No required parking for residential units
Non-Residential Parking (for Mixed-Use projects)	Up to 10% reduction in non-residential parking requirement	Up to 20% reduction in non-residential parking requirement	Up to 30% reduction in non-residential parking requirement	Up to 40% reduction in non-residential parking requirement

23 *TOC Program Guidelines*, *supra* note 15, at 9-11.

24 There are some exceptions: in the RD Zone or a specific plan or overlay district that regulates residential FAR, the maximum FAR increase is 45 percent; if allowable base FAR is less than 1.25:1 then the maximum FAR is 2.75:1; in the Greater Downtown Housing Incentive Area, the FAR increase is limited to 40 percent. *See id*.

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All-affordable projects—projects comprised of 100 percent affordable housing—can "tier up" under the program, allowing them to seek the bonuses that would normally be applicable to projects in the next tier. This mechanism provides an added incentive to drive production of affordable housing units. In addition to base incentives, projects may be granted up to three additional incentives in return for meeting specific affordability requirements[25]:

- To receive one additional menu incentive, the percentage of on-site restricted affordable housing units must be at least 4 percent ELI, 5 percent VLI, 10 percent LI, or 10 percent MI in a common interest development, based on the project's base units.
- To receive two additional menu incentives, the percentage of on-site restricted affordable housing units must be at least 7 percent ELI, 10 percent VLI, 20 percent LI, or 20 percent MI in a common interest development, based on the project's base units.
- To receive three additional menu incentives, the percentage of on-site restricted affordable housing units must be at least 11 percent ELI, 15 percent VLI, 30 percent LI, or 30 percent MI in a common interest development, based on the project's base units.

25 *Id*. at 8-9.

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All-affordable projects can "tier up" under the program, allowing them to seek bonuses that would normally be applicable to projects in the next tier.

Additional menu incentives include, by tier[26]:

	TIER 1	TIER 2	TIER 3	TIER 4
Comm. Setback	Any yard req't for the RAS3 Zone	Same as Tier 1	Same as Tier 1	Same as Tier 1
Residential Setback Decrease[27]	Up to 25% in width or depth of one yard or setback	Up to 30% in width or depth of one yard or setback	Same as Tier 2	Up to 35% in width or depth of one yard or setback
Open Space Decrease	Up to 20%	Same as Tier 1	Up to 25%	Same as Tier 3
Lot Coverage Increase	Up to 25%	Same as Tier 1	Up to 35%	Same as Tier 3
Lot Width Decrease	Up to 25%	Same as Tier 1	Same as Tier 1	Same as Tier 1
Total Height[28]	Add one story up to 11 ft.	Same as Tier 1	Add two stories up to 22 ft.	Add three stories up to 33 ft.
Transitional Height Step Back[29]	45° from a horizontal plane originating 15 ft. above grade	Same as Tier 1	45° from a horizontal plane originating 25 ft. above grade	Within the first 25 ft. of the property line, 45° from a horizontal plane originating 25 ft. above grade

26 *Id.* at 11-14.
27 Front yard reductions are limited to no more than the average of the front yards of adjoining buildings on the same frontage; if there are no adjoining buildings, no reduction is permitted. Yard reductions may not be applied along any property line that abuts a R1 or more restrictive residential zoned property. *Id.* at 12.
28 Projects located on lots with a 45-foot or less height limit or in a Specific Plan area or overlay district that regulates height will require any height increases over 11 feet to be stepped-back at least 15 feet from the exterior face of the ground floor of the building located along any street frontage. *Id.* at 13.
29 Measurements are taken from the property line of the adjoining lot. *Id.*

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Three other additional menu incentives are available in all tiers[30]:

- Projects located on two or more contiguous parcels may average the floor area, density, open space, and parking over the project site, and permit vehicular access from a less restrictive zone to a more restrictive zone, assuming the project is permitted by the underlying zoning on each parcel and no further lot line adjustment or subdivision is required.
- Any land area required to be dedicated for a street or alley may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone of the project site.
- In lieu of L.A.M.C. requirements, a joint public-private development may include the uses and area standards permitted in the least restrictive adjoining zone.

The Planning Director determines availability of these additional menu incentives. The Director must grant the additional incentives if the project meets the TOC Guidelines requirements, unless the Director finds (1) an incentive is not required to provide for affordable housing costs or rents, or (2) the incentive will cause a specific adverse impact on public health and safety, the physical environment, or a listed historic resource, and there is no way to mitigate the impact without rendering the project unaffordable to VLI, LI, or MI households.[31]

The below chart compares two scenarios for projects located in Tier 4, and demonstrates the significant base incentives that are available under the TOC Program even without submitting to the discretionary City process to take the added menu incentives:

	ORIGINAL PROJECT[32]	**USING TOC PROGRAM INCENTIVES**
Residential Only	☐ 75 base units ☐ 3:1 FAR on a 30,000 sf lot with 25,000 sf buildable area, translating to 75,000 sf of floor area ☐ 113 parking spaces[33]	☐ 135 units (80% density bonus) ☐ At least 15 affordable units (at 11% ELI) ☐ 4.25:1 FAR, translating to 106,250 sf of floor area ☐ No parking required
Mixed-Use in Commercial Zone	☐ 150 base units ☐ 1.5:1 FAR on a 60,000 sf lot, translating to 90,000 sf of floor area ☐ 225 residential parking spaces, plus between 1/100 sf and 1/500 sf of non-residential parking, depending on use	☐ 270 base units (80% density bonus) ☐ At least 30 affordable units (at 11% ELI) ☐ 4.25:1 FAR translating to 255,000 sf of floor area ☐ No parking required for residential component; 40% reduction

30 *Id*. at 13-14.
31 *Id*. at 11, L.A.M.C. 12.22 A.25(g)(2).
32 These calculations assume one unit for 400 feet of lot area per the L.A.M.C.
33 This number was calculated using an average of 1.5 spaces/unit based on L.A.M.C. requirements for residential units.

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While additional menu incentives may prove beneficial for a project, the City considers the process of obtaining additional menu incentives to be discretionary. As discussed in additional detail in Section III.B.2 *infra*, the discretionary nature of the process may require projects to comply with CEQA.

At least one analysis of Measure JJJ has concluded that the benefits of the TOC Program have been offset by reductions in zone change and other entitlement applications, which also lead to production of both market-rate and affordable housing, and has suggested that the TOC Program be strengthened to account for this effect.[34] While this paper does not assess the overall impacts of Measure JJJ as a whole or the particular recommendations of that report, it does concur that strengthening the TOC Program could yield positive results for increased production of deed-restricted affordable housing in the City and offers recommendations to address specific legal barriers that present hurdles to the program's efficacy.

Is TOC really leading to the production of more affordable units? Could it produce even more?

The TOC Program has now been in effect for nearly two years, and the City of Los Angeles is closely tracking the ordinance's implementation. While the number of requests for TOC incentives and permitted TOC projects indicate the program is contributing to the addition of a significant number of affordable housing units city-wide, the implementation challenges discussed below may still be constraining the program's ability to meet its full potential.

While the TOC Program is contributing to the addition of a significant number of affordable housing units city-wide, implementation challenges may still be constraining the program's ability to meet its full potential.

TOC By the Numbers

The City of Los Angeles's initial assessment indicates that the TOC Program appears to be on track to increase the number of permitted affordable housing units. Hundreds of projects have requested TOC incentives from the City, and project developers are using the TOC Program far more often than other incentives programs, including California's Density Bonus Law, to propose and seek permits for affordable housing units.[35] By the end of 2018, a little over a year after the TOC Program was implemented, proposed housing entitlements through the program represented 30 percent of all proposed housing entitlements in the City.

Since the TOC Program's inception, it has earned the distinction of being the strongest driver of new housing, a trend that continued into 2019. During the second quarter of 2019, the TOC Program accounted for nearly half of all housing units proposed through discretionary applications. Moreover, the share of deed-restricted affordable housing units in the City's development pipeline that were proposed through the program has increased to 19.4 percent from a previous high of 18 percent in the fourth quarter of 2018. In total, the TOC Program has added nearly 20,000 new housing units to the City's development pipeline since its 2017 launch, and

34 Mark Vallianatos et al., LAPlus and Real Estate Development & Design Program, College of Environmental Design, University of California at Berkeley, *Measure JJJ: An evaluation of impacts on residential development in the City of Los Angeles* (May 2019), *available at* https://wordpressstorageaccount.blob.core.windows.net/wp-media/wp-content/uploads/sites/867/2019/06/2019-Measure-JJJ-An-Evaluation-of-impacts-on-residential-development-in-City-LA.pdf.

35 The City of Los Angeles tracks trends in housing production on a quarterly basis through its Housing Progress Report. *See* City of Los Angeles Department of City Planning, Housing Progress Report—Quarterly Report: April-June 2019, *available at* https://planning.lacity.org/odocument/c795255d-9367-4fdf-9568-0a34077720ef; *see also* City of Los Angeles Department of City Planning, Housing Progress Report—Quarterly Report: January-March 2019, *available at* https://planning.lacity.org/odocument/c82e412b-9d5a-4306-8e19-48bd17ebd752.

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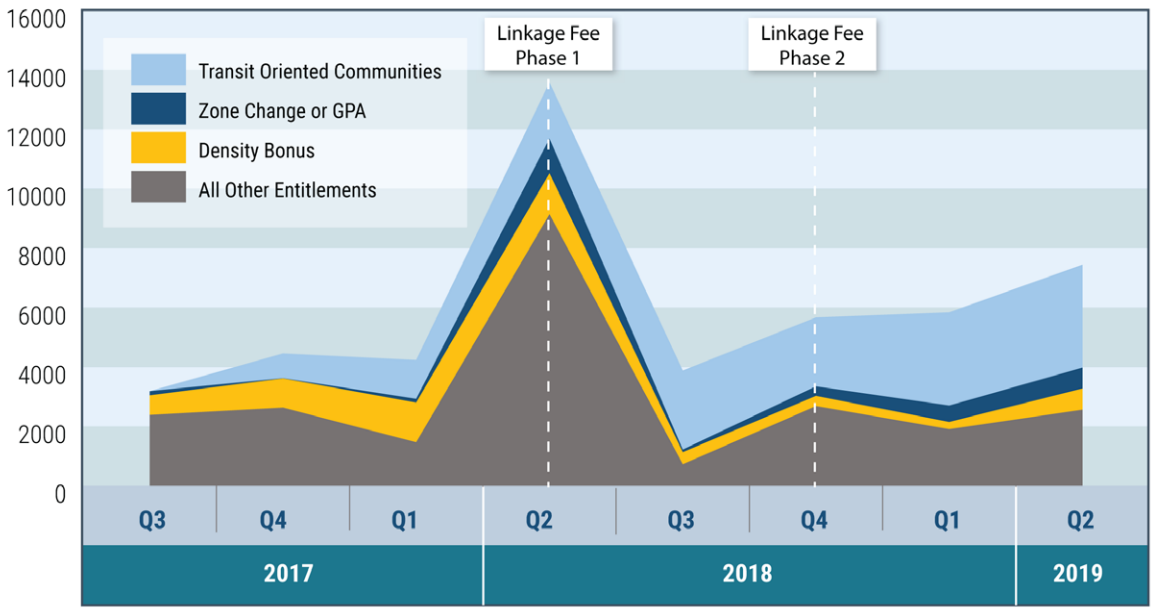


Graphic provided by Los Angeles Department of City Planning.

The TOC Program has driven, and continues to drive, the City's production of deed-restricted affordable housing units.

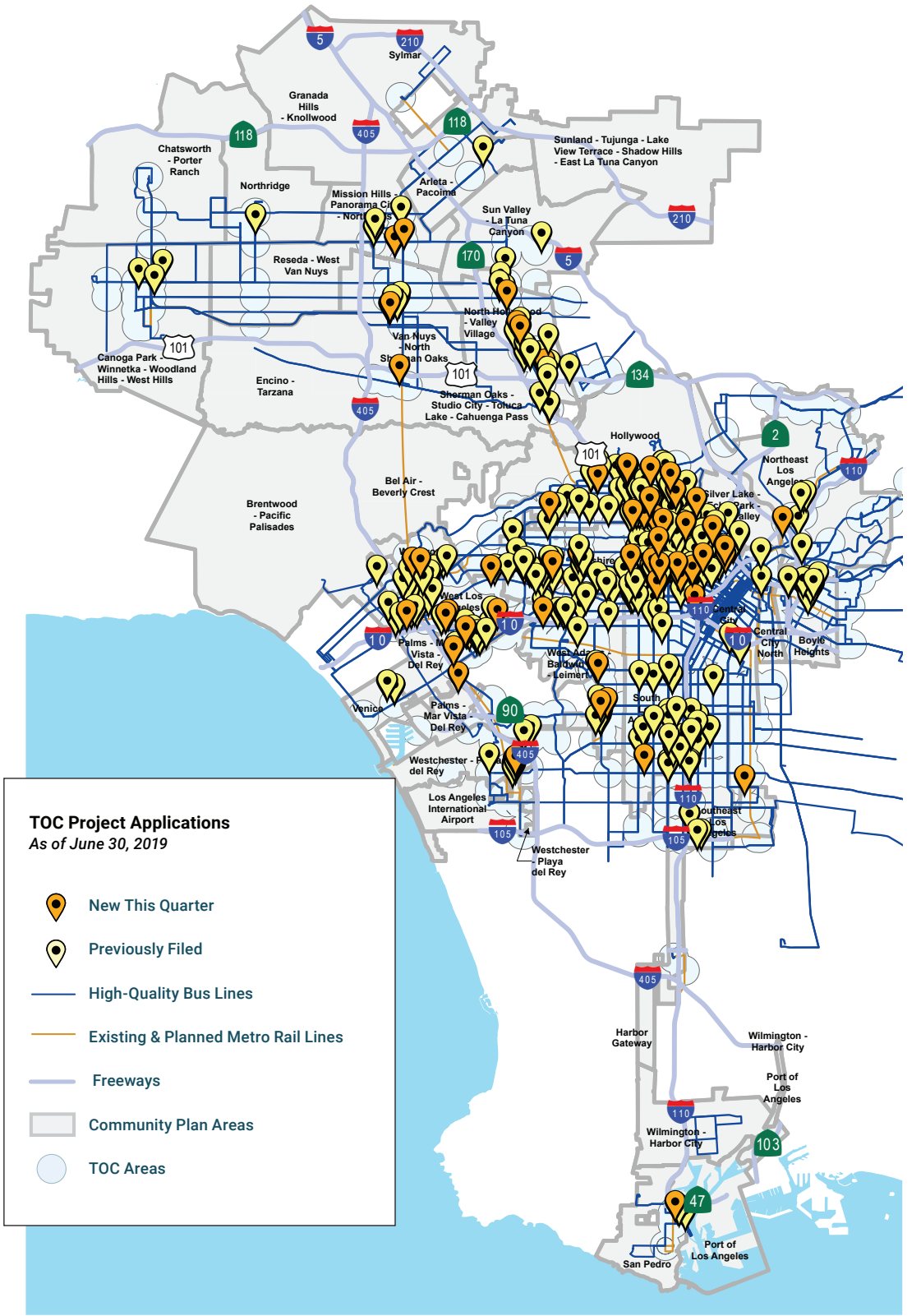
nearly 4,000 of those units are deed-restricted affordable housing units. The City announced in early 2019 that during the past calendar year, the City had produced more housing than it has annually in the past 30 years. The City credited the TOC Program as a major contributor to this housing increase.[36]

The TOC Program has not only driven the City's generation of housing units generally, but also has specifically driven, and continues to drive, its generation of deed-restricted affordable housing. Market-rate developers have utilized the program to add density to their projects, adding a significant number of affordable units along with that density. Furthermore, all-affordable housing projects are eligible to use the TOC Program and receive additional incentives through it, adding more housing units to all-affordable projects.[37] In the first quarter of 2019, 75 percent of all proposed deed-restricted affordable housing units in the City—of which there were nearly 1,000—took advantage of TOC Program incentives.[38] Affordable housing unit production through the TOC Program appears to be on the upswing: the number of deed-restricted affordable housing units proposed through the program increased by over 150 percent from the fourth quarter of 2018 to the first quarter of 2019.[39] Of the proposed units, 40 percent are designated to serve ELI households.[40] The City predicts that nearly 4,000 new deed-restricted affordable housing units will be in the development pipeline by the end of 2019 as a result.[41] And ground is starting to break on projects that have used the TOC Program, translating these affordable units to a reality—by the second quarter of 2019, 65 percent of proposed TOC projects had applied for building permits, and many had received early-start permits to begin work.[42]

36 *See* City of Los Angeles Department of City Planning, Housing Progress Report—Quarterly Report: January-March 2019 at 3.
37 This fact accounts, in part, for the 20 percent share of deed-restricted affordable housing units proposed through the TOC Program, as many market-rate developers are electing to build housing for ELI residents, which range from rates of 8 percent to 11 percent depending on tier.
38 City of Los Angeles Department of City Planning, Housing Progress Report—Quarterly Report: January-March 2019, *supra* note 35, at 4.
39 *Id*.
40 *Id*.
41 City of Los Angeles Department of City Planning, Housing Progress Report—Quarterly Report: April-June 2019, *supra* note 35, at 4.
42 *Id*. at 4.

EXHIBIT A

Projects proposed through the TOC Program continue to be sited in areas of Los Angeles with good access to job centers and mass transit.



Map provided by Los Angeles Department of City Planning.

EXHIBIT A

Projects proposed through the TOC Program also continue to be sited in areas of Los Angeles with good access to job centers and mass transit. Half of all proposed TOC Program projects are located in Central Los Angeles, an area that includes Wilshire Center, Koreatown, and Hollywood.[43] Westside neighborhoods with strong mass transit access, like Palms, Mar Vista, West Los Angeles, and Westchester, represent another 15 percent of proposed projects.[44] In other words, the TOC Program appears to be meeting its objective to site new housing units in areas of the City that are better served by mass transit.

Potential Challenges for TOC Program Implementation

Although the City of Los Angeles has documented a continued rise in TOC Program applications since the program became available in late 2017, there are a number of possible constraints on the program's implementation that could prevent projects near major transit stops from utilizing the program. These constraints reduce the number of total deed-restricted affordable housing units the TOC Program could potentially produce.

Constraints on the program's implementation reduce the number of total deed-restricted affordable housing units the TOC Program could potentially produce.

While some constraints are economic,[45] this paper focuses on potential legal constraints that could impact the TOC Program due to conflicts with existing zoning or discretionary approval regimes in the City. This section of the paper identifies three such possible constraints, and considers potential methods to reduce their impacts, either through interagency cooperation or through modifications to the existing TOC Program.

Before moving into a discussion of the three identified possible legal constraints, it is important to highlight a pending lawsuit that challenges the validity of the TOC Program and poses a potential threat to the program's stability.[46] This challenge was filed in late August 2019 by a neighborhood group, Fix the City, well known in Los Angeles for its efforts to challenge other community- and city-wide transit-oriented development plans.[47]

Fix the City's lawsuit challenges the TOC Program via its application to one development project, which is sited in a densely developed area of West Los Angeles, on a major thoroughfare and close to the skyscrapers and multi-story mall of Century City. The lawsuit contends that the project was improperly granted density, height, and setback incentives through the TOC Program—and that the incentives were improperly granted not because the City did not apply the program's requirements correctly, but because the program itself is inconsistent with Measure JJJ. The lawsuit alleges that Measure JJJ was intended to require labor standards to apply to development projects that sought certain zone changes—the kinds of zone changes the project in question would have needed if the TOC Program were not available—and the TOC Program goes beyond what voters authorized by allowing incentives, like height and setback incentives, that are not contemplated in Measure JJJ.

43 *Id*.
44 *Id*.
45 For example, material costs for high-rise construction (which requires steel rather than wood-frame construction) can sometimes mean that a project developer only takes partial advantage of a TOC Program density bonus incentive, which limits the number of deed-restricted affordable housing units included in the project.
46 Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief, *Fix the City, Inc. v. City of Los Angeles, et al.*, Case No. 19STCP03740 (Aug. 30, 2019).
47 *See, e.g.*, Bianca Barragan, Curbed LA, Anti-Development Group Forcing LA to Take Back Big-Deal Plan For Less Car-Centric City (Nov. 9, 2015), *available at* https://la.curbed.com/2015/11/9/9902490/los-angeles-mobility-plan-lawsuit; David Zahniser, Los Angeles Times, Judge deals a major blow to Hollywood growth plan (Dec. 11, 2013), *available at* https://www.latimes.com/local/lanow/la-me-ln-judge-hollywood-growth-plan-20131211-story.html.

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While assessing the validity of Fix the City's claims and offering recommendations regarding pending litigation at the City are outside the scope of this paper, the lawsuit may at least temporarily chill use of the TOC Program, which, in addition to the constraints discussed in this paper, would further restrict its efficacy. It is also worth noting that there is potential for the lawsuit to resolve in such a way as to require a follow-on ballot measure to achieve the objectives of the TOC Program. In that event, such a measure could provide a vehicle for adoption of some of the recommendations in this paper, such as a pilot program to test streamlining in Tiers 3 and 4 or permitting the program to apply in the limited case of a zone change from industrial to residential use.

This paper will now turn its focus to other legal hurdles to full implementation of the TOC Program's core goals.

1. *Conflicts with the successor agency to the City's former Community Redevelopment Agency.*

The first such limitation involves conflicts between the TOC Program and the requirements of land use plans administered by the Community Redevelopment Agency of Los Angeles, a Designated Local Authority (CRA/LA-DLA). CRA/LA-DLA is a successor agency to the City's Community Redevelopment Agency, and currently administers redevelopment plan areas, some of which impose development limitations that can limit the application of TOC Program incentives.

There are multiple redevelopment areas within the City where redevelopment plans may bar developers from utilizing TOC Program incentives to their full extent, restricting the number of housing units that may be built.

Community redevelopment agencies were originally authorized by California's Community Redevelopment Act in 1945 and became part of a post-World War II effort to promote urban renewal. By 1952, a tax-increment financing structure put in place by Proposition 18 gave local governments the authority to declare certain areas as "blighted" and in need of renewal, allowing local governments to distribute property tax revenue growth in that area to the redevelopment agency as revenue.[48] Redevelopment agencies were legally obligated to use those tax dollars to reduce blight and encourage economic activity in the designated redevelopment plan areas, and California law gave redevelopment agencies significant authority to regulate land uses and development within those areas. Over the years, the number and scope of redevelopment plan areas expanded, and some expressed concerns that redevelopment agencies' growth was coming at the expense of funding for other local programs; by 2008, redevelopment agencies received 12 percent of statewide property tax revenue.[49] But while the agencies' roles and administration of their funds became controversial, they provided the largest source of revenue for affordable housing in California.[50]

In 2011, the California Legislature enacted legislation that dissolved redevelopment agencies statewide; when the redevelopment agencies were formally dissolved in early 2012 after a period of litigation, agencies were appointed to wind down the existing operations of the redevelopment agencies, including administering their assets and liabilities.[51] The City of Los Angeles chose not to become the successor agency to the Community Redevelopment Agency of Los Angeles (CRA/LA), and as a result, Governor Brown appointed a Designated Local Authority (DLA) to wind down CRA/LA's operations.[52] While the responsibility of CRA/LA-DLA is primar-

48 Casey Blount, et al., U.S. Department of Housing and Urban Development, *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure* (Jan. 2014) at 1, *available at* https://huduser.gov/portal/publications/Redevelopment_WhitePaper.pdf.
49 *Id*. at 2.
50 Katy Murphy, San Jose Mercury News, California lawmakers want to bring back local redevelopment agencies (Mar. 16, 2018), *available at* https://www.mercurynews.com/2018/03/16/sjm-l-redevelop-0317/.
51 California Department of Finance, Redevelopment Agency Dissolution, *available at* www.dof.ca.gov/Programs/Redevelopment.
52 City of Los Angeles Department of City Planning, Recommendation Report: Case No. CPC-2013-3169-CA (May 8, 2014) at 3, *available at* http://clkrep.lacity.org/onlinedocs/2013/13-1482-s1_misc_e_6-16-14.pdf.

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ily to administer the former CRA/LA's enforceable obligations and dispose of its assets, it also plays a role in the administration of the former CRA/LA's redevelopment plan areas because the dissolution legislation did not abolish the redevelopment plan areas or eliminate the redevelopment plans that govern them.[53]

In the City of Los Angeles, CRA/LA-DLA has authority over 19 active redevelopment plan areas, each of which has a redevelopment plan that specifies permitted land uses and prohibitions or limitations, like density limitations, on land uses. In mid-2018, CRA/LA-DLA released a memorandum articulating its position on the interplay between the land use provisions set forth in its redevelopment plans and the TOC Program. Because its authority over redevelopment plan areas is derived from state law, CRA/LA-DLA has taken the position that its land use authority to administer redevelopment plans exceeds that of the City Planning Department, and that as a result, the land use requirements of the redevelopment plans—in particular, the density limits set by redevelopment plans—trump application of the TOC Program when the two conflict.[54] CRA/LA-DLA clearance is required for projects located in redevelopment plan areas.

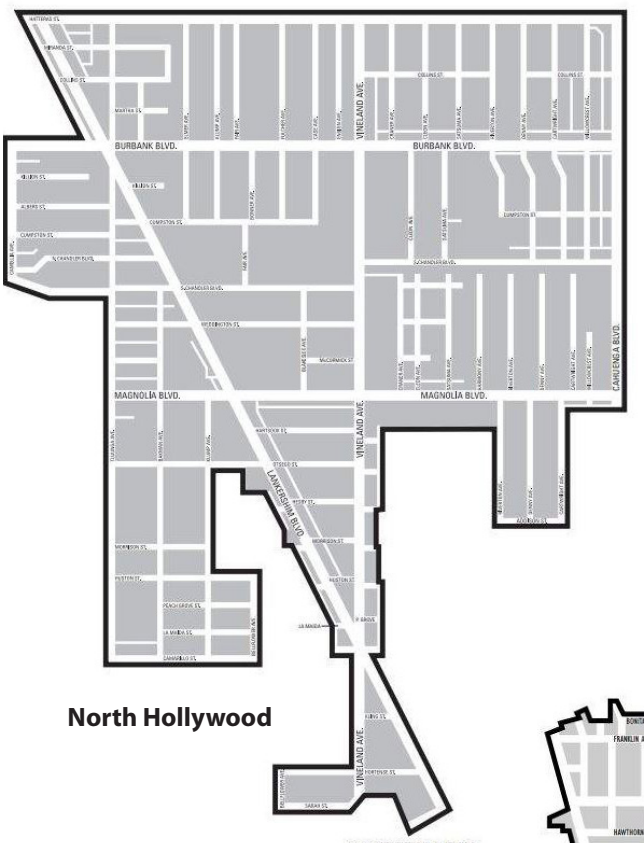
In practical effect, this means that there are multiple redevelopment areas within the City where redevelopment plans may bar developers from utilizing TOC Program incentives to their full extent, restricting the number of housing units that may be built. At this time, the City seems to concur that developers seeking TOC Program incentives in those redevelopment areas will be constrained by the limits in the redevelopment plans.[55] CRA/LA-DLA initially asserted that the conflict would impact six redevelopment plan areas—City Center, Central Industrial, Hollywood,

53 *Id*. at 3.
54 CRA/LA, A DESIGNATED LOCAL AUTHORITY, Transit Oriented Communities (TOC) Density Bonuses (Jun. 27, 2018).
55 CITY OF LOS ANGELES DEPARTMENT OF CITY PLANNING, Advisory Memo on Application of Transit Oriented Communities (TOC) Incentives in CRA/LA Redevelopment Plan Areas (Jan. 9, 2019), *available at* https://planning.lacity.org/ordinances/docs/TOC/adopted/AdvisoryMemo.pdf.

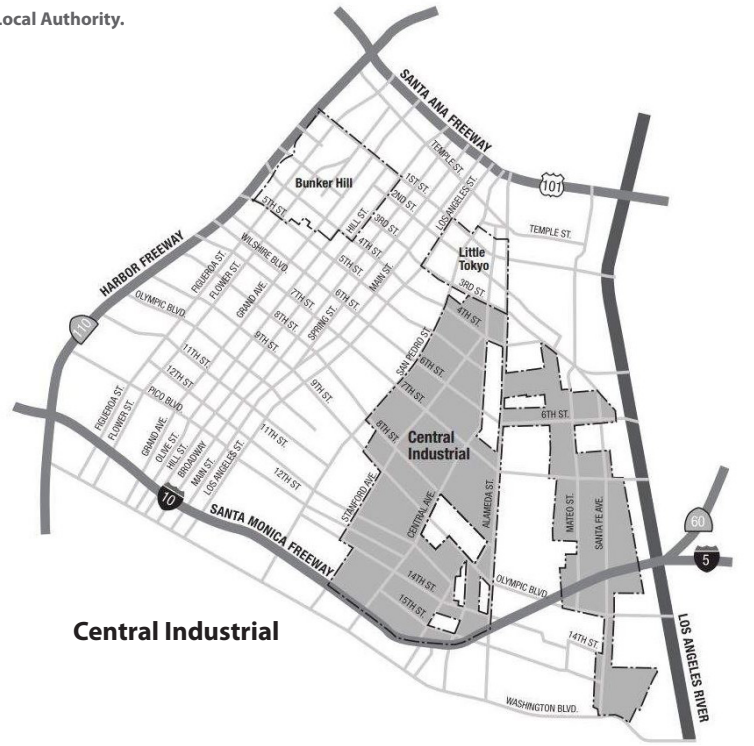
Hollywood/Western Metro Station

EXHIBIT A

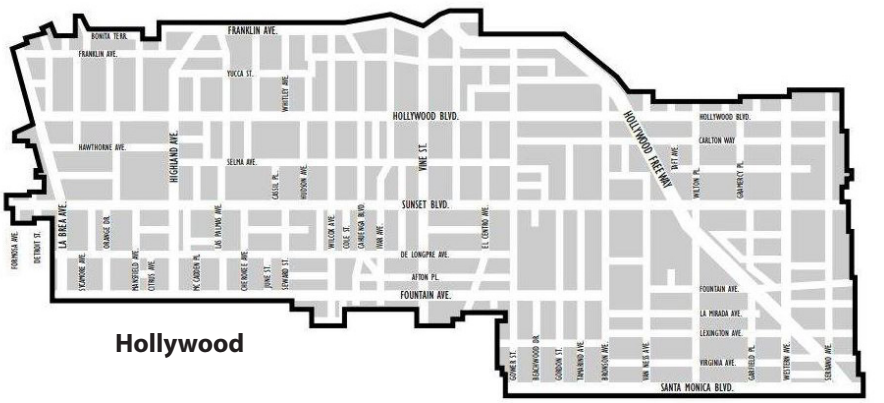
Maps provided by CRA/LA, a Designated Local Authority.



North Hollywood



Central Industrial



Hollywood

North Hollywood, Wilshire Center/Koreatown, and Pacific Corridor—and estimated that at least 25 TOC Program projects, including over 200 affordable housing units and over 50 permanent supportive housing units, mostly in the Hollywood and Wilshire Center/Koreatown areas, would be restricted in their ability to take advantage of program incentives as a result.

Upon direction by the City Council, Planning Department staff assessed the status of impacted projects, as well as any direction project applicants received from the City about the conflict and the status of ongoing efforts to address the conflict with CRA/LA-DLA.[56] The Plan-

56 City of Los Angeles Department of City Planning, Community Redevelopment Agency/Los Angeles Designated Local Authority (CRA/LA-DLA) and Measure JJJ Transit Oriented Communities Incentives; CF 18-1023 (Apr. 4, 2019), *available at* https://clkrep.lacity.org/onlinedocs/2018/18-1023_rpt_PLAN_04-04-2019.pdf.

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ning Department concluded that only three redevelopment plan areas—Hollywood, North Hollywood, and Central Industrial—should be affected , eliminating the impact of the conflict in the Wilshire Center/Koreatown area where a number of projects seeking to utilize TOC Program incentives have been proposed.[57] As of April, 16 projects in the Hollywood and North Hollywood redevelopment plan areas were impacted by the conflict; the Planning Department indicated that it had reached out to project applicants to suggest that they explore using the Density Bonus Law or other entitlement options instead of the TOC Program.[58]

The Planning Department's proposed workaround raises a key issue for project applicants in these plan areas; utilizing the Density Bonus Law or conditional use entitlements instead of the TOC Program incentives can mean that a project moves from ministerial approval to discretionary approval, increasing its potential vulnerability to legal challenges.[59] Utilizing these pathways instead of the TOC Program could also result in a reduction in the number of permitted deed-restricted affordable housing units, as the Density Bonus Law offers density incentives at a lower percentage of committed affordable housing units than is required by the TOC Program. And, as noted above, the Density Bonus Law does not offer incentives at the ELI level, so inability to use the TOC Program could reduce the availability of deed-restricted units for individuals and families at this most vulnerable income level. The Planning Department's assessment of impacted projects also offers a limited snapshot; as applications to utilize TOC Program incentives continue to rise, the conflict may worsen, and there is no way to accurately capture the number of forgone development projects that are not pursued—and the number of deed-restricted affordable housing units never developed—as a result.

For now, the Planning Department's imperfect solution may be the best option, but the TOC Program's ability to produce more deed-restricted affordable housing in affected plan areas is likely to remain constrained.

At this time, interagency cooperation between CRA/LA-DLA and the Planning Department remains the best hope for resolving this issue. While the Planning Department's proposed workaround could still lead to the production of some number of deed-restricted affordable housing units, it is not an ideal solution. In the past, the City of Los Angeles has contemplated accepting a transfer of CRA/LA-DLA's land use authority under the redevelopment plans[60]; doing so could effectively eliminate this conflict. However, questions remain about the City's administration of CRA/LA-DLA's land use authority, and confirming the City's responsibility to adhere to past CRA/LA-DLA agreements that guarantee the preservation of lower-income housing is critical to ensuring the availability of affordable housing.[61] Until these issues can be resolved, the Planning Department's imperfect solution may be the only option, but the TOC Program's ability to produce more deed-restricted affordable housing in affected plan areas is likely to remain constrained.

57 *Id*. at 2. CRA/LA-DLA has not challenged the City's assessment that only projects in three redevelopment plan areas are affected.

58 *Id*. at 3-4.

59 As discussed in Section III.B.2, *infra*, discretionary approvals are subject to CEQA, while ministerial approvals are not. A discretionary approval process increases the likelihood that a project will be challenged under CEQA, adding a risk of protracted litigation that may dissuade developers and their investors from pursuing a project.

60 City of Los Angeles Department of City Planning, Recommendation Report: Case No. CPC-2013-3169-CA, *supra* note 52. On August 27, 2019, the City Council's Planning and Land Use Management Committee approved a CEQA exemption for a proposed City Council resolution and ordinance delegating CRA/LA-DLA's land use authority to the City, but keeping the redevelopment plans intact. The proposed ordinance contains express language stating that the redevelopment plans will supersede the Municipal Code and City ordinances to the extent that there is any conflict, perpetuating the constraint identified in this section. *See* City of Los Angeles Planning and Land Use Management Committee, Council File No. 13-1482-S3 (Aug. 27, 2019), *available at* http://clkrep.lacity.org/onlinedocs/2013/13-1482-S3_ord_draft_08-23-2019.pdf.

61 *See* Legal Aid Foundation of Los Angeles, Letter to Los Angeles City Council Planning & Land Use Management Committee (Aug. 9, 2016), *available at* https://clkrep.lacity.org/onlinedocs/2013/13-1482-S1_pc_8-9-16.pdf.

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Construction site in downtown LA

2. *Impacts of discretionary review processes.*

Because discretionary review can complicate the development process, some developers may choose not to take full advantage of program incentives--or choose not to use them at all.

There are multiple ways in which projects that are eligible for TOC Program incentives could become subject to discretionary review—review that requires the exercise of judgment or deliberation by the City in determining whether to approve the project—if they utilize those incentives. Because discretionary review can complicate the development process, some developers may choose not to take full advantage of program incentives—or choose not to use them at all. The end result of such choices would be fewer affordable housing units, limiting achievement of the program's goals.

The California Environmental Quality Act, or CEQA, is an environmental review statute applicable to plans and projects in the state that require discretionary approval from a government agency.[62] The law requires government agencies, before approving a project, to assess the significance of a project's environmental impacts and to identify and require measures to mitigate significant impacts when feasible.[63] In addition to its important function of lessening or avoiding project environmental impacts where possible, CEQA serves an important public disclosure function, allowing for community and stakeholder participation in project approval processes with the goal of increasing transparency in those processes.

Because the statute itself does not delegate enforcement authority to any particular state agency, CEQA enforcement comes in the form of private litigation against projects that allegedly fail to satisfy the law's requirements. As the housing shortage has worsened in recent

62 Cal. Pub. Res. Code § 21080.
63 *See* Cal. Pub. Res. Code § 21002.1.

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Some Los Angeles developers have focused their efforts on pursuit of by-right projects, which are exempt from discretionary review but are also relatively low-density.

years, CEQA has come under attack for what some claim is its role in perpetuating the crisis.[64] Proponents of this theory argue that CEQA can be abused when individuals, organizations, or community groups with a "not in my backyard" approach, or other organized interests like labor groups, use the statute to sue projects for purposes unrelated to the environmental objectives it was designed to achieve. Such lawsuits can be used as tools to delay a project or to extract other concessions from the project developer. Because CEQA challenges take time and resources to litigate, potentially impacting a project's bottom line, some say that the threat of CEQA litigation chills development of key infill projects that could help alleviate the housing shortage.

But other studies show that CEQA litigation, while certainly a risk for project developers, impacts only a very small percentage of all projects that undergo CEQA review.[65] A review of CEQA litigation data also does not demonstrate that litigation frequency is trending upward, meaning that there have not been more CEQA suits on an annual basis as the housing crisis has progressed.[66] However, even without litigation, the CEQA review process can itself take between 10 and 29 months,[67] and the litigation process can extend for an average of 18 to 24 months beyond that. In a changing market, financing options for a project can become more uncertain, or can disappear altogether, during that timeframe. Developers and their investors do view the possibility of CEQA review and litigation as an additional project risk when evaluating development potential for sites, [68] and in Los Angeles in particular, recent years have seen high-profile CEQA litigation challenges, some resulting in major project stalls.[69] Weighing these factors has led some Los Angeles developers to focus their efforts on pursuit of by-right projects: projects consistent with existing zoning and that do not require discretionary approvals from the City. These kinds of ministerial projects are exempt from the CEQA process but are also relatively low-density.

Projects utilizing the TOC Program can be subject to discretionary review in two different ways. First, while some menu incentives are ministerial—they are automatically granted by the City if certain conditions are met—others are not, and the determination to allow for those

64 For example, some have claimed that infill development projects are disproportionately the subject of CEQA challenges. *See* Jennifer Hernandez, et al., Holland & Knight, *In the Name of the Environment* (Jul. 14, 2015), *available at* https://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu. Others have challenged the methodology behind these claims, contending they use a nonstandard and misleading definition of infill, or are flawed in other ways. *See*, *e.g.*, Sean Hecht, Legal Planet, *Anti-CEQA Lobbyists Turn to Empirical Analysis, But Are Their Conclusions Sound?* (Sept. 28, 2015), *available at* https://legalplanet.org/2015/09/28/anti-ceqa-lobbyists-turn-to-empirical-analysis-but-are-their-conclusions-sound/.

65 *See* Rose Foundation, *CEQA in the 21st Century: Environmental Quality, Economic Prosperity, and Sustainable Development in California* (Aug. 2016), *available at* https://rosefdn.org/wp-content/uploads/2016/08/CEQA-in-the-21st-Century.pdf.

66 *Id*. at ii.

67 *Id*. at iii.

68 *See* MGAC, *Los Angeles Construction Market Mid-Year Report 2018* (Jun. 2018), *available at* https://www.mgac.com/blog/wp-content/uploads/2018/08/MGAC-Los-Angeles-Construction-Market-Mid-Year-Report-2018.pdf?utm_source=LA%20market%20report&utm_medium=blog&utm_campaign=AB%20bottom (noting that challenges as part of the entitlements process have deterred foreign developers from building in Los Angeles).

69 *See, e.g.*, Bianca Barragan, Curbed Los Angeles, AIDS Healthcare Foundation sues LA over Crossroads of the World redevelopment (Feb. 21, 2019), *available at* https://la.curbed.com/2019/2/21/18234996/aids-healthcare-foundation-lawsuit-crossroads-of-the-world-development (challenging redevelopment of the Crossroads of the World site as a mixed-use transit-oriented development project with 950 residential units, including deed-restricted affordable housing units); BusinessWire, AHF Sues City of Los Angeles, Council Members and Developer over Hollywood's Palladium Project (Apr. 21, 2016), *available at* https://www.businesswire.com/news/home/20160421006848/en/AHF-Sues-City-Los-Angeles-Council-Members (CEQA lawsuit challenged mixed-use development project near the Hollywood Palladium Theater); Bianca Barragan, Curbed Los Angeles, Judge Tanks Plans for Two Giant Towers by Capitol Records (Apr. 30, 2014), *available at* https://la.curbed.com/2015/4/30/9965214/judge-tanks-plans-for-two-giant-towers-by-capitol-records (CEQA lawsuit halted construction of the Millennium Hollywood high-rise project). These high-profile cases have largely been due to the efforts of a handful of individuals and organizations but have captured significant attention in the city. And while the 2017-2018 period saw a rise in housing construction, 2019 data suggests construction may be slowing. *See* Elijah Chiland, Curbed Los Angeles, LA housing construction surging—for now (Aug. 13, 2019), available at https://la.curbed.com/2019/8/13/20802833/los-angeles-housing-development-data-construction.

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additional incentives is a discretionary one.[70] The discretionary review process applicable to TOC Program bonuses is less onerous than that which applies to other discretionary City approvals, such as requests for zone changes; discretionary TOC Program bonuses are approved by review of the Planning Director, and a public hearing is required only in the event of an appeal. By contrast, zone changes and General Plan amendments require multiple public hearings culminating in approval by the City Council, a far lengthier and more involved political process. Nonetheless, even the TOC Program's more limited discretionary process triggers CEQA review.

Second, all projects in the City that exceed 50 net new residential units are subject to the site plan review process, which is discretionary, regardless of whether or not those projects would otherwise have been permitted by-right given a site's zoning.[71] The City has clarified that site plan review requirements apply to the base number of allowable residential units on a site.[72] In other words, if a project would contain fewer than 50 base residential units, but by virtue of ministerial TOC Program incentives, more than 50 units may be proposed, site plan review requirements still would not apply. But for larger projects hoping to take advantage of TOC Program incentives, even when those incentives are ministerial, the discretionary site plan review process will be necessary.

Developers interested in a by-right approval process may choose to avoid using discretionary TOC Program incentives or to avoid developing larger projects on TOC Program-eligible sites.

Developers interested in a by-right approval process may choose to avoid using discretionary TOC Program incentives or to avoid developing larger projects on TOC Program-eligible sites, which could impact the number of deed-restricted affordable housing units ultimately permitted through the program. For example, while density bonuses are ministerial under the TOC Program, discretionary incentives, like height increases or setback reductions, may be necessary to make the most of those bonuses. If a developer chooses not to pursue those discretionary incentives in favor of a ministerial process, forgone density could mean a lower absolute number of deed-restricted affordable housing units in a project (because required affordable housing is defined as a percentage of total housing units). Similarly, a developer seeking to avoid the discretionary site plan review process entirely may choose to build a project of fewer than 50 units on a site that has more zoned capacity, and in so doing, would not take advantage of the TOC Program incentives at all—meaning that developer would not be bound by the affordable housing obligations that come along with those incentives. Finally, developers leery of the discretionary process could focus their attention on development of smaller sites with density limited to 49 units or less, limiting the number of larger projects with more potential impact to produce deed-restricted affordable housing units.

Still, as discussed above, questions remain about the extent to which discretionary review processes chill infill development. In part, those questions persist due to a dearth of data and analysis that could assist policymakers in understanding the role discretionary review plays in developers' choices to use—or not use—density bonus incentives. Some advocate for streamlining benefits that would apply to infill development projects like those eligible for the TOC Program, and would free developers from having to consider the impacts of discretionary review—particularly the threat of CEQA litigation—when making these choices. But streamlining can come with significant consequences for public disclosure processes and community involvement, meaning that policymakers should be wary of making indiscriminate streamlining changes without knowing

70 *See TOC Program Guidelines, supra* note 15, at 9, 11; L.A.M.C. 12.22 A.25(g)(2).
71 L.A.M.C. 16.05. The result of this requirement is that virtually all projects that attain transit-supportive density are subject to discretionary site plan review.
72 *TOC Program Guidelines*, *supra* note 15, at 9.

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more about the impact of discretionary review processes on the use of density incentives.

The TOC Program could offer opportunities to gather data that would clarify whether, and how much, discretionary review processes are chilling maximum development of TOC Program-eligible parcels. One way to collect this data would be to institute a short-term pilot project in Tier 3 and 4 areas testing the impact of further streamlining. For one year, the City could test two measures that could theoretically increase the number of projects taking advantage of TOC Program incentives in Tiers 3 and 4: (1) making all discretionary TOC Program incentives ministerial and (2) eliminating site plan review for projects up to 100 base units, both in exchange for an increase in the required percentage of deed-restricted affordable housing units.[73]

The pilot could be restricted to Tier 3 and 4 areas that do not abut single-family residential properties, to limit any perceived impact on neighborhood character, and could additionally require that any development taking advantage of the pilot be required to provide discounted transit passes to all residents for 3 years. This could have the effect of increasing the number of by-right TOC Program projects in the areas best-served by mass transit, while also requiring that significant numbers of residential units be set aside for low-income residents. The year-long time limitation for the pilot would allow the City to assess developers' interest and impact on overall number of permitted deed-restricted affordable housing units through the TOC Program without more substantial and longer-term program revisions, while further promoting the program's affordability and transit-oriented development goals.

In proposing such a pilot project, this paper does not adopt the view that the CEQA process or CEQA litigation plays an outsize role in the perpetuation of housing shortages. This paper also strongly advocates that any streamlining of discretionary approval processes not be taken lightly: CEQA is an important public participation and environmental mitigation tool, and where environmental review obligations under CEQA are eliminated, advocates of streamlining should consider requiring additional benefits in the public interest, like increased percentages of deed-restricted affordable housing, to ensure the needs of disadvantaged communities are met. However, a short-term pilot project such as the one proposed here would be a limited measure that could help clarify the ways in which discretionary approval processes constrain, if at all, the number of housing units built through the TOC Program.

3. Lack of application in cases of zone change.

The TOC Program also has a constraint built into its framework: the program cannot be used if a project receives the benefit of "any development bonus or other incentive granting additional residential units or floor area provided through a General Plan Amendment, Zone Change, Height District Change, or any affordable housing development bonus in a Transit Neighborhood Plan, Community Plan Implementation Overlay (CPIO), Specific Plan, or overlay district."[74] The provision appears intended to address "double-dipping"—preventing a project from using multiple density bonuses on top of each other. But because of its import for industrially-zoned and conditionally-zoned properties, it may have unintended consequences that could limit the production of additional deed-restricted affordable housing units. It removes

73 Recommended increases in the required percentage of deed-restricted affordable housing units would be to 14 percent ELI, 19 percent VLI, 33 percent LI, or 33 percent MI in a common interest development in Tier 3 or 15 percent ELI, 20 percent VLI, 35 percent LI, or 35 percent MI in a common interest development in Tier 4. Current required affordable housing percentages to receive the maximum number of discretionary additional incentives under the TOC Program are 11 percent ELI, 15 percent VLI, 30 percent LI, or 30 percent MI in a common interest development. *See* Section II, *supra*.

74 *TOC Program Guidelines*, *supra* note 15, at 7.

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a potential incentive to convert non-residential properties to residential use, and results in confusion about the effect of certain pre-TOC zone changes.

Potentially the most significant of these consequences is the impact that the provision has on industrially-zoned properties close to major transit stops.[75] Many industrially-zoned properties in the City are use-restricted such that a zone change would be required to site residential units on them. Applying for such a zone change would, however, make them ineligible for TOC Program incentives.

The City has recently taken some steps to modify the zoning of certain industrial properties near mass transit, but many industrially-zoned properties are not impacted by those modifications. For example, the Exposition Corridor Transit Neighborhood Plan, approved last year, will allow taller mixed-use buildings within a half-mile radius of five Westside Expo Line stops, rezoning some industrial properties to allow for residential development.[76] The plan also includes its own affordable housing incentive program, which supersedes the TOC Program in covered plan areas. This program offers a density bonus and parking incentives provided a project commits to 10 percent ELI, 14 percent VLI, or 23 percent LI deed-restricted affordable housing units.[77] However, the Exposition Corridor Transit Neighborhood Plan affects a limited number of properties and does not impact zoning near any Expo Line station east of Culver City. Industrially-zoned properties remain elsewhere in the City, including near mass transit in Downtown Los Angeles.

Where a developer is considering the value of engaging in the zone change process for an industrial property, eligibility for TOC Program incentives could offer a reason to convert the property.

The process for converting these properties to residential zoning will not necessarily result in the production of deed-restricted affordable housing units at the levels required by the TOC Program. And significantly, conversion would bar a developer from using TOC Program incentives that come with an obligation to produce more affordable housing.[78] Properties like these can only be a net gain from a housing perspective: they move from a prohibition on housing units to some permitted number of housing units after a zone change. Rendering them ineligible for TOC Program incentives, however, removes an important incentive that could prompt the development of more deed-restricted affordable housing units when these properties do turn over. Zone changes alone typically cannot result in the amount of density available to developers through ministerial TOC Program incentives; the Municipal Code applies a 1 unit per 400 square foot unit density ratio to much residential and mixed-use zoning, meaning that developers must weather the more time-intensive and riskier variance process to add density. Nor will a zone change itself result in reduced parking requirements, which the TOC Program allows ministerially. And in many cases a zone change will not implement reduced yard and

75 Another unintended consequence, albeit one with less likely impact on a project's number of deed-restricted affordable housing units, is the effect on parking reductions, which are one tool the City has to incent increased transit use. Under the TOC Program, parking reductions are ministerial, but through the zone change process, they are discretionary; this means that industrial properties near mass transit that utilize the zone change process alone to convert to a residential use could face significant opposition with respect to parking requirements that would otherwise be eliminated if the zone change were sought first and then the TOC Program were utilized to reduce parking requirements.

76 *See* City of Los Angeles Department of City Planning, *Exposition Corridor Transit Neighborhood Plan*, Council File No. CPC-2013-621-ZC-CPA-SP (approved Aug. 2, 2018), *available at* http://clkrep.lacity.org/onlinedocs/2018/18-0437_misc_1_05-17-2018.pdf.

77 *Id*. at 3-5. These percentages are slightly lower than the 11 percent ELI, 15 percent VLI, or 25 percent LI required in Tier 4 under the TOC Program, so for projects sited in what would otherwise be designated a Tier 4 area, the plan's application would result in slightly fewer deed-restricted affordable housing units. The plan also eliminates site plan review for projects in the plan area, which means tracking projects that seek affordable housing-related density bonus incentives in the plan area could be another way to track the impact of lessening site plan review requirements near mass transit.

78 Measure JJJ requires that, where a zone change would permit a residential use where none was previously allowed, 5 percent of total project units must be provided at rents affordable to ELI households, and either 11 percent of total project units must be provided at rents affordable to VLI households or 20 percent of total project units must be provided at rents affordable to LI households. Measure JJJ, Sec. 11.5.11(a)(1)(iii). These affordability percentages are consistent with TOC Program requirements in Tier 1.

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setback requirements, which can increase building envelope and are available through the discretionary TOC Program process. In other words, where a developer is considering the value of engaging in the zone change process, eligibility for TOC Program incentives could offer the developer a reason to convert the property.

A second potential consequence involves properties that were subject to a conditional zone or height district change when the TOC Program became effective. While the TOC Program incentives clearly apply to a site's existing zoning, when conditional zone changes are at play, an added wrinkle could create confusion about the availability of program incentives. In some cases, a project's zone change is subject to a "Q," or qualified, condition, meaning that the zone change becomes effective once the condition has been met.[79] If a property was already entitled for a conditional zone change when the TOC Program went into effect, but the condition has not yet cleared, it is unclear whether the "existing zoning" for purposes of applying TOC Program incentives is the approved zoning, with the Q Condition attached, or the pre-entitlement site zoning. Developers who take title to a Q-conditioned property before the condition has cleared may also wonder whether the clearance of the condition represents a zone change that would render the project ineligible for TOC Program incentives. While this scenario is likely to have far less impact than the issue of industrially-zoned properties, ambiguity on this point could further constrain application of the TOC Program.

The City could take steps to address both of these potential issues. With respect to industrially-zoned properties, the City could add clarifying language to the TOC Program Guidelines

79 In Los Angeles, site- or project-specific provisions can be established by ordinance as part of a lot's zoning; these specific provisions are known as Q Conditions (Qualified Classifications) and T Conditions (Tentative Zone Classifications). T Conditions represent City Council requirements for public improvements imposed as a result of zone changes, while Q Conditions represent property use restrictions that ensure compatibility with the zoning of surrounding properties. Developers must "clear" any entitlement conditions for zone change requirements to be satisfied.

Construction site in downtown LA

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that would allow for incentives to apply when industrially-zoned properties receive a zone change converting the site to mixed-use or residential zoning, while preserving the general prohibition on use of TOC Program incentives in the event of a zone change. This would allow for application of bonuses specifically in instances where the site did not contain any housing units before. In turn, that would maximize the capacity to add housing units, including deed-restricted affordable housing units, close to mass transit.

With respect to ambiguity around conditional zoning, the City could revise the TOC Program Guidelines to clarify its position on this point. Where a condition is attached to a zone change that was approved prior to the enactment of the TOC Program, the City could specify that the satisfaction of the condition does not preclude eligibility for the program. These clarifications would reduce administrative burden on the City as project developers move through the program application process, and would err on the side of eligibility to maximize the number of deed-restricted affordable housing units required through the program.

Implementation of Possible Measures to Address Identified Challenges

This portion of the paper has identified four possible measures that the City could take to address the TOC Program implementation issues discussed above:

- **Measure #1**: Coordination with CRA/LA-DLA to resolve conflicts between the limitations of the redevelopment plans CRA/LA-DLA administers and the terms of the TOC Program;
- **Measure #2:** Adoption of a one-year pilot program in Tiers 3 and 4, limited to sites that do not abut residential properties, that would, in exchange for an increased deed-restricted affordable housing component and an obligation to provide reduced-price transit passes for 3 years, allow projects to take advantage of the TOC Program's discretionary incentives on a ministerial basis and allow projects of up to 100 base units to avoid site plan review;
- **Measure #3:** Modification of the TOC Program to clarify that zone changes from industrial to mixed-use or residential zoning will not bar a project site from taking advantage of TOC Program incentives; and
- **Measure #4:** Clarification that, where a project site is subject to a conditional zoning requirement imposed before the TOC Program went into effect, the site zoning for purposes of calculating TOC Program incentives is the new zoning, and that clearance of the condition does not reflect a "zone change" barring application of TOC Program incentives.

Of the various measures discussed above, some would require no change to the existing TOC Program ordinance, which is codified in the Los Angeles Municipal Code. Those measures could be implemented by the City either through its normal dealings with other agencies or by making technical clarifications to the TOC Program Guidelines, as the City already did once in February 2018. Measure #1, coordination with CRA/LA-DLA, can occur without any changes to the structure of the TOC Program. Measure #4, clarification on conditional zoning, could likely be implemented through a technical change to the TOC Program Guide-

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lines. Technical changes in the past have included clarifications about the applicability of particular tiers to certain forms of transit (e.g., rapid bus and metro line intersections), clarifications about the applicability of step-backs to certain height increases, and clarifications regarding allowable FAR increases. A clarification on conditional zoning would be consistent with the technical nature of these changes.

The other two recommendations may require additional process. The City could argue that Measure #3, which affects changes from industrial to mixed-use or residential zoning, is a technical change; however, past technical changes to the TOC Program Guidelines have simply resolved ambiguities in the Guidelines's drafting, while this change would represent a modification of the existing program to eliminate a prior restriction in some cases. Similarly, Measure #2, the one-year pilot program, would be a departure from the current program, rather than a technical change.

In both cases, there are two possible mechanisms for modifying the TOC Program. First, TOC incentives may be adjusted in individual incentive areas—meaning individual half-mile radii around a particular transit stop or transit stops—through a Community Plan update, Transit Neighborhood Plan, or Specific Plan, as provided by Ordinance No. 184745, which enacted the program. Alternatively, the TOC Program may be modified citywide if the City Council or a private citizen or group proposes a new ordinance that is approved by the voters, amending the Municipal Code to reflect these adjustments. The first option would require a separate process for each incentive area seeking to employ a modification; the second option would be more widely applicable, but would require a ballot initiative. However, if there was a desire to further limit or test the applicability of either the industrial exemption elimination or the pilot program in individual incentive areas, the City could utilize the first option to create an even smaller-scale adjustment to the program. Modification of the site plan review threshold as proposed by Measure #2 could also require amendment to the Municipal Code provisions applicable to site plan review.

Both options involve a public process and are not without risk: opponents of proposed changes could mount a political or legal challenge to bar any suggested changes to the program. Community Plans, Transit Neighborhood Plans, and Specific Plans are typically reviewed and recommended by a local Area Planning Commission and the City Planning Commission before being heard and adopted by the City Council. Such a process can take months, or years, and engagement by local stakeholders may be high depending on the particular incentive area in question. While the ballot initiative process could theoretically lead to wide-scale program changes on a shorter timeframe, it is subject to significant political risk; Measure JJJ passed with overwhelming support in 2017, but after multiple years of program implementation, community groups that disfavor the TOC Program's upzoning provisions would likely mount significant opposition. Even after a plan or ordinance has been adopted, it is subject to legal challenge, which could further delay implementation.

While some of the more ambitious TOC Program changes identified in this paper could carry their own implementation challenges, they are still worth investigation and consideration. Each proposal may assist in achieving program goals, and serve as valuable data collection tools to test live theories about the effects of transit-oriented development and affordable housing incentive programs.

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What could increased efficacy in implementation of TOC mean for Los Angeles, and California?

The TOC Program's implementation to date has already made it the strongest driver of proposed deed-restricted affordable housing in the City of Los Angeles' production pipeline.[80] The suggestions in this paper, including Measures #2 and #3, have the potential to further increase the efficacy of the program, which in turn would lead to additional production of deed-restricted affordable housing in areas of the City nearest to mass transit. Given the City's current projections, it is safe to say that making the TOC Program easier to utilize would only solidify its position as a major contributor—indeed, at present, the most significant contributor—to deed-restricted affordable housing production in the City.

It bears mentioning, though, that along with this additional deed-restricted affordable housing comes a significant amount of market-rate development, raising questions about neighborhood character and displacement in some areas. There is a body of still-developing literature that examines the potential impacts of infill development on gentrification and displacement in major metropolitan areas.[81] Although a full assessment of those issues is beyond the scope of this paper, sensitivity to concerns about gentrification and displacement must be paramount when considering expansions to measures like the TOC Program, either locally or on the state level. The suggestions made in this paper are designed to enhance the program's potential to produce housing, including deed-restricted affordable housing, while limiting the effects of displacement by conditioning streamlining provisions on increased provision of deed-restricted affordable housing and concentrating streamlining in areas nearest rail stations, and by eliminating program restrictions only when the property in question is moving from an industrial to a residential use. However, before making any changes, policymakers should carefully assess and consider the potential effect of such changes on gentrification and displacement.

To help with this assessment, policymakers and others could be doing more to collect data about the ways in which new transit-oriented infill development impacts existing residents in surrounding neighborhoods. The nature of the TOC Program allows researchers to identify specific sites and their changes in use. Policymakers could develop early and continued engagement with residents near TOC Program sites once a project is proposed or approved, and collect information about specific attributes of new projects once they are developed. For example, data tracking the number and percentage of market-rate versus affordable units, demographics of residents living in market-rate and affordable units, demographics in adjacent residential areas, frequency of mass transit use by residents in market-rate units versus affordable units, car ownership among market-rate and affordable residents, and more could be collected. In sum, gathering data about TOC Program projects may help to further elucidate questions about gentrification, displacement, and infill development.

80 *See* City of Los Angeles Department of City Planning, Housing Progress Report—Quarterly Report: January-March 2019, *supra* note 35.

81 *See, e.g.*, Quentin Brummett and Davin Reed, Federal Reserve Bank of Philadelphia, *The Effects of Gentrification on the Well-Being and Opportunity of Original Resident Adults and Children* (Jul. 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3421581; Miriam Zuk, et al., 33 Journal of Planning Literature 31, *Gentrification, Displacement, and the Role of Public Investment* (Feb. 2018), *available at* https://escholarship.org/uc/item/0mh6f3tr; Karen Chapple, et al., *Developing a New Methodology for Assessing Potential Displacement* (Apr. 26, 2017), *available at* https://ww3.arb.ca.gov/research/apr/past/13-310.pdf; UC Berkeley, The Urban Displacement Project, available at https://www.urbandisplacement.org/.

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In addition to serving as a potential source of useful data, the TOC Program has a role to play as an example for other localities and state legislators grappling with application of transit-oriented development principles to the state's current housing shortage. The program's implementation successes and challenges can give lawmakers a sense of the outcomes associated with inclusionary transit-oriented development laws. This information can also help them think critically about the best ways to iterate: assessing how laws define and designate affordable housing, whether and how streamlining of discretionary processes is permitted, and stakeholder experiences as the program continues in effect. As legislation intended to promote transit-oriented development emerges on the state level year after year—first with SB 827 and now with SB 50[82]—the City's lessons learned from the TOC Program will have particular relevance.

While there is still much we do not know about the outcomes associated with the TOC Program, the information we have suggests a few important points lawmakers should keep in mind as they work to address the housing crisis.

First, the TOC Program has demonstrated that transit-oriented density incentive measures that mandate inclusionary housing can be successful at spurring development of deed-restricted affordable housing under current market conditions. As discussed above, there are still many questions to ask about the mechanics of programs like these. Should the required percentages of affordable housing be higher? What are the financial constraints (e.g. investor concerns, material costs, etc.) that affect developers' choices about participation in the program and the type of affordable housing units to produce, and how do those constraints affect a decision to increase affordability requirements? Do our definitions of AMI appropriately match the demographics of neighborhoods in which new projects are sited, to ensure neighborhood residents can afford a new project's deed-restricted affordable housing units? Even so, the TOC Program has become the top performer in adding affordable housing units to the City's development pipeline. And early data shows, at the very least, that programs like these can result in more, and more affordable, housing as long as current market conditions favorable to the production of housing persist.

Second, the TOC Program can itself be designed to shed light on the impacts of streamlining approval processes. A short-term and limited pilot project designed to streamline project approvals in Tiers 3 and 4 in exchange for an increased affordability requirement would help better assess the role risk from discretionary approval processes plays in developers' choices. But even if such a pilot is not introduced, the TOC Program can already serve as a source of valuable data about developer choice on this score. For example, assessments of the number of ministerial versus discretionary incentive applications could help elucidate the point at which density bonus incentives outweigh concerns about delays due to discretionary processes.[83] As approved TOC Program projects move forward, timelines for discretionary review and litigation challenges to discretionary projects can be tracked. This information can give lawmakers a better sense of how to most effectively employ streamlining efforts, if at all—rather than blindly proposing across-the-board streamlining, which can strip vulnerable communities of important opportunities for public participation.

82 Local governmental bodies, including the Los Angeles City Council, have been highly critical of these measures, which they view as unreasonable attempts to strip local governments of control over their own land use processes. In Los Angeles, members of the City Council have even pointed to the TOC Program as evidence that state legislation is not needed. *See* Statement of Paul Koretz at Los Angeles City Council Meeting (Apr. 16, 2019) (speaking in opposition to SB 50) ("…in Los Angeles, we have already densified and we already have TOCs…So, there doesn't seem to be much of a point and where we do something that most cities haven't done, this legislation doesn't acknowledge that.").

83 For example, current City data on TOC Program implementation suggests that discretionary TOC Program applications outpaced by-right applications by a factor of about 2 to 1 in the first quarter of 2019. City of Los Angeles Department of City Planning, Housing Progress Report—Quarterly Report: January-March 2019, *supra* note 35, at 4.

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Finally, the TOC Program provides one possible blueprint for targeted placement of inclusionary housing in places where it can provide greenhouse gas reduction benefits. The Southern California region accounts for over half of the state's transit trips[84], and recent data shows that transit riders in the region are heavily concentrated in urban areas that hold 45 percent of the region's mass transit commuters, despite only holding about 17 percent of the region's total population.[85] Low-income riders are the most frequent users of mass transit in Southern California.[86] This data suggests that situating affordable housing in areas well-served by mass transit can ensure continued transit ridership rather than the use of more carbon-intensive transportation alternatives, and underscores the importance of providing housing options near transit for low-income residents. Transit-oriented development measures should take into account the realities of mass transit ridership; a transit-oriented inclusionary housing incentive program can do just that by requiring that developers provide housing accessible to low-income residents in order to unlock a site's full development potential. The TOC Program serves as an important reminder that simply increasing density near mass transit is not enough to tackle either our housing or our greenhouse gas reduction goals: increasing density while at the same time providing for the needs of our most vulnerable populations will better help us achieve both.

Recommendations and Conclusion

Since coming into effect in late 2017, the TOC Program has quickly become a key driver of deed-restricted affordable housing production in the City of Los Angeles. However, the program faces some implementation challenges that potentially limit its full efficacy. Limited modifications to the way that the program is implemented could assist in better understanding and mitigating those challenges, and in promoting the production of additional affordable housing units.

To address these possible challenges, and to take advantage of the TOC Program as a learning tool as state and local politicians consider the role of transit-oriented development in addressing California's housing shortage and climate goals, this paper recommends:

- **Possible alterations to the TOC Program that could assist in easing program implementation challenges:**
  - — Coordination with CRA/LA-DLA to resolve conflicts between the limitations of the redevelopment plans CRA/LA-DLA administers and the terms of the TOC Program;
  - — Adoption of a one-year pilot program in Tiers 3 and 4 that would allow projects to take advantage of the TOC Program's discretionary incentives on a ministerial basis and allow projects of up to 100 base units to avoid site plan review in exchange for affordability and transit pass concessions;
  - — Modification of the TOC Program to clarify that zone changes from industrial to mixed-use or residential zoning will not bar a project site from taking advantage of TOC Program incentives; and
  - — Clarification regarding conditional zoning requirements imposed before the TOC Program went into effect, explaining that site zoning for purposes of calculating TOC Program incentives is the new zoning and TOC Program incentives apply.

84 Manville, et al., *supra* note 14, at 17.
85 *Id.* at 5-6.
86 *Id*. at 5.

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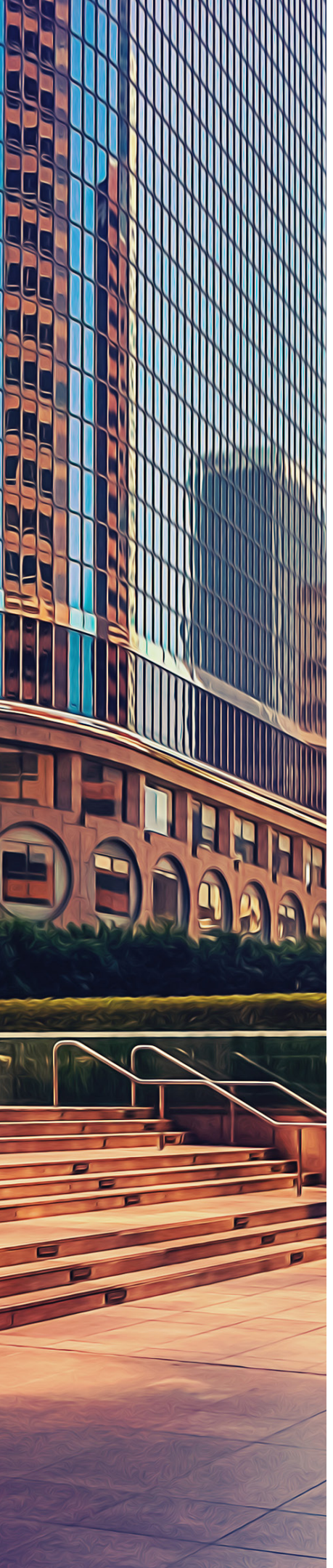
- **Expanded efforts to take advantage of opportunities for data collection related to the TOC Program. These efforts could include:**
  - — Assessment of existing TOC Program data, already collected by the City, that tracks the number of discretionary and non-discretionary TOC Program applications;
  - — Tracking legal challenges to discretionary TOC Program projects;
  - — Assessment of Tier 3 and 4 TOC Program application data created by the implementation of the one-year pilot program suggested as Measure #2, if it is implemented;
  - — Collection of data to track neighborhood patterns and demographics in TOC Program incentive areas, including data regarding prior uses of TOC Program project sites, number and percentage of market-rate versus affordable housing units within individual TOC Program projects, neighboring uses to project sites, income levels and racial demographics of the residents of TOC Program projects and in surrounding residential areas, area rents over time as compared to average city-wide rent increases in the same time period, etc.; and
  - — Collection of data to track VMT and transit ridership associated with TOC Program projects, including information about car ownership rates in market-rate versus affordable housing units, frequency of mass transit use by market-rate and affordable housing residents, impacts of discounted transit pass programs on ridership by project residents, etc.
- **Careful attention to lessons learned from the TOC Program, including stakeholder experiences, successes, and challenges, as other lawmakers think about crafting additional legislation to promote transit-oriented development. Areas for consideration include:**
  - — Assessment of AMI and affordability designations, and their interplay with neighborhood demographics for individual TOC Program projects;
  - — The impact of discretionary approval processes and, if relevant in the future, limited streamlining, on utilization of the program;
  - — Financial constraints that affect developer choice about participation in the TOC Program and impacts of those constraints on the production of affordable housing units; and
  - — A critical review of required affordability percentages for the TOC Program, taking into consideration anti-displacement concerns and market factors.

In sum, the TOC Program's success is notable, but does not fully resolve how transit-oriented development measures can best be utilized to address California's housing shortage. As lawmakers at the state and local levels continue to develop and propose solutions to improve housing outcomes in the state, they should both look to the TOC Program as a potential source of valuable data and lessons learned about inclusionary transit-oriented development incentives programs, and work to further improve and build on the program.

EXHIBIT A



Pritzker Briefs

PRITZKER ENVIRONMENTAL LAW AND POLICY BRIEFS

POLICY BRIEF NO. 13 | NOVEMBER 2019

This policy paper is the thirteenth of the Pritzker Environmental Law and Policy Briefs. The Pritzker Briefs are published by UCLA School of Law and the Emmett Institute on Climate Change and the Environment in conjunction with researchers from a wide range of academic disciplines and the broader environmental law community. They are intended to provide expert analysis to further public dialogue on important issues impacting the environment.

ABOUT THE AUTHOR

Julia E. Stein is Supervising Attorney for the Frank G. Wells Environmental Law Clinic, and Project Director for the Emmett Institute on Climate Change and the Environment at UCLA School of Law. Prior to coming to UCLA, she was in private practice at Los Angeles firms for nearly a decade, focusing on environmental litigation, regulatory compliance, and land use practice, including litigating complex environmental cases in state and federal court, advising clients on compliance with state and federal environmental regulations, and assisting clients through land use entitlement and development processes.

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ABOUT THE EMMETT INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT

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The Emmett Institute on Climate Change and the Environment is the leading law school center focused on climate change and other critical environmental issues. Founded in 2008 with a generous gift from Dan A. Emmett and his family, the Institute works across disciplines to develop and promote research and policy tools useful to decision makers locally, statewide, nationally and beyond. Our Institute serves as a premier source of environmental legal scholarship, nonpartisan expertise, policy analysis and training.

UCLA School of Law
Emmett Institute on Climate Change & the Environment

EXHIBIT A

UPDATE #3

Planning, Zoning, and Development Law: What's New from California's Judicial and Legislative Branches?

MODERATOR:

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PANELISTS:

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Matt Klopfenstein, *Legislative and Legal Advisor, California Advisors, LLC*

CONTENT:

1. Presentation
2. 2019 Summary of Case Law
3. 2019 Legislative Summary

EXHIBIT A

Planning, Zoning, and Development Law Update

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What We'll Cover

- Takings
- Coastal Act
- Administrative Hearings & Brown Act
- General Plans & Zoning
- Housing & Homelessness
- Accessory Dwelling Units
- Fees & Prop 218
- 2019-2020 Budget
- First Amendment
- Telecom
- Wildfires
- Stadiums

Takings

Los Angeles County Metropolitan Transportation Authority v. Yum Yum Donut Shops, Inc.

- L.A. Metropolitan Transportation Authority ("MTA") sought to condemn a Yum Yum Donut Shop because it was on a proposed path of an MTA light rail line.
- Yum Yum rejected MTA's proposed sites for relocation, which would have mitigated goodwill losses, but would not have eliminated goodwill losses completely.
- Court of Appeal held Yum Yum only needed to prove "*some* or *any* unavoidable loss of goodwill" to show entitlement to compensation for goodwill under Code of Civ. Proc. section 1263.510. Therefore, the court held that Yum Yum was entitled to a jury trial on the amount of the loss.
- **Take away:** A condemnee only needs to prove "*some* or *any* unavoidable loss of goodwill" to demonstrate entitlement to compensation for goodwill losses. The ability to relocate or otherwise mitigate the loss of goodwill does not preclude entitlement to compensation for goodwill losses.

Prout v. Department of Transportation

- Plaintiff dedicated to Caltrans a 20-foot-wide strip of land as public right-of-way, but property was never transferred by deed to Caltrans. Twenty years later Caltrans widened the highway and included the dedicated property.
- Plaintiff filed an inverse condemnation action against Caltrans
- Caltrans filed a cross-complaint for breach of contract, promissory estoppel, and specific performance, alleging that plaintiff had accepted the benefit of the encroachment permit but refused to finalize the dedication and deed of the property.
- **Take away**: Mere passage of time does not nullify a dedication of land, and a dedication may be impliedly accepted. There cannot be a taking of property when the property has already been dedicated.

City of Orville v. Superior Court of Butte County

- A dentist office filed an inverse condemnation claim when sewage entered and damaged the building.
- Trial court determined that the City was liable for the damage because the sewer line was partially blocked by roots. Court of Appeal affirmed because the Plaintiff's actions were irrelevant to the judgement and evidence showed some causation.
- Supreme Court reversed and remanded because the private party's actions must be considered to prove the harm is substantially caused by the City and not the private person. Furthermore, the lower courts did not consider if there was an inherent risk in the original system which is necessary for an inverse condemnation claim.
- **Take away**: Inverse condemnation claims are only valid if the damage to the private property was substantially caused by the inherent risks associated with designing, constructing, or maintaining the relevant system.

Knick v. Township of Scott, Pennsylvania

- Scott Township passed an ordinance requiring all cemeteries to be open and accessible to the public during daylight hours. Knick owned property with a private cemetery; since the cemetery was not open to the public, the Township claimed she violated the ordinance.
- Knick sought declaratory and injunctive relief in state court; the township withdrew the violation notice leading the court to decline to rule as there was no longer harm.
- Knick filed in federal court seeking damages; it was dismissed since the claim was not brought in state court. Court of Appeal affirmed.
- Supreme Court determined the takings claim was permissible once the property was taken; state remedies does not mean the taking did not occur and create an exhaustion requirement that unnecessarily bars cases from federal court.
- **Take away**: The Fifth Amendment Takings Clause applies as soon as the taking occurs allowing one to file in federal court as soon as the action occurs; possible state remedies do not change when a takings claim can be filed.

AB 1486 (Ting)

- Substantial changes to Surplus Land Act to increase use for Affordable Housing:
  - Imposes additional requirements on the process that local agencies must use when disposing of surplus property.
  - Maintain a database of surplus land, updated annually
  - Prohibits agreements that prevent residential development
  - New pre-notices to HCD before disposing of land
  - Major penalties for violations…
- Coincides with State's effort to review state owned land and determine sites appropriate for affordable housing.
- Passed and Signed

SB 5 (Beall)

- Bring back limited form of Redevelopment Agencies.
  - Gov. Brown dissolved RDAs during budget cuts in 2011.
- Up to $2 billion annually in avoided local property taxes for affordable housing, Transit Oriented Development, and infill housing.
- **Supported** by Cities, Counties, Housing Advocates
- **Opposed** by Howard Jarvis Taxpayers Assoc., CTA, other Ed unions

- Newsom Vetoed the bill, citing costs.

Coastal Act

Hubbard v. California Coastal Commission

- CDP application contained incorrect and misleading information regarding approvals from other government permitting agencies.
- Commission granted the CDP and revised its findings to avoid relying on the incorrect and misleading approvals.
- Commission denied Plaintiffs' request for revocation because the inaccurate information was not material to the CDP decision.
- Court of Appeal held under 14 C.C.R. Section 13105(a) that only material omissions or misrepresentations in a CDP application warrant revocation. If accurate and complete information would not have caused the Commission to act differently, the CDP stands.
- **Take away:** Only material omissions or misrepresentations in a CDP application warrant CDP revocation.

Fudge v. City of Laguna Beach

- City of Laguna Beach issued a Coastal Development Permit to allow a property owner to demolish a house. Fudge opposed the project.
- Fudge challenged the permit issuance in two fora: he (1) appealed to the Coastal Commission *and* (2) filed a petition for writ of mandate with the Superior Court attacking the merits of the City's decision to grant the CDP.
- Trial court held in favor of City; Fudge's action was moot because the Commission accepted the appeal. Fudge appealed, arguing to overturn judicial precedent.
- Court of Appeal upheld trial court's decision and judicial precedent. The Legislature wrote the Coastal Act so that the Commission reviews appeals de novo, "period."
- **Take away:** When the Coastal Commission accepts an appeal from a City's issuance of a CDP, a court cannot hear a case regarding the CDP until after the Commission has rendered a decision.

AB 1011 (Petrie-Norris)

- Allows the Coastal Commission to waive development filing fees.
- Emphasizes the importance for nonprofits.
- Passed and Signed.

AB 1644 (Levine)

- Adds “Agriculture” to the list of important areas where the Coastal Commission should seek outside scientific advice.
  - Erosion, biodiversity, desalination…
- Passed and Signed.

AB 1680 (Limon)

- Requires the creation of a new Hollister Ranch Coastal Access Plan
- Part of an effort to open public access to Hollister Ranch.
- Passed and Signed.

PROCEDURE: ADMINISTRATIVE HEARINGS AND BROWN ACT

1041 20th Street, LLC v. Santa Monica Rent Control Board

- In the mid 1990s, the Santa Monica rent control board approved two removal permits which were interpreted to allow the property to be free from rent control once the properties were returned to the rental market.
- In 2016, the rent control board determined the previous definition of removal was improper and alerted the permit holders in an administrative hearing.
- Permit holders sued asserting that change in interpretation was impermissible and the trial court agreed.
- Court of Appeal determined the change in definition was permissible because equitable estoppel and fairness were not applicable if the initial definition was based on an erroneous interpretation of the applicable statute.
- **Take away**: A city agency can retroactively change the applied definition if the previous definition was based on an erroneous conclusion of law.

County of Sonoma v. Gustely

- Respondent performed multiple construction and grading projects without a permit.
- County provided notices, requested proper permitting, and ultimately had an administrative hearing to determine penalties after continued noncompliance.
- County filed in court to recover the fees determined by the hearing.
- Trial court ruled for the County, but reduced the permit fee without explanation.
- Court of Appeal determined that changing the penalty was impermissible because the trial court did not explain the rational for the reduced fee and the respondent did not seek judicial review of the original hearing.
- **Take away**: If an administrative order reasonably determines a civil penalty, a trial court cannot change it without explaining the rational.

Preven v. City of Los Angeles

- Preven spoke at committee meeting about a proposed real estate development and tried to speak again on the topic at a special meeting.
- Council denied him the opportunity to speak since had the opportunity to speak previously so he sued alleging violations of the Brown Act.
- Trial court determined that the public participation rules for special and regular meetings were identical and sustained the demur.
- Court of Appeal determined the rules were different based on the plain language of the Brown Act and reversed the lower court's ruling.
- **Take away**: Regular and special meetings do not have the same public participation rules. Special meetings are required to provide an opportunity for public comment even if there was a previous committee meeting on the same topic where the public was allowed to comment.

SB 1 (Atkins)

- "Trump Insurance" Bill
- Requires various agencies to adopt by regulation any federal standards that are weakened at the federal level until 2025:
  - CARB, CalOSHA, SWRCB, Fish and Wildlife, Private rights of action
- Passed by the Legislature in the final hours of Session.
- But, vetoed by Governor Newsom
  - Citing Voluntary agreements with water agencies

AB 168 (Aguiar-Curry)

- Would require that no housing project approved under SB 35 streamlining be located on a tribal cultural resource.
- Concern that this may delay streamlined permitting under SB 35 and require tribal consultation on all projects.
- Sen. Housing Committee

GENERAL PLANS AND ZONING (URGENCY/MORATORIA/NONCONFORMING USES)

Denham v. City of Richmond

- City designated property in Richmond Hills as residential. Initiative barred construction of residential structures in the area.
- Property owners alleged damages caused by the initiative.
- Trial court determined the initiative was impermissibly inconsistent with the General Plan and directed the City to vacate the Initiative.
- Court of Appeal affirmed that the initiative was inconsistent but remanded the case because the City had to either modify the General Plan or revote to change the Initiative.
- **Take away**: General Plan Amendment that is inconsistent with the General Plan is not invalid when passed, and must be remedied by the City Council or voters (as applicable) modifying the General Plan.

Sacramentans For Fair Planning v. City of Sacremento

- City approved project that was not consistent with all zoning standards.
- Petitioners argued that approving the project violated CEQA, constitutional law, and an implied-in-law zoning contract.
- The Court upheld the City's general plan policies allowing for increased density for certain projects
- The Court reasoned that despite the project's noncompliance with density restrictions, policy allows for flexibility to approve specific projects where it is determined that the project provides a significant community benefit
- **Takeaway:** Charter Cities have the general police power to exceed density restrictions where it is determined that the project provides a significant community benefit. Zoning uniformity is only an issue if a City treats similar properties differently when both request a variance or if there is no rationally related reason to a legitimate government interest explaining the difference in treatment

Venice Coalition to Preserve Unique Community Character v. City of Los Angeles

- Venice Coalition alleged: (1) the city engaged in a pattern and practice of approving projects without giving proper notice and hearing to the public, (2) the City failed to confirm all development projects were consistent with the general plan, and (3) violations of the Coastal Act
- Court held that development projects at issue were not entitled to notice and hearing because the planning process was ministerial in nature, as it involved nondiscretionary decisions based only on fixed and objective standards, not subjective judgment
- Second, the Court determined that the Director of Planning is not required to review development projects for compliance with LUP, as the specific plan complies with the LUP
- **Takeaway:** Ministerial processes do not require notice and a hearing as long as they are truly ministerial.

California Charter Schools Association v. City of Huntington Park, et al.,

- City adopted moratorium on new charter schools due to traffic, parking, and noise problems caused by non-resident students.
- The ordinance found that a threat to public health existed because, among other reasons, the City had received "numerous inquiries and requests for the establishment and operation of charter schools," "the [City's code] did not have development standards specifically for charter schools," and "certain locations in Huntington Park had already experienced adverse impacts from charter schools."
- City's findings failed to meet the urgency standard under section 65858.
- **Take Away:** Urgency findings most show a current and immediate threat to public health, safety, or welfare under Section 65858, and simple inquiries and meetings prior to submitting an application do not satisfy this burden.

Point San Pedro Road Coalition v. County of Marin

- Nonconforming quarry operation was granted two permit amendments, allowing for processes not permitted under the operation's permit prior to the rezoning.
- Plaintiff challenged the second amendment, arguing the County's approval was an impermissible expansion or intensification of a nonconforming use. The trial court agreed.
- The court of appeal found that the new operations led to an intensification and expansion of the nonconforming use.
- County and the quarry failed to show the change in use was required for or reasonably related to continuation of the existing nonconforming on-site production.
- **Take Away:** Law favors discontinuance of nonconforming uses. Expansions or intensifications are not permitted.

AB 747 (Levine)

- Requires cities and counties to update their safety element to identify evacuation routes and their capacity, safety, and viability under a range of scenarios.
- Passed and signed

SB 182 (Jackson)

- Would create State Agency restrictions on local development in very high fire hazard severity zones (VHFHSZ).
  - State Fire Martial to create "wildfire risk reduction standards"
  - Prohibits development unless these standards are met.
- Local agencies must update General Plans with a retrofit strategy.
  - Then update zoning to include Wildlife Urban Interface
- OPR must compile clearinghouse and identify best practices.
- Held in Assembly

AB 891 (Burke)

- Would have required each city and county with a population greater than 330,000 to establish a safe parking program by
- Provide safe parking locations for people living in their vehicles.
- Vetoed by Gov. Newsom

Housing & Homelessness

SB 50 (Wiener)

- Upzones to allow 45-55 foot apartment buildings
  - (1) within a half-mile of a rail transit station;
  - (2) within a quarter-mile of a high-frequency bus stop; or
  - (3) within a "job-rich" neighborhood.
- Also reduces parking requirements and provides a 5 year delay for vulnerable communities.
- Prevents developers from using authority to demolish buildings that currently house renters.
- Failed on Senate Appropriations Suspense File.

SB 330 (Skinner)

- Restricts for five years, actions by cities/counties that reduce housing production.
- Anti-displacement measures: banning demolition of affordable and rent-controlled units unless replaced at same rent.
- Prohibits hiking fees or changing permit requirements once a project applicant has submitted required information.
- Bars housing-constricted urban areas from changing building design standards.
  - Supported by: Apartment Association, Realtors, Builders, Planning & Conservation League
  - Opposed by: AIDS Healthcare Foundation, Cities, Counties, Tenants groups
- Passed and Signed

SB 744 (Caballero)

- Furthers the No Place Like Home provisions that streamline supportive housing projects (use by right), pursuant to AB 2162 (Chiu, 2018).
- Prohibits local governments from subjecting those supportive housing projects to design review unless it is objective and applied broadly.
- Several CEQA exemptions:
  - Application for NPLH Funding
  - Local Government's review of objective design standards
  - Any policy to approve as a use by right proposed housing developments with at least 50 units.
- Passed and Signed

AB 1485 (Wicks)

- Bay Area focused bill, adding to SB 35 streamlining eligibility for “Moderate Income” affordable housing projects.
- CEQA exemptions
  - for decisions by BART to lease, convey, or encumber land that it owns.
  - for land improvements necessary for local government or BART land to make it suitable for streamlined housing project.
- SB 35 compliance standard is whether "there is substantial evidence that would allow a reasonable person to conclude" that the development complies.
- No Opposition; Passed and Signed

AB 1560 (Friedman)

- Expand the definition of a “major transit stop”
  - Stated purpose is to have the current definition apply to the Orange Line in LA.
  - Full-time dedicated bus lane in a separate right-of-way dedicated for public transportation with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
- Passed and Signed

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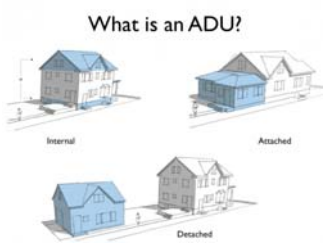
AB 1515 (Friedman)

- Prohibits a court from invalidating a development approval based on a community plan, if the development was approved or had a complete application prior to the community plan being invalidated.
- Defines a community plan update to include both the community plan itself and any zoning ordinances necessary to bring the zoning into consistency.
- Mayor Eric Garcetti sponsored the bill.
- Does not prevent separate CEQA challenges against specific developments
- Sunsets in 2025; Passed and Signed

SB 211 (Beall)

- Expands Caltrans' authority to lease property below market value for the purpose of building homeless shelters.
- Passed and Signed

…It's all about accessories…



SB 13 (Wieckowski)

- Builds upon prior ADU bills to make it easier to develop ADUs:
  - Prohibits requirement that an applicant be an owner/operator
  - Prevents Impacts Fees for 750sq/ft; 25% fees for larger units
  - Places restrictions on what locals can require, like size.
- Allows local agency to count ADUs towards targets in Housing Element
- Support: YIMBY, Builders, Realtors
- Opposition: American Planning Assoc., Special Districts, Cities, Counties
- Passed and Signed

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AB 881 (Bloom) & AB 68 (Ting)

- Specify that ministerial approval of an ADU must occur within a "residential or mixed-use zone."
- Increases the "minimum size" unit that must be approved to 800sq/ft.
- Limits local review of ADUs to water/sewer service adequacy and traffic and safety impacts.
- Passed and Signed

AB 670 (Friedman)

- Deems void and unenforceable any CC&R in a planned CID, and any HOA provision, that effectively prohibits the construction or use of an ADU or JADU on a lot zoned for single-family residential.
- Allows for "reasonable restrictions" that do not unreasonably increase the cost or effectively prohibit an ADU or JADU.
- Support: YIMBY, Builders, APA, Realtors
- Opposition: HOAs
- Passed and Signed

FEES AND PROP 218

Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School District

- Plaintiff's development to accommodate seasonal and migrant farmworker employees without dependents was subject to a school district impact fee.
- The Court held that the imposition of school impact fees does not require a school district to separately analyze the impact of a unique subtype of residential construction not contemplated in the statute.
- The only restriction to this authority is that the school district must determine a reasonable relationship between the fee imposed and the new construction.
- **Takeaway**: Under the Mitigation Fee Act, to impose a fee, a local agency need only determine the reasonable relationship required between the impact fee and new construction, and does not need to tailor the fee to the individual details of a given project.

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Boatworks, LLC v. City of Alameda

- City adopted parks and rec fee by calculating the value of parkland the City acquired at no cost and by including unopened parks as "existing parks" when calculating fees.
- Trial court held that the City's approach was improper and fees were therefore excessive.
- Court of appeal held that the City's approach was improper, as the factors involved in the fee study led to an overly inflated mitigation fee.
- **Take Away**: Simply performing a fee study under the Mitigation Fee Act will not insulate an impact fee from successful challenge. The factors involved in the fee study must be reasonable to support a proper fee under the Mitigation Fee Act.

Plantier v. Ramona Municipal Water District

- Water District proposed a fee change, Plainter challenged the method, and the Board of Directors rejected the challenge.
- Plainter claimed a Prop. 218 violation in court; the claim was deemed impermissible since the fee change administrative remedies were not followed.
- The Court of Appeal reversed because the substantive challenge to Prop. 218 is outside of the scope of Prop. 218 procedural requirements.
- Supreme Court affirmed because the method of determining the parcel charge and the fee were unrelated, and administrative remedies established for challenging the fee would not address the issue.
- **Take away**: Exhaustion of administrative remedies is required when the remedy directly addresses the complaint; coincidental challenges on related topics are not required to exhaust the administrative remedies for the other topic.

AB 1483 (Grayson)

- Requires local jurisdictions to provide public information regarding:
  - zoning ordinances,
  - development standards, fees, exactions, and
  - affordability requirements.
- Passed and Signed

2019-2020 Budget

Governor's Budget: Housing & Homelessness

- January Proposal – What did NOT materialize:
  - Potential new RHNA reforms.
  - Proposal to tie transportation funds to housing construction performance.

- **Sticks**:
  - If jurisdictions persist in refusing to approve new housing, courts could impose fines of $10,000 to $600,000 a month.
  - In a last resort, courts take control of the city's permit process to authorize new housing.

Continued…

Carrots:

- **$1.75 Billion for Housing & $1 Billion for Homelessness!**
- **$750 million in grants** for infrastructure and planning
  - Hundreds of millions earmarked for cities to update their housing plans.
- **The 13 largest cities would receive** $275 million to combat homelessness.
- **Counties would get $175 million** for homelessness.
- **Nearly $200 million would be spent** to coordinate homeless care.
- Cities could bypass CEQA for some homeless shelters.
  - "Low Barrier Navigation Centers" that include temporary housing and services.

Gov's Budget: Water

- To avoid a new tax, deal struck to use Cap & Trade revenues from GGRF to fund ongoing clean drinking water program.
  - 5% or $130 million, with General Fund adder $130 million
- Very controversial, as GGRF money intended for GHG reduction efforts.

FIRST AMENDMENT

Park Management Corp v. In Defense of Animals

- An amusement park owner brought an action against an animal rights group for private trespass.
- The Court of Appeal held that under California's Constitution, the amusement park's un-ticketed, exterior areas are a public forum for expressive activity
- The Court reasoned that one must balance society's interest in free expression against the amusement park's interests as a private property.
- The Court determined that since the public's interest in engaging in expressive activity in the exterior portions of the park is strong in comparison to the lack of evidence of the park's interest to retain park attendance, the exterior portions were considered public.
- **Takeaway:** The amusement park's un-ticketed, exterior areas are a public forum for expressive activity. This only applies for PMC's park, not every amusement park.

TELECOMS

T-Mobile West LLC v. City and County of San Francisco

- The California Supreme Court upheld portions of a San Francisco ordinance regulating telecommunications antennas in public rights of way based on aesthetic concerns.
- Court held that California Public Utility Code section 7901 does not preempt local agencies authority to regulate based on aesthetic concerns.
- Court recognized there are "significant local interests" in regulating use and management of public streets and the "goal of technological advancement is not paramount to all others."
- **Take Away**: Local agencies have the authority to regulate telecoms sites based on aesthetic concerns.

Wildfires

SB 632 (Galgiani)

- Requires CALFIRE to complete its environmental review of a program EIR for vegetation treatment program by February 2020.
- Background:
  - Board has been working on a statewide Vegetation Treatment Program (VTP) Program EIR for over a decade.
  - Pulled back a 2017 Draft Program EIR due to increased fires and need to revisit
- Passed and Signed

AB 1054 (Holden)

- Culmination of substantial process:
  - OPR Wildfire Commission (SB 901) Recommendations
  - Governor's Internal "Strike Force"
  - Legislative Process – July 12 deadline in order to satisfy Rating Agencies
- Result:
  - Utility Wildfire Fund
  - New Wildfire Advisory Board at CPUC
  - Changes to utility "prudent manager standard"
- More coming in 2020…
  - PG&E Bankruptcy, Municipalization efforts, backup generation for telco facilities

STADIUMS!

AB 1191 (Bonta)

Authorizes the State Lands Commission to enter into a land exchange for the Howard Terminal Property in the City of Oakland to facilitate a mixed-use project that includes a stadium for the Oakland A's.

Planning, Zoning and Development Law Update

Summary of Case Law from 2019

UCLA Extension Public Policy Program

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Introduction

The following is a summary of 2019 case law that is significant from a planning, zoning, and land use perspective. This summary does not include cases related to the California Environmental Quality Act (CEQA), which is covered in the CEQA Update segment of the program. This summary is not intended to be an exhaustive list of all reported cases in 2019 with planning and zoning implications.

EXHIBIT A

I. TAKINGS

1. *York v. City of Los Angeles*, 33 Cal.App. 5th 1178 (3/8/19)

This case involved the questions of (1) whether the City of Los Angeles abused its discretion in denying Plaintiffs' application for a deviation from the by-right grading limitations, and (2) whether the City had rendered a "final decision" regarding the allowable uses on Plaintiffs' property such that Plaintiffs' takings and civil rights claims were ripe.

The Yorks sought approval to build a large house, guest house, and recreation area in the Hollywood Hills. The Yorks also applied for a 79,700 cubic yard grading deviation. This was more than 24 times the amount of grading permitted by right under the Los Angeles Municipal Code. At a public hearing, a zoning administrator approved construction of the home and most of the accessory buildings and retaining walls, but denied the request for the 79,700 cubic yard grading deviation.

The Yorks alleged that the City's findings and decision at the hearing were arbitrary and capricious. They also alleged the decision was a taking of their property, and a violation of due process and equal protection.

The court found the City's decision was not arbitrary and capricious because the Yorks were not prejudiced. An abuse of discretion only results in reversible error if it is prejudicial. Even though the zoning administrator misunderstood the scope of his discretion at the hearing, the Yorks were not prejudiced by the misunderstanding because the zoning administrator testified that he would have made the same decision regardless.

The court also found that the decision to deny the grading deviation did not preclude the Yorks from building a house on the property, even if not the house the desired. Ultimately, the Yorks had the burden to show they were entitled to their desired amount of grading and they failed to present any evidence to meet their burden.

The court next analyzed the Yorks' takings claim for ripeness. The court found that it could only determine whether a taking had occurred after a property owner had obtained a "final decision" regarding the application of the zoning and subdivision regulations to the property. Here, the court found that the City did not reach a final decision because the Yorks could still submit a different plan and apply for a different sized grading deviation. The court found that the City had neither rendered a final decision, nor precluded all development of the property.

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2. *Los Angeles County Metropolitan Transportation Authority v. Yum Yum Donut Shops, Inc.*, 32 Cal.App.5th 662 (2/26/19)

This case asks whether a condemnee is entitled to compensation for lost goodwill when the condemnee could have mitigated the loss, even if some portion of the loss was unavoidable.

Yum Yum Donut Shops, Inc. ("Yum Yum") operated a store on Crenshaw Boulevard in Los Angeles for over 30 years. Los Angeles County Metropolitan Transportation Authority ("MTA") sought to condemn the store because it was in the proposed path of a light rail line.

MTA commenced eminent domain proceedings against Yum Yum and proposed three potential sites for relocation of the store. Yum Yum evaluated the three potential sites but rejected them because each one failed to satisfy some of Yum Yum's criteria for selecting shop locations. The trial reviewed whether Yum Yum was entitled to compensation for loss of goodwill resulting from MTA's taking. MTA's expert on goodwill testified that Yum Yum would have lost some goodwill even if it had relocated to any of the three potential sites. Yum Yum argued it was entitled to recover losses because it would have lost *some* goodwill, regardless of relocation.

The trial court ruled against Yum Yum, finding that Code of Civil Procedure section 1263.510 precluded a condemnee from recovering for a loss of goodwill when a condemnee could not show it took reasonable steps to preserve its goodwill. It found Yum Yum unreasonably rejected the potential sites. The Court of Appeals reversed the trial court's decision. It held that a condemnee only needs to prove "*some* or *any* unavoidable loss of goodwill" to satisfy condemnee's burden to demonstrate entitlement to compensation for goodwill under section 1263.510.

First, the court determined that the statute should be construed liberally in favor of providing a remedy for condemnees for loss of goodwill. The legislature passed the statute in response to "judicial stinginess" where condemnees were refused compensation for forced relocation. Second, the court determined that section 1263.510 operates by a two-step process: (1) the court determines entitlement to goodwill compensation, and (2) a jury determines the value of the goodwill.

Third, the court determined that a condemnee is entitled to goodwill losses when it will unavoidably lose some goodwill. When a condemnee would lose goodwill even if it relocated or otherwise mitigated the loss, the condemnee satisfies its threshold burden and moves on to a jury trial to determine the amount lost. Because MTA's uncontradicted expert testimony established that Yum Yum would lose goodwill even if it relocated the shop, the court found Yum Yum was entitled to compensation for goodwill losses, and the amount would be determined by a jury trial.

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3. *Prout v. Department of Transportation*, 31 Cal. App. 5th 200 (2019)

This case involves a claim of inverse condemnation and asks how long a public agency has to accept a dedication of real property. In 1990, the plaintiff, as part of its development of a residential subdivision in Caliveras County, submitted to Caltrans an application for an encroachment permit to connect the subdivision's private road to the adjacent highway. Caltrans conditioned its approval of the encroachment permit conditioned on plaintiff dedicating a 20-foot-wide strip of land as public right-of-way.

The dedicated property was noted on the Final Map, but "the matter simply fell through the cracks,'" and the property was never transferred by deed to Caltrans. Twenty years later, Caltrans discovered that the property had never been transferred by deed and requested that plaintiff sign a deed to convey the property. Caltrans proceeded with widening the highway and included the dedicated property.

Plaintiff filed an inverse condemnation action against Caltrans, alleging that Caltrans owed him just compensation for physically occupying the dedicated property. Caltrans filed a cross-complaint for breach of contract, promissory estoppel, and specific performance, alleging that plaintiff had accepted the benefit of the encroachment permit but refused to finalize the dedication and deed of the property. The court found in favor of Caltrans.

4. *City of Orville v. Superior Court of Butte County*, 446 P.3d 304 (8/15/19)

This case involves a claim of inverse condemnation resulting from damage caused by a system the City maintains. The City of Orville implemented a gravity-driven sewage system to move sewage from the city to the sewage plant. The City then required property owners to install backwater valves on private sewer connections when the building elevation was lower than that of the nearest manhole. The backwater valves would theoretically ensure that the any sewage overflow would go through the nearest manhole instead of into the property.

Three dentists acquired a building under construction and created a practice after the City inspected the building, which did not have the backup valve installed. On December 29, 2009, raw sewage from the sewer main backed into the dental office damaging the space. The City found evidence of partial blockage of the sewage line by tree roots on the same day.

As a result of the sewage, the dentists and their insurance company filed a suit against the City for inverse condemnation. The City filed a cross complaint alleging the dentists violated the Municipal Code by not installing the backwater valve. The trial court dismissed the City's motion for summary judgment and resolved the case in favor of the dentists because there were roots in the sewer main. The City then petitioned the Court of Appeals on the grounds the design was not the cause of the damages, the dentists' failure to install and maintain the backwater valve defeated any issues with construction, and the City acted reasonably in operating the sewer system. The Court of Appeals agreed with the trial court because the private owner's action was irrelevant to the inverse condemnation claim.

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The City appealed this decision to the Supreme Court of California which overturned the lower court decision and remanded the case. The Supreme Court determined that the lower courts applied the doctrine of inverse condemnation incorrectly. Inverse condemnation can only occur if there is an inherent risk associated with design, construction, or maintenance of the relevant system and the risk of harm must be substantially related to the harm to the private party. Simply proving a causal link between the damage and system is insufficient to allow the private party to succeed on an inverse condemnation claim. The lower court erred because they did not consider if there was an inherent risk with the gravity flow sewer system and the Plumbing Code requirements. Furthermore, the lower courts did not consider if the City's relative contribution to the harm was sufficiently substantial to warrant the claim's success. For these reasons, the case was remanded with instructions to apply the proper inverse condemnation analysis.

5. *Knick v. Township of Scott, Pennsylvania*, 139 S.Ct. 2162 (2019) (6/21/19)

This case provides individuals and business entities seeking compensation for alleged takings property with a choice; they can sue in state or federal court. Previously, landowners seeking money damages for inverse condemnation were required to first avail themselves of just compensation remedies provided by state law and sue in state court. *Knick v. Township of Scott, Pennsylvania* provides that landowners are no longer required to go to state court first.

In Knick, the Township of Scott adopted an ordinance requiring all cemeteries be kept open to the public during daylight hours. Plaintiff Rose Mary Knick's 90-acre rural property has a small graveyard where Knick's neighbors' ancestors are allegedly buried. Knick challenged the ordinance for violating the Takings Clause in state court and sought declaratory and injunctive relief, but not monetary compensation. Since the Township withdrew the violation notice, the court declined to rule on the relief as there was no harm caused.

Knick then filed suit in federal court, seeking damages under Section 1983 of the Civil Rights Act. The federal trial court dismissed Knick's taking claim under *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, which denied a landowner's Fifth Amendment taking claim against a local zoning board because the developer had not yet sought compensation through the procedures "the State had provided for doing so." After the federal court of appeal affirmed dismissal of Knick's complaint, Knick sought review in the U.S. Supreme Court, challenging the requirement that an inverse condemnation plaintiff litigate in state court first before seeking compensation in federal court.

The U.S. Supreme Court reversed the lower court and overturned the *Williamson County* state court litigation requirement. The Court observed that requiring landowners seeking recovery under the Takings Clause to proceed in state court first had an unanticipated consequence; a landowner who lost in state court and then sought recovery in federal court would be barred from recovery because the federal court would be required to follow the state court decision. Because nearly all states provide just compensation remedies to property owners who have

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suffered a taking, landowners claiming to have suffered takings at the hands of state and local regulators have been prevented from bringing their claims in federal court. The Court determined that the *Williamson County* rationale for the state litigation requirement was poor and in conflict with much of the Court's takings jurisprudence. Thus, the Fifth Amendment Takings Clause applies as soon as the taking occurs, allowing one to file in federal court as soon as the action occurs; the possible state remedies do not change when a takings claim can be filed.

II. COASTAL ACT

6. *Hubbard v. California Coastal Commission*, 38 Cal.App.5th 119 (7/31/19)

This case involved the interpretation of a Coastal Commission ("Commission") regulation that provides the grounds for the Commission to revoke a Coastal Development Permit ("CDP") based on inaccurate, erroneous, or incomplete information in the CDP application.

In 2006 Malibu Valley Farms ("MVF") applied to the Commission for a CDP to rebuild its equestrian facility after a fire. MVF's application contained incorrect and misleading information regarding approvals from the L.A. Environmental Review Board, the Department of Fish and Game, and the California Water Resources Control Board. In 2007 the Commission granted the CDP, and in 2009 the Commission issued revised findings for the approval that did not rely on any of the misleading approvals for evidence. Plaintiffs filed a request for revocation of MVF's CDP, arguing that because the CDP application materials were misleading, they could not support the CDP.

At the hearing on Plaintiffs' request, the Commission acknowledged MVF's various intentional misrepresentations, but denied the revocation request. The Commission stated that the regulation at issue, 14 C.C.R. Section 13105(a), allowed it to revoke a CDP if the accurate information would have *changed* the conditions imposed or led the Commission to deny the request. It reasoned that the inaccuracies at issue were not material, were not relied upon, and would not have changed the CDP result. Plaintiffs filed a writ petition challenging the Commission's decision. The trial court denied the petition because substantial evidence in the record showed the CDP outcome would not have changed.

On appeal, Plaintiffs argued the Commission erred in interpreting and applying Section 13105(a). Appellants argued Section 13105(a) requires that a CDP is invalid when it contains any incomplete or inaccurate information of other agencies' approvals.

The Court of Appeals reviewed the interpretation of the regulation independently. It found that Section 13105 plainly means that only *material* omissions or misrepresentations in a CDP application warrant revocation. If accurate and complete information would not have caused the Commission to act differently, the CDP stands. Here, the court found that substantial evidence in the record indicated the Commission would not have changed its decision.

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It also found that this interpretation of Section 13105(a) was consistent with other regulations related to outside government agencies' approvals. Because the Commission interpreted and applied Section 13105 correctly, the court affirmed the trial court's decision and denied Plaintiffs' writ petition to revoke the CDP.

7. *Fudge v. City of Laguna Beach*, 32 Cal.App.5th 193 (2/13/19)

This case involves the issue of whether a project opponent may challenge a City's issuance of a Coastal Development Permit ("CDP") in civil court when the Coastal Commission had accepted an appeal from the issuance of that CDP.

The City of Laguna Beach ("City") issued a CDP to allow a property owner to demolish his house. Fudge challenged the permit in two fora: he appealed to the Coastal Commission ("Commission") *and* filed a petition for writ of mandate attacking the merits of the City's decision to grant the CDP. The Commission accepted the appeal, meaning it would need to conduct a "de novo" hearing on the CDP's validity.

The City demurred to Fudge's petition in superior court arguing the Commission's acceptance of the appeal mooted Fudge's possibilities of relief in civil court. The trial court agreed; binding precedent declared that when the Commission accepts an appeal from issuance of a CDP, the Commission alone decides whether the CDP complies with all relevant legal standards. Fudge's challenge was entirely in the Commission's hands until the Commission rendered a decision, at which point the Commission's decision could be challenged by writ.

Fudge appealed and argued the Court of Appeal should overturn the precedent that guided the trial court. The City argued the appeal should be dismissed as moot because the Commission had already approved the CDP, the City had issued demolition permits, and the house had been demolished. To this mootness argument, the Court of Appeal held that the public interest exception applied because Fudge's issue needed to be dealt with for future litigants.

The court upheld the precedent guiding the trial court and held that Fudge's civil court action was moot. The court dissected Fudge's complex argument.

Fudge first argued that a California Supreme Court decision required that "de novo" hearings be conducted "in the same manner" as the original hearing. Fudge then pointed out that the "de novo" hearing of the Commission was not truly "de novo" under this decision because it was not "in the same manner." There were differences in rules and procedures (and consideration of CEQA adequacy) between the original hearing with the City and the "de novo" appeal at the Commission. Because of these differences, Fudge argued there was still something left for him to attack before the superior court. He argued the appeal before the Commission does not nullify the hearing before the City.

The Court of Appeals responded by noting that first, the California Supreme Court had issued subsequent decisions that did not contain the requirement that "de novo" hearings be held "in

the same manner." Second, the court noted that the Legislature wrote the Coastal Act so that a Commission's decision on appeal *does* nullify the original decision by a local agency, despite the procedural differences. Despite the fact that the original local decision is heard under CEQA and the appeal to the Commission is heard de novo under the Coastal Act, the court stated that "[t]he Legislature provided for de novo review of appeals to the Commission, period." Therefore, the court affirmed the trial court's decision that Fudge's appeal was moot.

III. HOUSING

8. *1041 20th Street, LLC v. Santa Monica Rent Control Board*, 38 Cal.App.5th 27 (7/30/19)

This case determines a city agency can correct an erroneous, yet previously relied upon definition. The Santa Monica rent control board corrected the scope of a removal permit from removing a property permanently from the rent control market to removing the property from the rental market. Ultimately, the court of appeals determined the change was appropriate since the original definition was not an accurate interpretation of the statute.

In 1979, the City of Santa Monica voted to approve the rent control charter amendment. This created a rent control board ("Board") to regulate the availability of rental units to alleviate the hardships caused by housing shortages in the area. The Board later created ways to remove a property from the rental market if the property was not profitable (Category A) or was uninhabitable and it was cost prohibitive to repair (Property C). In 1993, the Board approved a Category C permit for the 20th street property and approved a Category A permit for three units on Ocean Avenue the following year. Both property owners were told that removal meant that the unit was no longer subject to rent control.

In 2016, the Board determined these properties violated rent control laws, should be subject to rent control, and owed the tenants for extra rent and the Board for the unpaid fees. An internal administrative hearing supported the Board's decision. The property owners filed a writ of administrative mandamus and complaint for declaratory relief on the grounds that the Board's current interpretation was incorrect, the Board could not reconsider a final administrative decision, the owners had detrimentally relied on the rent control board's statements exempting them from the rent control statute, and equitable estoppel prevented the owners from paying. The trial court found for the property owners on the grounds of detrimental reliance and equitable estoppel and ordered the Board to reconsider its decision. The Board appealed this ruling.

The Court of Appeals determined that the trial court's determination was incorrect. First, the court determined that equitable estoppel did not permit recovery because equitable estoppel cannot be invoked when the applying the doctrine would contradict a statute. In this instance, the statute only allowed the Board to remove a property from the rental market and could not reasonably be interpreted to allow the property to be free of rent control. Thus, the respondent's interpretation was erroneous making equitable estoppel inapplicable. Next, the

respondents argued that changing the definition would be considered revoking the initial ruling. This is inaccurate because the property can still be removed from the rental market. The respondents then argued that the Board should be bound by the original determination because changing the definition would be considered reopening the matter. However, the court disagreed because correcting an erroneous interpretation is not a reconsideration as the ruling did not change. Lastly, the respondents argued that changing the definition would unfairly harm the property owners. The court determined that this issue was not ripe since the respondents had not gone through the proper means to attempt to receive just compensation. For these reasons, the appeals court determined that the Board reinterpretation of the definition of removal was permissible.

IV. PROCEDURE: ADMINISTRATIVE HEARINGS AND BROWN ACT

9. *County of Sonoma v. Gustely*, 36 Cal.App.5th 704 (5/31/2019)

This case involves a trial court that ignored the determinations found in an administrative order and provided no evidence explaining why the order was not followed. To correct this, the Court of Appeals determined that if an administrative order is reasonable, a trial court cannot change the order without at least explaining how the change was decided.

On June 13, 2017, a county engineer for the Permit and Resource Management Department ("PRMD") observed inadequate and unpermitted retaining walls, grading, and terracing on the respondent's property. A few days later it rained resulting in water contamination from the inadequate construction. On January 26, the PRMD sent the respondent notices regarding the inadequate construction and requested the respondent follow the permit process. In response, the respondent told the PRMD he was appealing the violations and going to do other excavation work. The PRMD alerted him that another permit would be required for the new excavation work.

The appeal was presented at a hearing, and the hearing officer found that the respondent had violated the city construction requirements. She imposed a $45 per day penalty for the violations starting from the date of the notice and a $8,476.79 fee for the abatement cost. Furthermore, the hearing officer asserted that penalties would continue to accrue at $45 per day until the abatement occurred. The respondent did not seek judicial review of this ruling.

On May 30, a PRMD inspector observed continued unpermitted grading which caused the County to file a complaint on June 9, seeking to compel abatement of the code violations and an order requiring payment of the penalties. Since no response was filed, the trial court entered a default judgment and the County filed for a permanent injunction and recovery of the penalties and abatement costs. The trial court issued a tentative ruling for the County, but reduced the penalty from $45 per day to $20 per day. The County argued that the trial court did not have the discretion to change the penalty because it was a final agency determination that was not challenged by the respondent in a timely manner. Despite this, the trial court found for the County and reduced the penalty.

The County appealed this decision on the ground that the penalty reduction was unreasonable. The court agreed and determined that the respondent did not appropriately seek judicial review of the penalty structure making the penalty permissible. Even if the respondent had sought judicial review, the hearing officer's determination would likely not be overturned because there was no prejudicial abuse of discretion. With regards to the trial court, the appeals court determined the penalty reduction was arbitrary because the opinion did not provide an explanation as to why the penalty was changed. Since the change was an abuse of discretion, it was impermissible.

10. *Preven v. City of Los Angeles*, 32 Cal.App.5th 925(2/22/2019)

This case determines whether regular and special meetings are required to follow the same public participation protocols under the Brown Act. In general, the Brown Act requires the public to have the opportunity to speak during legislative sessions; however, it provides an exception to this rule when the topic was previously addressed in a committee meeting comprised of members of the legislative body. Prior to this case, it was unclear if this exception, called the committee exception, applied only to regular meetings or to both special and regular meetings.

The Los Angeles City Council's Planning and Land Use Management Committee (PLUM) had a meeting on December 15, 2015, to discuss various real estate developments. This committee, which is comprised of five of the fifteen City Council members, granted the public the opportunity to speak about these projects. Preven spoke at this meeting.

On December 16, 2015, the City Council held a special meeting where they considered approving the real estate development discussed by PLUM. Preven attended this meeting and requested the opportunity to speak. The City Council denied this request citing the committee exception as he had the opportunity to speak about this particular topic at the meeting the previous day.

Preven sued and the City demurred. The trial court sustained the City's demurrer on the grounds that the public participation rules for special and regular meetings were identical, meaning the committee exception applied. Since Preven had the opportunity to comment at the PLUM meeting prior to the City Council decision, the trial court determined that he did not have the right to speak again on the same issue.

Upon appeal, the trial court's decision was overturned. The Court of Appeals determined that the plain language of the statute did not imply that the public comment requirements should be applied identically. Assuming identical requirements caused some portions of the Brown Act to be superfluous, which is an inappropriate assumption if a different interpretation of the plain language creates a different result. Besides this, the Brown Act distinguishes between regular and special meetings in other situations so the assumption that they are treated identically in this instance is unsupported. This interpretation is also supported by the legislative history

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surrounding the Brown Act. Before passing the Brown Act, the legislative discussed allowing the committee exception to apply to special meetings, but did not include this in the final draft of the bill. This implies that the legislative actively determined the committee exception should not apply to special meetings. For these reasons, the Court of Appeals determined that the demur could not be sustained and sent the case back to the trial court.

V. INITIATIVES AND REFERENDA

11. *Denham v. City of Richmond,* 41 Cal.App.5th 340 (2019) (10/25/19)

This case involves the issue of consistency between a city's general plan and general plan amendments.

The City of Richmond General Plan designated Richmond Hills as a residential area. This General Plan noted that all parcels below the 400-foot elevation line were allowed to have five dwellings per acre with a maximum building height of 35 feet. The Richmond Hills Initiative limited development in the Richmond Hills by prohibiting residential development unless a court determined the prohibition to be unconstitutional, in which case only one single-family residence would be allowed on each 20-acre plot.

Property owners sued, alleging the initiative damaged their property. The Sierra Club intervened to attempt to defend the initiative. The trial court determined that the initiative was impermissibly inconsistent with the General Plan and thus could not be implemented as written. To remedy this, the trial court directed the City to vacate the adoption of the Initiative. The Sierra Club appealed this ruling on the grounds that the initiative and General Plan were not inconsistent because there were still means for the property owners to build on the land and the precedent clauses in the initiative could resolve the inconsistencies.

The Court of Appeal determined that the trial court had not erred in the judgment, but had requested the incorrect remedy. First, the initiative and the General Plan have inconsistent designations for the land making the new restrictions on the property impermissible. Unlike in *Lesher Communications, Inc. v. City of Walnut Creek*, which held that "a zoning ordinance that conflicts with a general plan is invalid at the time it is passed," the Richmond Hills initiative amends the general plan, not a zoning ordinance. The Court held that Lesher does not hold that an action that renders a general plan internally inconsistent is void ab initio.

This is the first case to hold that a court may direct a city council to correct general plan inconsistencies when the inconsistencies are created by an initiative amending a general plan.

VI. ZONING (URGENCY/MORATORIA/NONCONFORMING USES)

12. *Sacramentans for Fair Planning v. City of Sacramento*, 37 Cal.App.5th 698 (2019)

This case involved a challenge to the City of Sacramento's approval and streamlined CEQA review of a transit project that would build significantly more housing than otherwise allowed in the zoning code. The issue here was whether the City's finding of consistency with the general plan was reasonable based on the evidence in the record. Petitioners argued that the City's approval of the project violated CEQA and the planning and zoning. The court was not persuaded.

First, the Court held that the project did not violate CEQA. In its reasoning, the Court referred to the Sustain Communities Environmental Assessment (SCEA), a method of streamlining environmental review for certain projects that assist the state in meeting its greenhouse gas reduction targets that are consistent with general use designation, density, building intensity, and applicable policies specified for the project area. The Court stated that despite the transit project's exceeding the City's density restrictions, the project qualified for streamlined CEQA review based on its consistency with the City's Metropolitan Transportation Plan/Sustainable Communities Strategy (MTP/SCS). Additionally, the Court determined the MTP/SCS can be utilized by the City to justify reviewing the project in an SCEA because its purpose is to establish a regional pattern of development, not a site-specific zoning ordinance. Furthermore, the Court reasoned the streamlined review was appropriate because the project's cumulative effects were reviewed on a regional basis in the MTP/SCS's environmental impact report.

Second, the Court upheld the City's general plan policies allowing for increased density for certain projects. The Court reasoned that despite the project's noncompliance with density restrictions, policy allows for flexibility to approve specific projects where it is determined that the project provides a significant community benefit. Furthermore, the Court rejected Petitioner's argument that the project violated the doctrine of zoning uniformity, California statutes, and the U.S. constitution's equal protection and due process. Rather, the Court turned to the City's inherent police power and its broad authority to control land use as long as there is a purpose to do so. In doing so, the Court held that based on the City's police power, equal protection does not require zoning uniformity since, here, there is a purpose in encouraging certain types of development.

13. *Venice Coalition To Preserve Unique Community Character v. City of Los Angeles*, 31 Cal.App.5th 42 (2019)

This case involves a challenge against the City of Los Angeles's exemption for certain development projects in Venice from permitting requirements in local land use plan and the Coastal Act. Venice Coalition to Preserve Unique Community Character (Petitioner) alleged five causes of action: (1) the City engaged in a pattern and practice of approving development projects without affording the community an opportunity for notice and a hearing, (2) the City

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failed to ensure all development projects complied with the requirements of the Venice Land Use Plan (LUP), (3) the City acted in excess of its authority by issuing exemptions, (4) the exemptions granted by the City were unauthorized under the Coastal Act, and (5) a request for the court to enjoin the City from using taxpayer funds to illegally issue permits. The trial court granted summary judgment to the City. Petitioner appealed as to the first, second, fourth, and fifth causes of action.

The City uses two different but parallel processes to approve development projects in Venice. First, the Venice specific plan mandates that a project must either undergo a project permit compliance review or obtain a determination that the project is exempt from such review. This allows the Director of Planning the ability to issue a "Venice-Sign-Off" (VSO) for certain small development projects. To issue a VSO, the Director must determine whether it meets specific, fixed development requirements. Second, the project must obtain a Coastal Development Permit pursuant to the Coastal Act or qualify for an exemption.

Plaintiff's argued that the VSO process resulted in denial of due process as the VSO was issued without notice and a hearing. The City argued that the VSO process was ministerial and therefore does not trigger due process requirements. The court agreed, reasoning that the planning process was ministerial in nature because it involved nondiscretionary decisions based only on fixed and objective standards, not subjective judgment.

Second, the Court determined that the Director of Planning is not required to review development projects for compliance with the LUP. Petitioners failed to identify any law requiring the Director to independently review projects for compatibility with the LUP. Additionally, the City had already concluded that the Venice specific plan that created VSO process complied with the LUP at the time it was enacted. Thus, the Director was not required to make a case-by-case decision for each exemption.

14. *California Charter Schools Association v. City of Huntington Park, et al.*, 35 Cal. App. 5th 362 (2019)

This case involves a temporary moratorium and what is required to establish a "current and immediate threat to the public health, safety or welfare" as required by Government Code section 65858(c).

Under section 65858 a city may adopt a moratorium prohibiting uses that may conflict with a general plan the city is considering, studying, or intends to study within a reasonable time. Section 65858 provides that "[t]he legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare."

The City of Huntington Park approved a moratorium on new charter schools, finding that the many non-residents attending the schools caused traffic, parking, and noise problems in the city.

The ordinance found that a threat to public health existed because, among other reasons, the City had received "numerous inquiries and requests for the establishment and operation of charter schools," "the [City's code] did not have development standards specifically for charter schools," and "certain locations in Huntington Park had already experienced adverse impacts from charter schools."

The court of appeal found that the City's findings failed to meet the urgency standard under section 65858. The court found that mere inquiries and meetings prior to submitting an application could not possibly present a current and immediate threat to public health, safety, or welfare under Section 65858 to justify an urgency ordinance.

15. *Point San Pedro Road Coalition v. County of Marin*, 33 Cal. App. 5th 1074 (2019)

This case involves the issue of expanding a nonconforming use. Plaintiff operates a quarry that was rendered nonconforming when the property was rezoned from "heavy industrial, limited agricultural" to "commercial and residential" use. At the time of the rezoning, the quarry's process involved only material mined from the quarry and imported sand. Subsequent to the rezoning, the County twice amended the mining permit, allowing for additional processes not permitted under the operation's permit prior to the rezoning.

Plaintiff challenged the second amendment, arguing the County's approval was an impermissible expansion or intensification of a nonconforming use. The trial court agreed.

The court of appeal upheld the trial court's decision, finding that the new operations involved new truckloads of material, requiring the operation to purchase additional machinery, all of which contributed to an intensification and expansion of the nonconforming use. The court also held that the County and the quarry failed to show the change in use was required for or reasonably related to continuation of the existing nonconforming on-site production. Instead, the change allowed the quarry to expand its nonconforming use in violation of the County zoning ordinance, which prohibited such extension or expansion.

VII. FEES AND PROP 218

16. *Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School District*, 34 Cal.App.5th 775 (2019)

This case involves a challenge to school impact fees assessed on an employee-only residential housing development. The issue was whether a school district acted reasonably in imposing school impact fees on a new residential development project intended to house adult seasonal farmworkers employed by the company.

Tanimura & Antle Fresh Foods (Tanimura) built a residential development to accommodate seasonal and migrant farmworker employees without dependents. The school district (District) determined the project was subject to an impact fee. Tanimura brought suit and the trial court found in their favor. The District appealed and argued that the trial court erred in finding no

reasonable relationship between the fee and the project's impact on school enrollment. Defendants contended that the authorizing statute to apportion such fees does not require the District to anticipate and analyze specific use cases for subtypes of residential housing, but only to find a reasonable relationship.

The District argued that the trial court's ruling will hold implications for school funding. Specifically, developers will be able to avoid paying school impact fees by characterizing projects as a different type than that covered by the fee analysis. Tanimura responded that imposing fees on a project that does not burden the schools is contrary to the reasonable relationship requirement, a principle of takings law to protect individuals from fees imposed as a condition of development that bear little or no relationship to the impact on public facilities.

The Court held that the imposition of school impact fees does not require a school district to separately analyze the impact of a unique subtype of residential construction not contemplated in the statute. The law only requires a reasonable relationship between the fee's use, the need for the school facilities, and the type of development project. The Court reasoned that this law provides the school district with quasi-legislative authority to impose district-wide fees. The only restriction to this authority is that the school district must determine a reasonable relationship between the fee imposed and the new construction. Here, the Court determined the District met this burden. Thus, the Court held that the District did not act arbitrarily in imposing the fee on the housing project.

The Court reversed in favor of the District.

17. *Boatworks, LLC v. City of Alameda*, 35 Cal. App. 5th 290 (2019)

This case analyzes the creation of development fees under the Mitigation Fee Act. The court of appeal held that the City's development fee at issue was invalid. The mitigation fee at issue was inflated because the City had set the fee by calculating the value of parkland the City acquired at no cost and by including unopened parks as "existing parks" when calculating fees.

The City imposed fees on developers to deal with the increased need for public facilities caused by additional development. The City based the parks and recreation portion of the fee on the projected cost to maintain the current ratio of park facilities to residents. This fee included the cost to acquire new parkland, improve existing facilities, and obtain new open space land. The information provided by the City about park facilities that it planned to develop with the proceeds from the fee included facilities on land that the City already owned.

The trial court held that the fees were excessive. The City appealed, arguing that it was justified in collecting fees based on the existing ratio of asset value of recreational facilities to population under the holding in *Home Builders Association of Tulare/Kings Counties, Inc. v. City of Lemoore*, 185 Cal. App. 4th 554, 561 (2010). The court rejected this argument because a substantial portion of the fee was based on the value of land that the City had received at no cost and therefore could not be related to the increased cost of public facilities caused by new

development. By contrast, the fee in *Lemoore* was based on the amount the city had invested in existing recreational facilities. The court therefore concluded that the fee was not justified by the burden posed by new development. The court also rejected the City's argument that unopened parks should be included in the inventory of current parks because it was unreasonable to include them as existing assets while planning to use the fee for construction of improvements to this land.

The court reversed the trial court's holding that the City erroneously counted areas classified as open space as parkland during the study. When calculating the current ratio, the City classified four areas originally classified as open space as parkland because the City had constructed facilities on these areas similar to those on improved parkland. The court held that this was not an arbitrary and capricious action and that those areas had a higher value than typical open space land.

The court also held that the trial court's remedy was inappropriate because it lacked the authority to require the City to perform the legislative act of rescinding portions of an ordinance. Instead, the court ordered the trial court on remand to declare the ordinance void to the extent it set the parks and recreation portion of the development impact fee.

18. *Plantier v. Ramona Municipal Water District*, 7 Cal.5th 372 (5/30/19)

This case determines whether a ratepayer may challenge the method of allocating property-related fees without exhausting all related administrative remedies. The Court narrowly framed the issue and did not determine whether protest proceedings could ever be an administrative remedy that must be exhausted.

Article XIII D, section 6, added as a part of Proposition 218 in 1996, requires public agencies to comply with certain substantive and procedural requirements prior to adopting new or increasing existing property-related fees or charges. Substantively, public agencies may not collect revenues that exceed the cost of providing the property-related service and must ensure fees are imposed proportionately on each parcel. Procedurally, public agencies must conduct a public hearing on proposed fees or charges no less than 45 days after mailing the notice to the effected parcel owners. At the public hearing, the public agency must consider all protests against the proposed fees or charges. If it receives written protests to the proposed fees from a majority of the property owners, the charges may not be adopted or increased.

The Ramona Municipal Water District ("RMWD") determined the wastewater fee by determining the equivalent dwelling unit ("EDU") of the property and a rate per EDU. The District assigned the number of EDUs to properties based on the estimated capacity needs and flow and strength of the wastewater discharged by different customer classes. In 2012, RMWD proposed an increase to the rate per EDU and reassigned Plainter's parcel from 2.0 EDUs to 6.82 EDUs. Plainter challenged the reassignment and method of assignment, but did not follow the administrative requirements for the proposed rate per EDU increase.

After the challenge was rejected by the agency, commercial property owners challenged the allocation method for violating the substantive provisions of article XIII D, section 6 in court. The District successfully argued at trial that plaintiffs failed to exhaust their administrative remedies because they did not file written protests or appear at the public hearing to object to the proposed fees. The Court of Appeal reversed and allowed the action to proceed.

On appeal, the Supreme Court confirmed the appellate court's decision that a payor challenging the method of fee allocation does not have to participate in the public hearing regarding the fee increase. The Court reasoned that the protest proceeding is an inadequate administrative remedy since the District was only required to take action if a majority of 6,900 parcel owners protested. Given that the District received fewer than 15 written protests, a majority protest was highly unlikely. Besides this, the Court determined that the public hearing would not resolve the plaintiffs' issue. Since the plaintiffs challenged the methodology for allocating the wastewater service fees and the District only proposed to increase the rates, the District was unable "to tinker with the method for calculating the fee, because a fee increase on certain fee payors resulting from a methodological change would be beyond the scope of the notice." Thus, the District lacked authority to adjust the methodology at the public hearing and could not address the plaintiffs' complaint. Exhaustion of administrative remedies is only required when the remedy directly addresses the complaint; coincidental challenges on related topics are not required to exhaust the administrative remedies for the other topic

VIII. EASEMENTS

19. *Inzana v. Turlock Irrigation District Board of Directors*, 35 Cal.App.5th 429 (2019)

This case involved a challenge to a trial court's decision authorizing an irrigation district to withhold water deliveries to landowners within the district who violate rules promulgated by the district. At issue was whether the trial court erred in its reasoning in upholding the water district's finding that the Plaintiff interfered with conditions of its easement with the water district.

Inzana (Plaintiff) owns property within Turlock Irrigation District (TID) subject to an irrigation easement owned by TID. The easement preserved a right of ingress and egress for purposes of maintaining and operating a pipeline. Plaintiff planted over 160 pistachio trees within the easement, preventing TID easy ingress and egress, while also potentially damaging the pipeline. TID found the tree planting interfered with the easement and ordered the Plaintiff to remove them. The trial court upheld TID's decision and plaintiff appealed, asserting that (1) TID cannot interfere with a vested fundamental right; (2) TID cannot withhold water deliveries; and (3) TID's rules were inconsistent with the Irrigation District Law.

The Court determined that Plaintiff had no vested right to water deliveries or to plant the trees within the easement. To support its reasoning, the Court emphasized that a servient tenement

does not have the right to use his property in a manner prohibited by the easement. Here, Plaintiff's trees clearly interfered with TID's right to the pipeline.

Additionally, the Court held that TID does have the authority to promulgate rules that curtail water deliveries to landowners in violation of TID's rules. The Court reasoned that despite lack of express authority to promulgate such a rule, the Legislature gave TID broad discretionary powers to fulfill their duty to furnish water. Thus, TID's rule to terminate deliveries was a tool to distribute water equitably.

Lastly, the Court held that TID's rule to curtail water deliveries were consistent with Irrigation District Law. Since the rule was quasi-legislative in nature, the Court reasoned that the rules had a rational basis for their application since they helped fulfill TID's duty to furnish water for beneficial use.

IX. SPEECH (FIRST AMENDMENT AND ANTI-SLAPP)

20. Rudisill v. California Coastal Commission, 35 Cal.App. 5th 1062 (6/5/19)

This case involved the question of whether an anti-SLAPP motion by Real Parties in Interest had enough merit to justify a reversal of sanctions.

Petitioners filed a petition for writ of mandate that claimed the City of Los Angeles and Coastal Commission violated the law by processing permits for 10 parcels in Venice for demolition of existing structures and for construction separately, rather than together as a single application.

The petition alleged that Real Parties' permit filing constituted a piecemealing of the demolition and new construction, which is not allowed for Unified Development under various applicable laws. The petition sought a writ ordering the City and/or Commission to set aside the permit approvals and remand them for proper processing as a single project. It also asked for reasonable attorneys' fees.

Real Parties filed anti-SLAPP motions arguing that the petition asserted claims against them arising from protected petitioning activity, and that the Petitioners could not show a probability of success on the merits. Petitioners opposed these motions and filed motions for sanctions claiming the anti-SLAPP motions were frivolous.

The trial court found that Real Parties could not file an anti-SLAPP motion because the petition only asserted claims against the City and the Commission, not against Real Parties themselves. Also, it found Real Parties could not file an anti-SLAPP motion because the claims in the petition did not arise from any protected petitioning conduct. The trial court found the anti-SLAPP motion was frivolous and awarded Petitioners $28,795.70 in attorney fees.

The Court of Appeals reviewed de novo the question of whether a reasonable attorney could conclude that a real party in interest in a mandamus proceeding is a "person" against whom petitioner asserts a "cause of action" under the anti-SLAPP statute.

The court found a reasonable attorney could have concluded that the petition asserted a claim against Real Parties. It reasoned that a "cause of action" is any claim alleged to justify a remedy, and that a "person" includes a real party in interest because real parties in interest are persons whose interests will be directly affected by the proceeding. The Petitioners alleged that the Real Parties were in-part responsible for the improper piecemealing, therefore the Real Parties were persons against whom claims were asserted.

The court also found that a reasonable attorney could have concluded that the petition asserted claims against Real Parties arising from protected conduct. This finding did not come from the request for mandamus relief, but rather from the Petitioners' request for attorney fees. Because these fees could be directly assessed against Real Parties, a direct challenge to Real Parties' petitioning conduct was necessarily involved. The court reversed the award of attorney fees.

20. *Park Management Corp. v. In Defense of Animals*, 36 Cal.App.5th 649

This case involves an action from an amusement park owner (Owner) against an animal rights group and their members (Petitioner) for private trespass and an injunction prohibiting them from protesting anywhere on owner's property.

After change in ownership, the amusement park began limiting free speech at the park in increasingly restrictive ways. In 2014, all expressive activity, such as protests, were banned. A month later, Petitioners protested in front of the park's entrance, leading the Owner to file suit for trespass. Trial court granted summary judgment in favor of the owner and Petitioners appealed.

The Court of Appeal, in a matter of first impression, held that under California's Constitution, the amusement park's un-ticketed, exterior areas are a public forum for express activity. In its reasoning, the Court recognized the difficulty in following prior jurisprudence since the California Supreme Court has not charted a clear path. Rather, the Court turned to appellate court decisions.

In doing so, the Court reasoned that one must balance society's interest in free expression against the amusement park's interests as a private property. The Court determined that since the public's interest in engaging in expressive activity on the exterior portions of the park is strong in comparison to the lack of evidence of the park's interest to retain park attendance, the exterior portions were considered public. Furthermore, the Court pointed out that the park is zoned "quasi-public," which under zoning law means its facility is public in nature. Thus, based on these factors, the Court held that the exterior areas of the park constitute a public

EXHIBIT A

forum. The Court, however, noted this only applies to this specific theme park; each case is unique and turns on its particular facts.

X. TELECOMS

21. *T-Mobile West LLC v. City and County of San Francisco*, 6 Cal.5th 1107 (4/4/2019)

The California Supreme Court affirmed the Court of Appeal, which had upheld portions of a San Francisco ordinance regulating telecommunications antennas in public rights of way based on aesthetic concerns. In doing so, the Court recognized there are "significant local interests" in regulating use and management of public streets and the "goal of technological advancement is not paramount to all others."

San Francisco adopted an ordinance in 2011 requiring a site-specific permit to install wireless equipment in the public rights of way. It was intended, in part, "to prevent telecommunications providers from installing wireless antennas and associated equipment in the City's public right of way either in manners or in locations that will diminish the City's beauty."

The state law at issue in this case is California Public Utility Code section 7901. It allows telephone companies to construct and maintain telecommunications antennas along public roads in such a manner as to not "incommode" public use of the road. Additionally, PUC Section 7901.1 states that municipalities "exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed." But, to be reasonable, that control must, at a minimum, be applied to all entities in an equivalent manner. T-Mobile argued that the term "incommode" refers to matters like blocking the street, and did not permit regulation on the basis of aesthetics at all. And it argued that, in any event, section 7901.1 invalidated local ordinances that applied aesthetic requirements to wireless and not to other street uses.

The California Supreme Court concluded that "neither the plain language of section 7901 nor the manner in which it has been interpreted by courts and the [California Public Utilities Commission] supports plaintiffs' argument that the Legislature intended to preempt local regulation based on aesthetic considerations." The Court asserted that a local government has inherent police power to determine the appropriate uses of land within its jurisdiction, which includes establishing aesthetic conditions for land use. Thus, the question was whether section 7901 divests the City of that power. In its analysis, the Court presumed that the ordinance is not preempted absent a clear indication of preemptive intent.

The Court reasoned that, though section 7901 guarantees that telephone corporations do not need to secure a local franchise to operate in the State or construct telephone lines, section 7901 does not relieve telephone companies of the obligation to obtain permits and comply with local land use authority. Hence, it did not preclude localities from using permitting powers and land use authority to address the aesthetics of telephone lines. The Court further supported its decision by noting that the "[California Public Utilities Commission]'s default

policy is one of deference to municipalities in matters concerning the design and location of wireless facilities."

The Court also concluded that the ordinance does not violate section 7901.1. Before trial, both parties agreed that the City treats all utility and telephone corporations equally when dealing with temporary access to the public rights of way during initial construction and installation. The Court analyzed the legislative history of section 7901.1 and ultimately found, as did the trial court and Court of Appeal, that this PUC section only deals with temporary access to the public rights of way. Therefore, the Court concluded that, since both parties agreed that the City does not discriminate when regulating temporary access to the public rights of way, the ordinance does not violate section 7901.1.

This outcome supports local regulation of wireless facility installation aesthetics in California. However, it may have broader implications. The Court was interpreting the scope of City police powers under a statute that permits telephone companies, including providers of wireless telecommunications services, to place facilities in public rights of way subject to local time, place and manner restrictions. Many other states have laws that are similar, and others have statutes that are more protective of local authority over telephone companies, or that do not apply to wireless facilities providers. Moreover, T-Mobile raised discrimination claims that may be similar to claims that are being raised by other companies in other states.

2019 Legislation Summary

Below please find a brief summary of legislation in 2019 regarding land use, housing and local government issues. For reference, all "Chaptered" bills were signed into law and take effect January 1, 2020, all "Vetoed" bills were vetoed by Governor Newsom after passing the Legislature, and all "In Committee" bills were unable to pass the Legislature in 2019 and remain active in 2020.

BUILDING STANDARDS

Chaptered Legislation:

SB 142 (Weiner), Chapter 720, Statutes of 2019
Employees: lactation accommodation.
Expands worker protections for lactation accommodation requests, including several requirements for what employers must provide in lactation rooms.

SB 280 (Jackson), Chapter 640, Statutes of 2019
Older adults and persons with disabilities: fall prevention.
Requires the state Department of Housing and Community Development (HCD) to investigate possible changes to building standards that promote aging in place, as specified and authorizes HCD to propose standards for consideration by the California Building Standards Commission (CBSC) if the changes will not significantly increase the cost of construction.

Vetoed Legislation:

AB 684 (Levine)
Building standards: electric vehicle charging infrastructure.
Requires the state Department of Housing and Community Development (HCD) and the California Building Standards Commission (CBSC) to propose building standards for the installation of electric vehicle charging infrastructure for parking spaces for existing multifamily and non-residential developments.

In Committee:

AB 349 (Choi)
Building standards: garages.
Requires the state Department of Housing and Community Development (HCD), with the assistance of the State Fire Marshal, to investigate and propose, if it deems necessary, changes to residential building standards relating to a second method of egress from a residential garage, as specified.

AB 393 (Nazarian)
Building codes: earthquake safety: functional recovery standard.

Requires the California Building Standards Commission (CBSC) to assemble a working group to help determine criteria for voluntary or mandatory "functional recovery standards" for buildings following a seismic event.

COMMON INTEREST DEVELOPMENTS

Chaptered Legislation:

SB 323 (Wieckowski), Chapter 848, Statutes of 2019
Common interest developments: elections.
Enacts a series of reforms to the laws governing board of director elections in common interest developments (CIDs), also referred to as homeowners associations (HOA), with the intent to increase the regularity, fairness, formality, and transparency associated with such elections.

SB 326 (Hill), Chapter 207, Statutes of 2019
Common interest developments.
Establishes a mandatory inspection regime for exterior elevated elements such as balconies, decks, walkways, stairways, and railings, within HOAs. Also nullifies any provision in an HOA's governing documents that purports to condition or limit the ability of the HOA to bring construction defect litigation against the developer or builder of the HOA.

SB 652 (Allen), Chapter 154, Statutes of 2019
Entry doors: display of religious items: prohibitions.
Requires landlords and homeowners associations (HOA) to allow their tenants and members to affix small religious items to the door or doorframe of the tenants' and members' homes.

SB 754 (Moorlach), Chapter 858, Statutes of 2019
Common interest developments: board members: election by acclamation.
Provides that nominees to a homeowners association (HOA) board in a common interest development (CID) shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board.

AB 670 (Friedman), Chapter 178, Statutes of 2019
Common interest developments: accessory dwelling units.
Prohibits common interest developments (CIDs) from banning construction of an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) but allows homeowners associations (HOA) to impose reasonable restrictions on construction of ADUs or JADUs, as specified.

In Committee:

SB 434 (Archuleta)
Common interest developments: managing agent: production of client property and client records upon termination of management agreement.

Requires a managing agent of a common interest development (CID), whose agreement has been terminated, to produce client property and records no more than 30 days from either the effective date of the termination of the management agreement or the date the agent receives the request, whichever is greater.

CONSTITUTIONAL AMENDMENTS

SCA 1 (Allen), Assembly Desk
Public housing projects.
Repeals Article 34 of the California Constitution, which requires majority approval by the voters of a city or county for the development, construction, or acquisition of a local publicly funded affordable housing project.

ACA 1 (Aguiar-Curry), Assembly Floor - Failed
Local Government financing: affordable housing and public infrastructure: voter approval.
Lowers the voter approval requirement to 55% for local funding for affordable housing, permanent supportive housing, or public infrastructure.

ELECTIONS

Chaptered Legislation:

AB 849 (Bonta), Chapter 557, Statutes of 2019
Elections: city and county redistricting.
Revises and standardizes the criteria and process to be used by counties and cities when they adjust the boundaries of the electoral districts that are used to elect members of the jurisdictions' governing bodies.

Vetoed Legislation:

SB 139 (Allen)
Independent redistricting commissions.
Would have required a county with a population of 400,000 or more to establish an independent redistricting commission to adopt the county supervisorial districts after each federal decennial census.

HOMELESSNESS

Chaptered Legislation:

SB 211 (Beall), Chapter 343, Statutes of 2019
State highways: leases.

Authorizes the State Department of Transportation (Caltrans) to enter into a lease agreement of as little as $1 per month with a local entity for purposes of establishing an emergency shelter or feeding program. (Caltrans currently has authority in a handful of jurisdictions throughout the state to lease property for homeless shelter programs at below market rate; this bill expands the authority to the rest of the state.).

SB 687 (Rubio), Chapter 345, Statutes of 2019
Homelessness Coordinating and Financing Council.
Requires the Governor to appoint one representative from either the California Community Colleges, University of California, or California State University to the Homeless Coordinating and Financing Council (HCFC).

SB 744 (Caballero), Chapter 346, Statutes of 2019
Planning and zoning: California Environmental Quality Act: permanent supportive housing: No Place Like Home Program
Makes changes to the existing streamlined process for supportive housing developments and creates a California Environmental Quality Act exemption for developments that qualify for No Place Like Home funding.

AB 58 (Luz Rivas), Chapter 334, Statutes of 2019
Homeless Coordinating and Financing Council.
Increases the number of members of the Homeless Coordinating and Financing Council (HCFC) appointed by the Governor from 17 to 18, by requiring the Governor to appoint a representative from the California Department of Education to the HCFC.

AB 101 (Committee on Budget), Chapter 159, Statutes of 2019
Housing development and financing.
Provides for statutory changes necessary to enact the housing and homelessness related provisions of the Budget Act of 2019: (1) Provides for certain judicial remedies for violations of the Planning and Zoning Law. (2) Creates a "pro-housing policy" incentive scoring system for certain competitive state-funded housing grant programs, under which local jurisdictions designated by HCD as pro-housing would be awarded additional points in scoring their applications for awards from these programs. (3) Makes statutory changes to streamline approval of low-barrier navigation centers to assist homeless individuals. Includes several provisions to adjust the streamlined approval process established by SB 35 (Wiener, 2017). (4) Provides for the distribution of $650 million in funds to assist local governments in addressing homelessness; $500 million in grants to fund infrastructure improvements such as water, sewer, streets, roads, and sidewalks for eligible cities and counties in relation to housing development; $500 million in new state low-income housing tax credits for affordable housing construction; and $500 million for the California Housing Finance Agency's Mixed Income Program, which provides financing for mixed-income housing developments.

AB 139 (Quirk-Silva), Chapter 335, Statutes of 2019
Emergency and Transitional Housing Act on 2019.

Requires a local government to base the needs for emergency shelter in its housing element on the most recent homeless point-in-time count conducted before the start of the planning period, the need for emergency shelter based on number of beds available on a year-round and seasonal basis, the number of shelter beds that go unused on an average monthly basis within a one-year period, and the percentage of those in emergency shelters that move to permanent housing solutions.

AB 143 (Quirk-Silva), Chapter 336, Statutes of 2019
Shelter crisis: homeless shelters: Counties of Alameda and Orange: City of San Jose.
Authorizes Alameda County, any city within Alameda County, Orange County, any city within Orange County, and the City of San Jose, to include homeless shelters as emergency housing upon declaration of a shelter crisis, until January 1, 2023.

AB 1197 (Santiago), Chapter 340, Statutes of 2019
California Environmental Quality Act: exemption: City of Los Angeles: supportive housing and emergency shelters.
Exempts from the California Environmental Quality Act, until January 1, 2025, the following: (1) actions taken by eligible public agencies to lease, convey, or encumber land owned by that agency, or to facilitate that lease, conveyance, or encumbrance, and actions taken by an eligible public agency in furtherance of providing emergency shelters or supportive housing in the City of Los Angeles, (2) activities approved or carried out by the City of Los Angeles in furtherance of either certain supportive housing projects or emergency shelters funded by certain sources during a declared shelter crisis, and (3) the adoption of specified City of Los Angeles ordinances relating to qualified supportive housing and qualified permanent supportive housing.

AB 1745 (Kalra), Chapter 342, Statutes of 2019
Shelter Crisis: emergency bridge housing community: City of San Jose.
Extends the sunset date for the City of San Jose to declare a shelter crisis and operate an emergency bridge housing community for the homeless from January 1, 2022, to January 1, 2025.

In Committee:

SB 48 (Wiener), Senate – Appropriations Committee – Held on Suspense.
Interim housing intervention developments.
Establishes a streamlined approval process for a “low-barrier navigation center” that connects people experiencing homelessness to services and permanent housing solutions until January 1, 2027, if it meets specified requirements. Makes changes to housing element law with regards to zoning for emergency shelters, as specified. Provisions related to a streamlined approval process for a "low-barrier navigation center" were included in AB 101 (Committee on Budget, Chapter 159, Statues of 2019).

SB 282 (Beall), Assembly – Appropriations Committee
Supportive housing for parolees.
Requires the California Department of Corrections and Rehabilitation to transfer all funds from the Integrated Services for Mentally Ill Parolees program to the California Department of Housing and

Community Development (HCD) for the newly created Supportive Housing Program for Persons on Parole, to provide permanent supportive housing and wraparound services to mentally ill parolees who are homeless or at risk of homelessness.

SB 333 (Wilk), Assembly – Appropriations Committee – Held on Suspense.
Homeless Coordinating and Financial Council.
Requires the Homeless Coordinating and Financing Council (HCFC) to develop and implement a statewide strategic plan to address homelessness and more effectively implement requirements by the US Department of Housing and Urban Development (HUD).

SB 369 (Hertzberg), Assembly Transportation Committee
Vehicle repair assistance program: safe parking program participants.
Authorizes a city, county, city and county, joint powers authority, nonprofit organization, or continuum of care to establish a safe parking program, as specified. Allows an individual enrolled in a safe parking program for at least 30 days to remain eligible for the repair assistance program (related to smog check) if vehicle registration requirements are not met.

SB 573 (Chang), Assembly – Housing and Community Development Committee
Homeless Emergency Aid program: funding.
Makes an annual appropriation of $250 million from the General Fund to the Homeless Emergency Aid Program (HEAP) administered by the Homeless Coordinating and Financing Council (HCFC).

AB 67 (Luz Rivas), Senate – Appropriations Committee – Held on Suspense.
Homeless integrated data warehouse.
Requires the state Department of Housing and Community Development (HCD), in coordination with the Homeless Coordinating and Financing Council (HCFC), to create a state homeless integrated data warehouse, as specified.

AB 137 (Cooper), Senate – Appropriation Committee – Held on Suspense.
Facilities of the State Plan of Flood Control.
Expands the prohibition on cutting or altering specific levees to a prohibition on concealing, defacing, destroying, modifying, using, occupying, cutting, altering, or physically or visually obstructing any levee forming part of any of the plans of flood control adopted by this part or by the Central Valley Protection Board, or any other facility of the State Plan of Flood Control without permission of the board. (This bill was introduced to address concerns about homeless encampments on levees.).

AB 302 (Berman), Senate – Inactive File
Parking: homeless students.
Requires a community college campus that has parking facilities on campus to grant overnight access to those facilities, on or before July 1, 2020, to any homeless student who is enrolled in coursework, has paid enrollment fees that have not been waived, and is in good standing with the community college, for the purpose of sleeping in the student's vehicle overnight.

AB 307 (Reyes), Senate – Appropriations Committee – Held on Suspense.
Homeless youth: grant program.
Requires the Homeless Coordinating and Financing Council (HCFC) to develop a grant program to support homeless youth and to prevent and end homelessness among California's youth, as specified.

Vetoed:

AB 891 (Burke)
Public Property: safe parking program.
Requires each city and county with a population greater than 330,000 to establish a safe parking program by January 1, 2022 that provides safe parking locations and options for individuals and families living in their vehicles.

AB 1702 (Luz Rivas)
Homeless Coordinating and Financial Crisis.
Requires the Homeless Coordinating and Financing Council (HCFC) to report to the Legislature on or before January 1, 2022, recommendations for statutory changes to streamline the delivery of services and enhance the effectiveness of homeless programs in the state, as specified.

HOUSING AND LAND USE

Chaptered Legislation:

AB 68 (Ting), Chapter 655, Statutes of 2019
Land use: accessory dwelling units.
Makes changes to accessory dwelling unit (ADU) and junior accessory dwelling unit (JADU) law.

AB 587 (Friedman, Quirk-Silva), Chapter 657, Statutes of 2019
Accessory dwelling units: sale or separate conveyance.
Creates an exception in ADU law for qualified nonprofit corporations to sell deed-restricted land with a tenants-in-common agreement to eligible homeowners.

AB 671 (Friedman), Chapter 658, Statutes of 2019
Accessory dwelling units: incentives.
Requires a local government to include a plan in their housing element to incentivize and promote the creation of ADUs that can be offered at an affordable rent for very-low, low-, and moderate-income households.

AB 747 (Levine), Chapter 681, Statutes of 2019
Planning and zoning: general plan: safety element.
Requires cities and counties in the safety element of the general plan to identify evacuation routes and their capacity, safety, and viability under a range of emergency scenarios.

AB 881 (Bloom), Chapter 659, Statutes of 2019
Accessory dwelling units.
Makes significant changes to ADU law, including changing the minimum size requirement that local governments may place on an ADU applicant.

AB 1191 (Bonta), Chapter 752, Statutes of 2019
State Lands Commission: exchange of trust lands: City of Oakland: Howard Terminal property: Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act.
Authorizes the State Lands Commission to enter into a land exchange for the Howard Terminal Property in the City of Oakland to facilitate a mixed-use project that includes a stadium for the Oakland A's baseball team.

AB 1255 (Robert Rivas, Ting), Chapter 661, Statutes of 2019
Surplus public land: inventory.
Requires each city and county to report to the Department of Housing and Community Development (HCD) an inventory of its surplus lands located in urbanized areas or urban clusters, and requires HCD to provide this information to the state Department of General Services (DGS) for inclusion in a digitized inventory of state surplus land sites.

AB 1483 (Grayson), Chapter 662, Statutes of 2019
Housing data: collection and reporting.
Requires local jurisdictions to post specified housing-related information on their websites, including zoning ordinances, development standards, fees, exactions, and affordability requirements, and requires HCD to develop and update a 10-year housing data strategy.

AB 1485 (Wicks), Chapter 663, Statutes of 2019
Housing development: streamlining.
Allows moderate income housing developments, under certain conditions, to use the SB 35 [(Wiener), Chapter 366, Statutes of 2017] streamlining process, and makes other clarifying changes to SB 35.

AB 1486 (Ting), Chapter 664, Statutes of 2019
Surplus land.
Imposes additional requirements on the process that local agencies must use when disposing of surplus property.

AB 1487 (Chiu), Chapter 598, Statutes of 2019
San Francisco Bay area: housing development: financing.
Establishes the San Francisco Bay Area Regional Housing Finance Act and enables Bay Area voters to raise revenue for affordable housing.

AB 1515 (Friedman), Chapter 269, Statutes of 2019

Planning and zoning: community plans: review under the California Environmental Quality Act.
Prohibits a court from invalidating the approval of specified development projects in an order issued to remedy an updated community plan's noncompliance with the California Environmental Quality Act.

AB 1730 (Gonzalez), Chapter 634, Statutes of 2019
Regional transportation plans: San Diego Association of Governments: housing.
Amends the timing and process for delivery of the San Diego Association of Government's next regional transportation plan and sustainable communities strategy.

AB 1743 (Bloom), Chapter 665, Statutes of 2019
Local government: properties eligible to claim or receiving a welfare exemption.
Expands the properties that are exempt from community facility district taxes to include properties that qualify for the property tax welfare exemption, and expands protections under the Housing Accountability Act (HAA) for properties receiving this exemption.

AB 1763 (Chiu), Chapter 666, Statutes of 2019
Planning and zoning: density bonuses: affordable housing.
Revises Density Bonus Law to require a city or county to award a developer additional density, concessions and incentives, and height increases if 100% of the units in a development are restricted to lower income households.

AB 1783 (Robert Rivas), Chapter 866, Statutes of 2019
H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development.
Revises the entitlement process and eligibility for state programs that provide funding for farmworker housing.

SB 13 (Wieckowski), Chapter 653, Statutes of 2019
Accessory dwelling units.
Makes a number of substantial changes to ADU law, including prohibiting local governments from requiring the applicant to be an owner or occupant.

SB 99 (Nielsen), Chapter 202, Statutes of 2019
General plans: safety element: emergency evacuation routes.
Requires the safety element of the general plan, upon the next revision of the housing element on or after January 1, 2020, to identify any residential development in any hazard area that does not have at least two emergency evacuation routes.

SB 235 (Dodd), Chapter 844, Statutes of 2019
Planning and zoning: housing production report: regional housing need allocation.
Allows the City of Napa and County of Napa to reach an agreement regarding their regional housing needs assessment (RHNA) requirements regarding the Napa Pipe Project.

SB 242 (Roth), Chapter 142, Statutes of 2019
Land use applications: Department of Defense: points of contact.
Revises provisions of law governing public agencies' duties to notify the United States military regarding specified development decisions.

SB 249 (Nielsen), Chapter 366, Statutes of 2019
Land use: Subdivision Map Act: expiration dates.
Allows certain unexpired subdivision maps in Butte County to be extended for up to 36 months.

SB 330 (Skinner), Chapter 654, Statutes of 2019
Housing Crisis Act of 2019.
Restricts, for a period of five years, actions by cities and counties that would reduce the production of housing.

SB 751 (Rubio), Chapter 670, Statutes of 2019
Joint powers authorities: San Gabriel Valley Regional Housing Trust.
Creates the San Gabriel Valley Regional Housing Trust.

AB 670 (Friedman), Chapter 178, Statutes of 2019
Common interest developments: accessory dwelling units
Prohibits common interest developments from banning construction of an accessory dwelling unit or junior accessory dwelling unit but allows homeowners accusations to impose reasonable restrictions on construction of ADUs and JADUs, as specified.

AB 430 (Gallagher), Chapter 745, Statutes of 2019
California Environmental Quality Act: exemption: City of Los Angeles: supportive housing and emergency shelters.
Creates a streamlined, ministerial approval process for specified housing developments in the Cities of Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows, and Yuba City.

AB 1560 (Friedman), Chapter 631, Statutes of 2019
California Environmental Quality Act: exemption: transportation: major transit stop.
Revises the definition of "major transit stop" to include "bus rapid transit," as defined, which expands the application of specified housing programs.

SB 18 (Skinner), Chapter 134, Statutes of 2019
Keep Californians Housed Act.
Deletes the (December 31, 2019) sunset on the requirement of 90 days' written notice to a renter in the case of a foreclosure, making the law permanent.

SB 222 (Hill), Chapter 601, Statutes of 2019
Discrimination: veteran or military status.
Underscores that housing discrimination on account of military or veteran status is unlawful in California by explicitly stating so within the Fair Employment and Housing Act (FEHA). In

addition, by defining a Veterans Affairs Supportive Housing (VASH) voucher as a source of income for purposes of FEHA, the bill prohibits landlords from discriminating against a tenant on the basis that the tenant pays part or all of the rent using a VASH voucher.

SB 329 (Mitchel), Chapter 600, Statutes of 2019
Discrimination: housing: source of income.
Prohibits landlords from discriminating against tenants who rely upon housing assistance paid directly to landlords, such as a Section 8 voucher, to help them pay the rent. Specifically, expands the definition of "source of income," a category that California's Fair Employment and Housing Act (FEHA) protects against discrimination.

SB 644 (Glazer), Chapter 602, Statutes of 2019
Tenancy: security deposit: service members.
Lowers the amount that a landlord can charge service members for a security deposit on residential rental housing.

AB 1110 (Friedman), Chapter 595, Statutes of 2019
Rent increases: noticing.
Requires landlords to give 90 days' notice to a tenant before imposing rent increases of more than 10%.

AB 1399 (Bloom), Chapter 596, Statutes of 2019
Residential real property: rent control: withdrawal of accommodations.
Amends the Ellis Act to: (1) clarify that owners may not pay prior tenants liquidated damages in lieu of offering them the opportunity to re-rent their former unit; and (2) clarify that the date on which the accommodations are deemed to have been withdrawn from the rental market is the date on which the final tenancy among all tenants is terminated. The Ellis Act prohibits a public entity from compelling an owner of any residential property to continue to offer the rental units for rental housing and allows a public entity to regulate the subsequent use of the property and mitigate any adverse impacts on people who are displaced from the withdrawal of a property.

AB 1482 (Chiu), Chapter 597, Statutes of 2019
Tenant Protection Act of 2019: tenancy: rent caps.
Places an upper annual limit of 5% plus inflation on annual rent increases. Requires that a landlord have and state a just cause, as specified, in order to evict tenants who have occupied the premises for at least one year. Both the rent cap and the just cause provisions are subject to exemptions including, among others: housing built in the past 15 years and single family residences unless owned by a real estate trust or a corporation. Sunsets January 1, 2030 and does not preempt any local rent control or just cause ordinances.

AB 173 (Chau), Chapter 488, Statutes of 2019
Mobilehomes: payments: nonpayment or late payments.

Extends the Register Your Mobilehome Program, a tax abatement program for mobilehome owners, by one year.

AB 338 (Chu), Chapter 299, Statutes of 2019
Manufactured housing: smoke alarms: emergency preparedness.
Requires all used mobilehomes that are sold or rented to have a smoke detector and requires mobilehome park owners to provide emergency procedures, in multiple languages, as specified.

AB 957 (Committee on Housing and Community Development), Chapter 620, Statutes of 2019
Housing Omnibus.
Makes several non-controversial and technical changes to sections of law relating to housing.

AJR 15 (Bloom), Chapter 147, Statutes of 2019
Section 202 Supportive Housing for the Elderly Program.
States the Legislature's support for annual federal funding of the Section 202 Supportive Housing for the Elderly Program and calls on the President of the United States and the Secretary of Housing and Urban Development (HUD) to support significantly increased funding for the program.

SB 623 (Jackson), Chapter 507, Statutes of 2019
Multifamily Housing Program: total assistance calculation.
Provides that the state Department of Housing and Community Development (HCD), in determining the proportion of the funds available for senior citizens in the Multifamily Housing Program, use the American Community Survey, instead of the decennial census, from the US Census Bureau.

SB 6 (Beall), Chapter 667, Statutes of 2019
Residential development: available land.
Requires the Department of General Services (DGS), in coordination with the state Department of Housing and Community Development (HCD), to create a public inventory of local sites suitable for residential development, along with state surplus lands.

AB 1010 (Eduardo Garcia), Chapter 660, Statutes of 2019
Housing Programs: eligible entities.
Makes the governing body of Indian reservations and Rancherias eligible to receive funding from various state affordable housing programs.

Vetoed Legislation:

AB 411 (Mark Stone)
Redevelopment: City of Santa Cruz: bond proceeds: affordable housing.
Would have authorized the City of Santa Cruz to use bond proceeds that are required to be used to defease bonds issued by the former redevelopment agency (RDA), to increase, improve, and preserve affordable housing and facilities for homeless persons.

AB 1084 (Mayes)
Redevelopment: housing successor: Low and Moderate Income Housing Asset Fund.
Would have allowed specified housing successors that own and operate a housing asset of a former RDA to retain "excess surplus" accumulated over eight years rather than four years without triggering the requirement to encumber the funds or transfer the funds to HCD within three years.

AB 1437 (Chen)
Local government: redevelopment: revenues from property tax override rates.
Would have allowed a portion of property taxes in the City of Brea to be paid out of the Redevelopment Property Tax Trust Fund to pay voter-approved taxes for a mobile intensive care program.

AB 1732 (Flora)
Redevelopment: successor agencies: asset disposal: City of Manteca.
Would have authorized the successor agency to Manteca's former RDA to sell property at less than market value to a nonprofit organization.

SB 5 (Beall, McGuire, Portantino)
Affordable Housing and Community Development Investment Program.
Would have established the Affordable Housing and Community Development Investment Program to allow local agencies to reduce contributions of local property tax revenue to schools to build affordable housing and related infrastructure.

SB 532 (Portantino)
Redevelopment: City of Glendale: bond proceeds: affordable housing.
Would have authorized the City of Glendale to use remaining RDA bond proceeds for affordable housing.

SB 611 (Caballero)
Housing: elderly and individuals with disabilities.
Requires the Governor to establish the Master Plan for Aging Housing Task Force to assess the housing issues affecting California's aging population.

AB 386 (Eduardo Garcia)
Agricultural Working Poor Energy Efficient Housing Program.
Establishes the Agricultural Working Poor Energy Efficient Housing Program and requires it to be administered by the Department of Community Services and Development.

In Committee:

SB 592 (Wiener), Assembly – Rules Committee
Housing Development: Housing Accountability Act: permit streamlining.

Expends protections of the Housing Accountability Act to accessory swelling units and certain ministerial decisions, and adds new provisions related to enforcement of the HHA.

AB 69 (Ting), Senate – Inactive File
Land use: accessory dwelling units
Requires the state Department of Housing and Community Development to submit proposed small building home standards to the California Building Standards COMMISSION, ON OR BEFORE January 1, 2021, for accessory dwelling units and homes of less than 800 square feet.

AB 182 (Jackson), Assembly Desk
Local Government: planning and zoning: wildfires
Imposes certain fire hazard planning responsibilities on local governments; requires a city's or county's regional housing needs allocation (RHNA) plan to further the objective of reducing development pressure within very high fire risk areas; and requires councils of government to incorporate lower housing allocations to cities and counties in very high fire risk areas, into their RHNA methodology.

AB 672 (Hill), Assembly - Appropriations Committee – Held on suspense
Planning and zoning: regional housing need allocation: City of Brisbane.
Prohibits the Association of Bay Area Governments from allocating to the City of Brisbane a regional housing needs allocation (RHNA) share that exceeds the City's allocation for the prior planning period, if specified conditions are met.

AB 1251 (Santiago), Senate – Rules Committee
Planning and zoning: housing development
Provides that if a jurisdiction fails to rezone under housing element law within the three year period and after the one-year extension, a development with at least 20% lower income units shall be a use by right in any zone where residential is an allowable use (including mixed use).

SB 4 (McGuire), Senate – Governance and Finance Committee
Housing
Creates a streamlined, ministerial approval process for an eligible neighborhood multifamily project or eligible transit-oriented development project located on an eligible parcel. Prohibits an eligible project from being subject to a conditional use permit if it is consistent with objective zoning standards and objective design review standards, as defined. (This bill was merged with SB 50.)

SB 25 (Caballero), Assembly – Natural Resources Committee
California Environmental Quality Act: projects funded by qualified opportunity zone funds or other public funds.
Establishes expedited judicial review procedures under the California Environmental Quality Act (CEQA) for housing development projects financed in whole or in part by a "qualified opportunity fund" or other specified means and meeting other specified conditions, requiring the courts to resolve lawsuits within 270 days, to the extent feasible.

SB 50 (Wiener), Senate – Appropriations Committee
Planning and zoning: housing development: incentives.
Requires local governments to provide a specified "equitable communities incentive" to developers that construct residential developments in "jobs-rich" and "transit-rich" areas, which may include certain exceptions to specified requirements for zoning, density, parking, height restrictions, and floor area ratios.

SB 384 (Morrell), Senate – Environmental Quality Committee – Failed, reconsideration granted
Housing.
Establishes expedited administrative and judicial review of environmental review and approvals granted for housing development projects with 50 or more residential units. Prohibits courts from staying or enjoining challenged projects with two narrow exceptions.

SB 621 (Glazer), Assembly – Natural Resources Committee
California Environmental Quality Act: expedited judicial review: affordable housing projects: reports.
Establishes that housing development projects providing 30% of units affordable to lower-income households be afforded an expedited 270-day judicial review of CEQA claims.

AB 168 (Aguiar - Curry), Senate – Inactive File
Housing: streamlined approvals.
Establishes a scoping consultation process before the submission of a SB 35 (Wiener, Chapter 366, Statutes of 2017) application to determine if there are potential tribal cultural resources on a proposed project site. If there are tribal cultural resources, the applicant must go through a process, as specified, to identify tribal cultural resources and mitigate any impact to those sites.

AB 1279 (Bloom), Senate – Housing Committee
Planning and zoning: housing development: high-resource areas.
Requires certain development sites in high resource areas to allow for more density and height and makes these sites subject to "use by-right" approval.

AB 1703 (Bloom), Senate – Rules Committee
Redevelopment plans: City of Los Angeles.
Allows the City of Los Angeles' Measure JJJ Transit Oriented Communities zoning requirements to overrule prior redevelopment plans in existing redevelopment areas in the city.

SB 529 (Durazo), Senate Floor – Failed.
Tenant associations: eviction for cause.
Provides for the formation of tenant associations – groups of tenants from three or more units belonging to the same landlord – and attaches certain protections to belonging to such an association, including a requirement that a landlord state the reason for any termination of tenancy.

SB 15 (Portantino), Senate – Appropriations Committee – Held on suspense

Property tax revenue allocations: Local-State Sustainable Investment Program.
Establishes the Local-State Sustainable Investment Program to fund local affordable housing, housing infrastructure, neighborhood restoration, and specified public safety facilities.

SB 1659 (Bloom), Senate – Inactive File.
Local home financing agencies: cities.
Redefines "city" as it applies to home mortgage financing and multifamily rental housing bonds, to include any nonprofit public benefit corporation or instrumentality created by the City of Los Angeles for the purpose of issuing housing bonds in the City, as specified.

SB 252 (Leyva), Senate – Appropriations Committee – Held on suspense.
Income Taxation: exclusion: mobilehome park sales.
Excludes the gain from the sale of a qualified mobilehome park to a qualified purchaser that agrees to maintain affordable rents for 30 years.

AB 195 (Patterson), Senate – Housing Committee
Department of Housing and Community Development: housing bond programs.
Requires the state Department of Housing and Community Development (HCD) to include information on grant-based programs it administers in its annual reports as well as develop a long-term plan to ensure it does not exceed its budget.

AB 1484 (Grayson), Senate – Rules Committee
Mitigation Fee Act: housing developments.
Requires a city or county to post on its Web site each fee imposed by the city or county, and any dependent special districts of the city or county, that is applicable to a housing project.

AB 10 (Chiu), Senate – Appropriations Committee – Held on suspense
Income taxes: credits low-income housing: farmworker housing.
Increases the amount of state tax credits the California Tax Credit Allocation Committee (TCAC) can allocate for low-income housing and makes other changes to the state low income housing tax credit program.

AB 434 (Daly), Senate – Housing Committee
Housing financing programs: universal application.
Requires the state Department of Housing and Community Development (HCD) to develop a single, universal application for the Multifamily Housing Program, the Infill Incentive Grant Program, and the Transit-Oriented Development Implementation Program.

AB 437 (Wood), Senate – Appropriations Committee – Held on suspense
Move-In Loan Program.
Creates the Move-In Loan Program under the state Department of Housing and Community Development (HCD) to provide no-interest loans to help eligible renters with move-in costs.

AB 694 (Irwin), Senate – Appropriations Committee – Held on suspense

Veterans Housing and Homeless Prevention Bond Act of 2019.
Creates the Move-In Loan Program under the state Department of Housing and Community Development (HCD) to provide no-interest loans to help eligible renters with move-in costs.

JOINT EXERCISE OF POWERS

Chaptered Legislation:

AB 305 (Nazarian), Chapter 225, Statutes of 2019
Public capital facilities: public water or wastewater agencies: rate reduction bonds.
Makes a number of changes to existing law that allows publicly-owned utilities that provide water service to form joint powers authorities for the purpose of issuing rate reduction bonds for specified water projects.

SB 355 (Portantino), Chapter 248, Statutes of 2019
Joint powers agencies: Clean Power Alliance of Southern California: meetings.
Authorizes the Clean Power Alliance of Southern California to allow certain alternate members of its legislative body to attend closed sessions of the agency.

LOCAL AGENCY FORMATION COMMISSIONS (LAFCOs)

Chaptered Legislation:

AB 530 (Aguiar-Curry), Chapter 69, Statutes of 2019
The Fairfield-Suisan Sewer District.
Makes a number of changes to the provisions of the Fairfield-Suisun Sewer District Act.

AB 600 (Chu), Chapter 612, Statutes of 2019
Local government: organization: disadvantaged unincorporated communities.
Makes changes to LAFCO requirements for approving specified annexations to disadvantaged unincorporated communities.

AB 1822 (Committee on Local Government), Chapter 20, Statutes of 2019
Local Government: omnibus.
Makes several non-controversial changes to LAFCO statutes which govern local government organization and reorganization.

LOCAL GOVERNMENT FINANCE

Chaptered Legislation:

AB 116 (Ting), Chapter 656, Statutes of 2019
Local government.
Modifies the requirement that Enhanced Infrastructure Financing Districts (IFDs) receive voter approval prior to issuing bonds.

AB 485 (Medina), Chapter 803, Statutes of 2019
Local government: economic development subsidies.
Requires local agencies to take specified actions to inform the public before approving or granting economic development subsidies of $100,000 or more for warehouse distribution centers, and during the term of such subsidies.

AB 689 (McCarty), Chapter 230, Statutes of 2019
Municipal Utility District Act: nonstock security.
Authorizes a pilot project until January 1, 2025, for the Sacramento Municipal Utility District to hold nonstock security in private entities.

AB 723 (Quirk), Chapter 747, Statutes of 2019
Transactions and use taxes: County of Alameda: Santa Cruz Metropolitan Transit District.
Exempts specified transactions and use taxes from counting towards the statutory 2% combined rate cap.

AB 857 (Chiu, Santiago), Chapter 442, Statutes of 2019
Public banks.
Provides for the establishment of a public bank by a local agency, subject to approval by the Department of Business Oversight and Federal Deposit Insurance Corporation.

AB 945 (McCarty), Chapter 619, Statutes of 2019
Local government: financial affairs: surplus funds.
Makes changes to the authority of local agencies to invest surplus funds in certain deposits.

AB 1208 (Ting), Chapter 238, Statutes of 2019
Utility user taxes: exemption: clean energy resource.
Extends, until January 1, 2027, a utility user's tax exemption for the consumption of electricity generated by a clean energy resource located on a customer's premises and used solely for the customer or the customer's tenants.

AB 1413 (Gloria), Chapter 758, Statutes of 2019
Transportation: transactions and use taxes.
Authorizes specified local transportation authorities, which have existing transactions and use tax authority, to levy a transactions and use tax in a portion of its jurisdiction, with voter approval.

SB 293 (Skinner), Chapter 762, Statutes of 2019
Infrastructure financing districts: formation: issuance of bonds: City of Oakland.

Establishes procedures to form an IFD in the City of Oakland, modeled after various existing infrastructure financing district laws.

SB 646 (Morrell), Chapter 78, Statutes of 2019
Local agency utility services: extension of utility services.
Requires connection fees to bear a fair or reasonable relationship to the water or sewer connection that they fund.

SB 699 (Hill), Chapter 214, Statutes of 2019
San Francisco Bay Area regional water system.
Extends the sunset dates of the state's oversight authority of and bond authority for Bay Area regional water system projects.

Vetoed Legislation:

AB 618 (Mark Stone)
Transactions and use taxes: City of Scotts Valley: City of Emeryville.
Would have allowed the Cities of Scotts Valley and Emeryville to adopt an ordinance proposing the imposition of a transactions and use tax that exceeds the 2% statutory limitation.

SB 5 (Beall, McGuire, Portantino)
Affordable Housing and Community Development Investment Program.
Would have established the Affordable Housing and Community Development Investment Program to allow local agencies to reduce contributions of local property tax revenue to schools to build affordable housing and related infrastructure.

SB 531 (Glazer)
Local agencies: retailers.
Would have prohibited a local agency from entering into any agreement that results in a rebate of Bradley-Burns local tax revenues to a retailer in exchange for that retailer locating within that agency's jurisdiction.

SB 598 (Moorlach)
Open Financial Statements Act.
Would have created the Open Financial Statement Commission and required it to report to the Legislature regarding how to transition state and local agencies' financial reporting to a machine readable format.

POWERS AND DUTIES

Chaptered Legislation:

AB 212 (Bonta), Chapter 41, Statutes of 2019

Counties: recording fees.
Allows county recorders to use a $1 fee collected pursuant to existing law for additional purposes, until January 1, 2026.

AB 632 (Aguiar-Curry), Chapter 62, Statutes of 2019
Counties: offices: consolidation.
Allows the Board of Supervisors in Lake County, by ordinance, to consolidate the offices of Auditor-Controller and Treasurer-Tax Collector when one of the offices has a vacancy.

AB 825 (Mullin), Chapter 292, Statutes of 2019
San Mateo County Flood and Sea Level Rise Resiliency District.
Makes numerous changes to the San Mateo County Flood Control District Act.

AB 857 (Chiu, Santiago), Chapter 442, Statutes of 2019
Public banks.
Provides for the establishment of a public bank by a local agency, subject to approval by the Department of Business Oversight and Federal Deposit Insurance Corporation.

AB 931 (Boerner Horvath), Chapter 813, Statutes of 2019
Local boards and commissions: representation: appointments.
Prohibits, on or after January 1, 2030, the membership of appointed boards and commissions in cities with a population of 50,000 or more from having more than 60% of the same gender identity, and smaller boards and commissions from being comprised entirely of members having the same gender identity.

AB 1100 (Kamlager-Dove), Chapter 819, Statutes of 2019
Electric vehicles: parking requirements.
Clarifies that parking spaces served by electric vehicle supply equipment shall count as parking spaces for the purpose of complying with applicable minimum parking space requirements established by a local jurisdiction.

AB 1106 (Smith), Chapter 165, Statutes of 2019
Los Angeles County: notice of recordation.
Extends the sunset date on specified elements of the Los Angeles County Homeowner Notification Program.

SB 205 (Hertzberg), Chapter 470, Statutes of 2019
Business licenses: stormwater discharge compliance.
Requires a business operation in a regulated industry to demonstrate enrollment in the National Pollutant Discharge Elimination System permit program when applying for an initial business license or business license renewal.

SB 324 (Rubio), Chapter 73, Statutes of 2019
Street lighting systems: City of Temple City.

Allows the Landscaping and Lighting District of Temple City to perform maintenance and make improvements under the Landscaping and Lighting Act of 1972.

Vetoed Legislation:

AB 891 (Burke)
Public property: safe parking program.
Would have required counties and cities with a population greater than 330,000 to establish a safe parking program.

TRANSPORTATION AND TRANSIT DISTRICTS

Chaptered Legislation:

AB 631 (McCarty, Cooley), Chapter 94, Statutes of 2019
Sacramento Regional Transit District: voting threshold.
Reduces, from 80% to 67%, the nonweighted voting threshold of the Sacramento Regional Transit District (SacRT) Board in order to authorize the detachment of territory from SacRT.

AB 185 (Grayson), Chapter 534, Statutes of 2019
California Transportation Commission: transportation and transportation-related policies: joint meetings.
Requires the state Department of Housing and Community Development (HCD) to participate in the two joint meetings the California Transportation Commission and the California State Air Resources Board are required to hold annually in order to coordinate implementation of policies that jointly affect transportation, housing, and air quality.

In Committee:

SB 509 (Portantino), Senate – Appropriations Committee – Held on suspense.
Vehicles: California Housing Crisis Awareness specialized license plate.
Requires the state Department of Housing and Community Development (HCD) to apply to the Department of Motor Vehicles (DMV) to sponsor a housing crisis awareness specialized license plate program, with the fees going to support programs in the Building Homes and Jobs Act (Atkins, Chapter 264, Statues of 2017) for owner occupied workforce housing.

SB 526 (Allen), Senate – Appropriations Committee – Held on suspense.
Regional transportation plans: greenhouse gas emissions: State Mobility Action Plan for Healthy Communities.
Among other things, establishes an interagency working group to develop and implement a state plan to ensure that regional growth and development is designed and implemented in a manner to help achieve the state's environmental, equity, climate, health, and housing goals, as specified.

UTILITIES, TELECOMMUNICATIONS, AND ENERGY

Chaptered Legislation:

AB 689 (McCarty), Chapter 230, Statutes of 2019
Municipal Utility District Act: nonstock security.
Authorizes a pilot project until January 1, 2025, for the Sacramento Municipal Utility District to hold nonstock security in private entities.

AB 1208 (Ting), Chapter 238, Statutes of 2019
Utility user taxes: exemption: clean energy resource.
Extends, until January 1, 2027, a utility user's tax exemption for the consumption of electricity generated by a clean energy resource located on a customer's premises and used solely for the customer or the customer's tenants.

WATER

Chaptered Legislation:

AB 508 (Chu), Chapter 352, Statutes of 2019
Drinking water: consolidation and extension of service: domestic wells.
This bill makes changes to statute related to the State Water Resources Control Board's authority to order the consolidation of drinking water systems.

AB 591 (Cristina Garcia), Chapter 124, Statutes of 2019
Central Basin Municipal Water District: board of directors.
Clarifies who can be an appointed member of the Central Basin Municipal Water District Board of Directors.

AB 825 (Mullin), Chapter 292, Statutes of 2019
San Mateo County Flood and Sea Level Rise Resiliency District.
Makes numerous changes to the San Mateo County Flood Control District Act.

AB 1220 (Cristina Garcia), Chapter 71, Statutes of 2019
Metropolitan water districts.
Makes changes to the membership requirements of the Metropolitan Water District Board.

AB 1752 (Petrie-Norris, Brough), Chapter 500, Statutes of 2019
South Coast Water District.
Allows, until January 1, 2025, the South Coast Water District to contract with a private entity for the Doheny Ocean Desalination Project, under certain conditions.

SB 205 (Hertzberg), Chapter 470, Statutes of 2019
Business licenses: stormwater discharge compliance.
Requires a business operation in a regulated industry to demonstrate enrollment in the National Pollutant Discharge Elimination System permit program when applying for an initial business license or business license renewal.

SB 413 (Rubio), Chapter 370, Statutes of 2019
San Gabriel Basin Water Quality Authority.
Extends by one year the terms of city representatives currently elected to the San Gabriel Basin Water Quality Authority Board and revises specified reporting requirements.

ROSTER

(those who registered after 1/21 are not included in the below list)

NAME	TITLE
Abalos, Raynard	Program Manager
Adler, Noah	Manatt, Phelps & Phillips
Aguirre, Haide	
Alkire, Jennifer	Planning Manager, CHPP
Alkire, Masa	Principal Planner
Allard, Ray	Planning Commissioner
Allen, Nyeka	
Anderson, Jeff	Community Development Director
Andrew, Jared	California State University, Northridge
Archer, Romi	Project Manager
Ascione, Mike	Assistant Planner II
Atwood, Lucy K.	Deputy City Attorney
Azriel, Eric	Cal Poly San Luis Obispo
Babla, Christine	Director, Urban Design and Planning
Bar-El, Elizabeth	City Planner
Barron, Alina	
Bathgate, Diane	Principal
Black, Laura	Deputy Planning Director
Blackson, Kristin	
Bohonok, Brianna	Associate Principal
Boparai, Poonam	Principal
Brizzee, Bart William	Principal Assistant County Counsel
Bronowski, Clare	
Bullard, Eric	Dean, UCLA Extension
Bundy, Kevin	Of Counsel, Shute Mihaly & Weinberger
Burris, Matt	Deputy City Manager, Rancho Cucamonga
Caceres, David	
Cai, Winnie	City of Goleta
Campbell, James	
Campion, Michael	Attorney
Cao, Stephanie	Attorney- Richards, Watson & Gershon
Cardona, George	Special Counsel
Carter, Alan R	
Casey, Katherine M.	Senior Project Manager
Castillo, Antonio	Associate Planner
Castro, Danny	
Chang, Joanna	Land Use Manager

Chang, Matt	Senior Planner
Chang, Sophia	Associate
Chang, Sophia	Associate, Real Estate – Loeb & Loeb LLP
Chow, James	Senior Planner
Christoffels, Mark	Vice-Chair of Long Beach's Planning Commission
Chu, Cindy	Attorney
Cohen, Albert M	Partner, Environmental Law – Loeb & Loeb LLP
Cola, Susan	
Cook, Allison	Assistant Planning Director
Cooper, Julie	Senior Associate
Copado, Norma	Attorney
Dalquest, Robert	
Damasco, Michael	University of California, Irvine
Dandekar, Hemalata C.	Cal Poly San Luis Obispo
Davis, Ashley	Principal - Environmental Planning
Dawson, Miles	Chapman University
DeBusk, Allison	
DeHerrera, Stephanie	Attorney
Demeter, Myra	City of Beverly Hills Planning Commissioner
DePalatis, Paul S	Vice President / Director of Planning Services
Dickson, Elizabeth	City of San Diego's Planning Department
Dilg, Lane	
Dillon, Bill	Santa Barbara LAFCO Counsel
Doimas, John	
Donaldson, Jamie	Community Development Specialist
Duron, Heidi	
Ehrlich, Bruce G	Ehrlich Group Law Office
Enciso, Valerie	Program Representative, UCLA Extension
Enders, Rachel	Pepperdine University
Eskandar, Philippe	Deputy City Manager
Fernandes, Carey	Carey Fernandes, AICP
Fitzgerald, PJ	Assistant Deputy Director
Flodine, Eric	Director of Community Development
Flores, Cherie	
Flores, Jessica Kirchner	Managing Principal
Flower, Steven	Attorney- Richards, Watson & Gershon
Frattin, Daniel	Attorney
Freeman, Jay	Santa Barbara Commissioner
Fu, Ben	Director of Community Development
Fuentes, Theresa	Assistant City Attorney
Fulton, William	Director
Gallardo-Daly, Cecilia	Community Development Director
Galler, Kirsten	

Garcia, Michael	
Garcia, Ron	City Planner
Gatzke, David	Senior Director, Entitlement & Development
Gaver, Shawn	Project Manager / Snr Environmental Planner
Geiler, Gary	Deputy Director
Geyer, Craig	Santa Barbara LAFCO Commissioner
Gharamanian, Leo	California State University, Northridge
Gibson-Williams, Gina	Community Development Director
Glickman, Steve	Best Best & Krieger LLP
Golden, Jack W.	HAVE CEQA, WILL TRAVEL
Gondek, David	Attorney
Gonzales, Rina	Deputy City Attorney
Goodman, Cameron	Attorney
Graham, Fiona	Interim Planning Manager
Griffith, Danielle	Supervising Environmental Planner
Gyi, Khin Khin	Khin Khin Gyi, M.D., Ph.D., Board Member CCSC
Hadfield, JoAnn C	Principal
Halligan, William	Managing Principal
Hansen, Deanna	Principal
Harding, Christopher M	Attorney
Harlan, Jeffrey	Land Use Attorney
Heinselman, Zachary M.	Attorney- Richards, Watson & Gershon
Herson, Al	Of Counsel, Sohagi Law Group
Hill, Allison	Pepperdine University
Hoekstra, Stephanie	Public Policy Program Director, UCLA Extension
Hogan, Jeff	Senior Director-Development Services
Hong, Hana	Associate
Hong, Hana	Associate, Real Estate – Loeb & Loeb LLP
Hooper, Tess	University of California, Santa Barbara
Hopkins, Greg	Assistant Director
Hori, Susan	Partner
Houlihan, Michael	Principal Associate
Huerta, Susanne	Supervisory Environmental Planner
Im, Eunice	Eunice Im
Imhof, Peter	Planning and Environmental Review, Director
Iverson, Erika	Associate Planner
Janz, James R	Attorney
Jensen, Marcia	Mayor, Town of Los Gatos
Jimenez, Alejandra	
Jimenez, Beabea	Land Development Division Manager
Joe, Dennis	
Johnson, Jayshawn	

Jones, Jill	Senior Counsel - Real Estate
Jones, Jill	Senior Counsel, Real Estate – Loeb & Loeb LLP
Jones, Kelli	Planning Commissioner
Jostes, John	University of California, Santa Barbara
Kaufman, Joanna	Land Use Planner
Kearns, Brendan	Attorney- Richards, Watson & Gershon
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