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FEATURE ARTICLE

WEED, WATERS AND WILDLIFE: ENVIRONMENTAL PERMITTING OF CANNABIS CULTIVATION IN CALIFORNIA—PART 1: FISH AND GAME PERMITTING

By Clark Morrison

This article is the first of a two-part series describing California's environmental regulatory structure for cannabis cultivation as implemented by the California Department of Fish and Wildlife (Department or CDFW) and the State Water Resources Control Board (SWRCB).

In part 1, the author provides a brief introduction to Proposition 64's environmental requirements as subsequently codified by the California Legislature through the passage of Senate Bill 94. Following this introduction, the author describes the Department's regulations under §§ 1602 and 1617 of the Fish and Game Code (lake and streambed alterations), which code provisions were amended or adopted by SB 94 specifically to address cannabis cultivation.

In the second part of this article, to follow in a subsequent issue, the author will discuss the cannabis policy and permitting requirements adopted by the SWRCB to implement the directives of Proposition 64 and SB 94.

Introduction

Last year, the California Department of Fish and Wildlife published a report entitled, *A Review of the Potential Impacts of Cannabis Cultivation on Fish and Wildlife Resources* (July 2018). The Department's report identified a variety of environmental challenges related to the production of cannabis, including the direct and indirect impacts of pesticides and rodenticides on wildlife; water diversion impacts on flow regimes (including dewatering) and water quality; the impacts of dams and stream crossings; the delivery of pollutants; terrestrial impacts associated with site development, use and maintenance (including road use, noise and artificial lighting); and health hazards to wildlife from the ingestion of crops.

The Department's findings were neither new nor surprising. California's regulatory agencies had long known that unregulated grows were affecting water quality, and fish and wildlife habitat, in areas of the state where cultivation was most concentrated. Accordingly, when Proposition 64 was crafted for consideration by California voters in 2016, significant funding was included for three conservation priorities: the restoration of watersheds and habitat damaged by cultivation; improved management of state parks and wildlife areas to minimize future degradation; and the enforcement of environmental laws that had hitherto been largely unenforced. According to the Conservation Strategy Group, Proposition 64 initially was expected to generate up to $200 million year for these purposes.

In 2017, Proposition 64 was codified through the passage SB 94. The law includes a number of provisions calling upon the state's environmental agencies, particularly the Department and the SWRCB to develop programs for the regulation of cannabis cultivation. In particular, the law requires the California Department of Food and Agriculture (CDFA) to include in any license for cultivation conditions requested by the Department or the SWRCB to:

- Ensure that the effects of diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration and rearing, and the flows needed to maintain natural flow variability;

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- Ensure that cultivation does not negatively impact springs, riparian habitat, wetlands or aquatic habitat; and

- Otherwise protect fish, wildlife, fish and wildlife habitat, and water quality.

The law further directs CDFA, in consultation with the SWRCB and the Department, to implement a program for the issuance of unique identifiers to be attached to the base of marijuana plants grown under a state license. In implementing the program, CDFA is required to consider issues such as water use and environmental impacts, including 1) flows needed for fish spawning, migration and rearing, and the flows needed to maintain natural flow variability and 2) impacts on springs, riparian wetlands and aquatic habitats. If a watershed cannot support additional cultivation, no new plant identifiers may be issued for that watershed.

With respect to the SWRCB and the Regional Water Quality Control Boards (RWQCBs) specifically, the law amended § 13276 of the Water Code to authorize the SWRCB and direct the RWQCBs to address discharges of waste from cultivation, including by adopting a general permit, establishing waste discharge requirements or taking action under Water Code § 13269. In so doing, the water boards must include conditions addressing a dozen different considerations including, for example, riparian and wetland protection, water storage and use, fertilizers, pesticides and herbicides, petroleum and other chemicals, cultivation-related waste and refuse and human waste. The water boards' programs to implement these requirements, and SB 94's requirements relating to water rights, will be addressed in Part II of this article.

With respect to the Department, the law amended certain provisions of the Fish and Game Code governing the diversion of water from, and certain alterations and discharges to, rivers, streams and lakes in California. These provisions, and the Department's implementation of them, are further described below.

Finally, the law directs the Department and the SWRCB to prioritize the enforcement of environmental laws governing cannabis cultivation, and establishes steep penalties (including imprisonment) on those whose activities violate various provisions of, among other statutes, the Water Code (§ 1052 regarding diversions or §§ 13260, 13264, 13272, or 13387 regarding waste discharges) or the Fish and Game Code (§§ 5650 or 5652 regarding discharges of waste or, § 1602 regarding streambed alterations, § 2080 regarding listed species and § 3513 regarding migratory birds).

The Department of Fish and Wildlife's Lake and Streambed Alteration Program

SB 94 supplemented the Department's existing authority under § 1602 of the Fish and Game Code to issue "Lake and Streambed Alteration Agreements" for certain activities affecting rivers, streams and lake (*i.e.*, water diversions, modifications to bed and bank, certain deposits of waste). The Department's lake and streambed alteration program is one of California's original environmental regulatory structures, hailing from the days of the gold rush.

Under the statute, an "entity" (*i.e.*, permittee) intending to engage in a potentially regulated activity provides a "notification" to the Department. Upon receipt, the Department evaluates whether the activity is covered by § 1602 and, if it is, recommends a set of reasonable measures to protect fish and wildlife resources. Those measures are set forth in a draft Lake and Streambed Alteration Agreement (LSAA) delivered to the permittee, who then has the opportunity to objection to one or more of those measures and negotiate a final agreement with the Department. If the Department and permittee cannot resolve their differences, the matter is submitted to binding arbitration.

The LSAA process is generally fairly quick. The Department has 30 days to determine if a notification is complete and, if it is, 60 days to issue a draft agreement. In many cases the Department will simply decline to act within the 60-day period, in which case the proposed activity becomes authorized as a matter of law. LSAAs can be authorized for individual projects or in the form of long-term, programmatic agreements that might cover a complex or multiphase project.

SB 94 Requirements Regarding LSAAs

Under SB 94, any cultivation license must contain a condition that it not become effective until the licensee has demonstrated compliance with § 1602 or receives written verification from the Department that an LSAA is not required. Given the potential deluge of LSAA applications expected to swamp the

Department as a result, even the efficiencies associated with the 1600 process were not expected to be sufficient to implement this requirement. Accordingly, the law amended to Fish and Game Code to further streamline the process.

First, it amended § 1602 to exempt any permittee from the need to secure an LSAA if, following notification and the payment of fees, the Department determines that conditions contained in the license in accordance with the Department's recommendations as described above (and codified at § 26060.1 of the Business and Professions Code) "will adequately protect existing fish and wildlife resources that may be substantially adversely affected by the cultivation without the need for additional measures" that would ordinarily be included in an LSAA. This process is described by the Department as "self-certification." Where this occurs, any failure to comply with the CDFA's license conditions will constitute a violation of the Fish and Game Code.

Second, SB 94 added a new § 1617 to the Fish and Game Code, allowing the Department to adopt a "general" LSAA (referred to as the "General Agreement") authorizing certain cannabis cultivation activities on an essentially automatic basis. As more fully described below, a permittee secures this coverage by submitting to the Department information to the Department demonstrating that the proposed project qualifies for coverage, and the Department issues its authorization on a perfunctory, non-discretionary basis. There is no need for a specific LSAA for the activities proposed. Under the General Agreement, however, there is no opportunity for a permittee to object to the required fish and wildlife protections or to arbitrate any disagreement with the Department.

The General Agreement

On January 2, 2018, the Department, acting on an emergency basis (as authorized by SB 94), added § 722 to the Department's existing regulations in Title 14 of the California Code of Regulations. Section 722 constitutes the the General Agreement authorized by the Legislature.

Although coverage under the General Agreement is more or less automatic, compliance is anything but simple. Anyone wishing to pursue authorization under the General Agreement must certify that he or she will comply with an exhaustive and detailed list of environmental protections. These are described below. Notably, neither § 1617 nor § 722 include any requirement for compensatory mitigation in the form of conservation easements or other tools typically required under § 1600, the California Endangered Species Act (CESA) and other state regulatory programs.

The General Agreement covers certain construction projects as well as certain water diversions associated with cannabis cultivation, including the planting, growing, harvesting, drying, curing, grading or trimming of cannabis. In particular, the General Agreement covers: 1) the construction, reconstruction, maintenance or repair of a bridge, culvert or rock ford in or over a stream or river, including all fill material within the crossing "prism"; and 2) water diversions on *nonfish* rivers, streams, and lakes where such diversions are used or will be used for the purpose of cannabis cultivation. Covered diversions include diversions of either surface flow or hydrologically connected subsurface flow for use or storage, including all infrastructure used to divert or store the flow (*e.g.*, rock dams, excavation pools in fast-moving water, and wells).

For an activity to be eligible for coverage, the permittee must certify to the Department that the proposed activity: 1) will meet certain design criteria and other requirements described in § 722, 2) will not occur on or in a "finfish" (*i.e.*, inhabited by any species of bony fish) stream or lake, and 3) is not already the subject of a complaint by the Department or other law enforcement agency or any resulting court order; provided, however, that the General Agreement process may be used on an after-the-fact basis to permit prior unauthorized work.

The permittee must also certify that the activity will not result in the "take" of a species that is listed under the CESA, the Native Plant Protect Act (NPPA) or the Fish and Game Code's provisions establishing statutory, "fully protected" status for certain species.

Section 722(e) establishes the Department's required design criteria for bridges, culverts, rock fords and water diversions, respectively.

Bridges, for example, must be single span with abutments located outside of top of bank and the tops of any abutment footings located below the scour line; allow 100-year peak flows with one foot of freeboard; and allow free passage of fish upstream and downstream. Culverts must be comprised of a single

pipe constructed in a particular manner and sufficient to, among other things, convey or withstand a 100-year peak storm flow. Rock fords must be located in a stable stream reach with a coarse gravel and cobble streambed, oriented particular to the flow, designed and constructed to withstand multiple flow velocities, and must not impede fish passage.

The design criteria for water diversions are more complicated. Among other things, diversions may not exceed ten gallons per minute and must allow a minimum 50 percent of the flow to bypass the diversion. Water diverted to storage must not exceed five acre-feet per year, with storage facilities located off-stream and outside the 100-year floodplain.

In addition to these design criteria, any authorized structure must be constructed in a manner consistent with a number of general and specific measures to protect fish and wildlife resources, which are described more fully below.

Applying for Coverage

To apply for coverage, a permittee must—in addition to paying certain fees and making the certifications described above—submit certain information to the Department (through the Department's website at https://wildlife.ca.gov/Conservation/LSA) describing the identity of the permittee and the nature and location of the project. Following the submittal of that information, the Department notifies the permittee of the issuance of coverage.

Among the required information is a certification that the permittee has in his or her possession and will retain at the project site: 1) a detailed design plan prepared by a licensed engineer, geologist, land surveyor, professional forester or professional hydrologist, 2) a detailed a property diagram; and 3) a detailed biological resources assessment prepared by a qualified biologist. This information, as well certain other information such as any cannabis cultivation license issued by CDFA, must be presented upon request to CDFW employees upon request. CDFW employees are permitted access to any project site for inspection purposes—without notice—between 8 am or 5 pm or at other reasonable times as may be mutually agreed between the Department and the permittee.

Biological Resource Assessment and Impact Avoidance

The biological resource assessment must identify the presence or potential presence of "Species of Greatest Conservation Need" (as listed in the state's *Wildlife Action Plan*), rare or endangered species (as defined in § 15380 of the California Environmental Quality Act (CEQA) Guidelines), any finfish or their habitat, and any invasive species. In so doing, the biologist must rely on certain classification systems promulgated by the U.S. Department of Agriculture (USDA), the Department, the U.S. Geological Service (USGS), the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), respectively. Notably, the species covered by the biological resource assessment are somewhat different from those whose take is expressly prohibited under the terms of the General Permit.

Because the primary purpose of the Department's LSAA program is to protect fish and wildlife resources, the General Permit establishes a long list of detailed measures to avoid and minimize impacts to those resources. These include the following:

- Seasonal restrictions on work within the bed, bank or channel (*i.e.*, June 15 to October 15 only) and dry-weather-only work requirements;

- Any wildlife encountered must not be disturbed or harmed;

- Disturbances to aquatic and riparian habitat must be minimized;

- Daily morning inspections of the project site for wildlife;

- Installation of overnight escape ramps in open trenches;

- Seasonal (*i.e.*, February 1 through August 31) focused surveys for nests and dens of birds and mammals, and the establishment of work buffers if any are found;

- Vegetation removal must be minimized and buffers established for any plant designated as a Species of Greatest Conservation Need;

- Implementation of measures to protect water flow and minimize turbidity, siltation and pollution.

- Prohibitions on the use of chemical herbicides and pesticides that are deleterious to fish, plants,

birds or mammals where they may "pass into" any "waters of the State" as defined in § 89.1 of the Fish and Game Code);

•Implementation of a variety or erosion control measures throughout all work phases
Measures related to the storage or migration of toxic materials and hazardous substances
Invasive species controls, including prohibitions on the stocking of fish;

•A variety of additional design requirements for all stream crossings, and also specifically for bridges, culverts, and water diversions.

Not surprisingly, the regulation includes significant reporting requirements, including a project completion report, water diversion and use reports, and reports on any observations of Species of Greatest Conservation Need (to be submitted to the Department's Natural Diversity Database, *i.e.* CNDDB).
If a permittee fails to comply fully with the General Agreement, or if any activity undertaken by a person does not actually qualify for the General Agreement, the Department may take action, including suspension or revocation of the permittee's authorization or the pursuit of formal enforcement.

Conclusion and Implications

The Department's cannabis program website: (https://www.wildlife.ca.gov/Conservation/Cannabis#53534664-resources) includes a number of helpful tools for the prospective permittee, including best management practices for watershed management and pesticide use, a compliance handbook issued by the Department's North Coast region, frequently asked questions, and other materials. A review of the Department's page for LSAAs is also helpful. It is cited above.

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LAND USE NEWS

DEMOCRATIC PRESIDENTIAL CANDIDATES' PLANS TO ADDRESS CLIMATE CHANGE IMPACTS IN THE AGRICULTURAL SECTOR

The Iowa State Fair is known as a staple of presidential campaigns. Over 20 Democratic presidential candidates made the rounds at the fair this summer, with a few of the candidates speaking about the connection between climate change and agriculture. Many of the candidates have released rural policy plans that include components to address climate change impacts in the agricultural sector. Excerpts from a few of the plans are highlighted below.

U.S. Senator Amy Klobuchar

Senator Klobuchar's plan, released August 7, 2019, is known as the "Plan from the Heartland: Strengthening our Agricultural and Rural Communities" (Klobuchar Plan). The Klobuchar Plan's main topics are "Economics," "Living in Rural America," "Protecting Our Future," and "Leaving No One Behind." The agriculture/climate change proposals are in the "Protecting Our Future" portion and include the following (excerpted from the Klobuchar Plan).

Expand Conservation Practices

Senator Klobuchar has been a champion of supporting farmer conservation efforts and promoting farming practices that reduce soil erosion and improve air and water quality, including by helping pass the 2018 Farm Bill, which included several of her priorities. As President, she will support significant new investments in conservation of working and retired lands. Senator Klobuchar will support the continued expansion of the Environmental Quality Incentives Program and increase resources for the Conservation Stewardship Program to help provide farmers the tools they need to protect and enhance natural resources on working agricultural lands. And after successfully increasing the acreage cap of the Conservation Reserve Program, Senator Klobuchar will work to attract more enrollees and ensure payment rates are fair.

Invest in Conservation Innovation

Senator Klobuchar will target research into soil carbon sequestration, which could improve soil health as well as reduce carbon levels in the atmosphere. She will also expand Conservation Innovation Grants to test emerging conservation approaches, including practices that increase carbon sequestration levels. And building on provisions she included in the 2018 farm bill, Senator Klobuchar will further improve agriculture data research of conservation practices to help farmers reduce risk and increase profitability.

Invest in and Provide Incentives for Homegrown Energy

Senator Klobuchar believes that homegrown biofuels are key to our rural economies, our nation's energy security, and reducing greenhouse gas emissions. In the Senate, she has been a leader when it comes to standing up to the administration's misuse of small refinery renewable fuel standard (RFS) waivers. She has also worked successfully in the Senate to provide financing and grant support to biobased manufacturers. She authored an amendment that was included in the Farm Bill that provides mandatory funding to support biobased marketing, manufacturing.

U.S. Senator Cory Booker

On August 8 2019, Senator Booker introduced the "Climate Stewardship Act of 2019." According to a press release issued by Senator Booker, the Climate Stewardship Act is a:

> . . .climate change bill focused on voluntary farm and ranch conservation practices, massive reforestation, and wetlands restoration.
>
> The Climate Stewardship Act will:
>
> •Plant over 4 billion trees by 2030, and 15 billion trees by 2050, on a combination of federal, state, local, tribal, and non-governmental lands. The ambitious level of tree planting outlined in the Climate Stewardship Act makes it the biggest

reforestation measure ever to be introduced in Congress.

•Plant over 100 million of these trees in urban neighborhoods across America, with the priority going to low-income neighborhoods and communities of color. In addition to sequestering carbon, trees also absorb harmful air pollutants and reduce temperatures in urban areas.

•Support voluntary climate stewardship practices on over 100 million acres of farmland, reducing or offsetting agricultural emissions by one-third by 2025, through:

•Providing tens of billions of dollars of supplemental funding for the U.S. Department of Agriculture (USDA) working lands conservation programs, with new funding dedicated to stewardship practices such as rotational grazing, improved fertilizer efficiency, and planting tens of millions of new acres of cover crops.

•Protecting millions of acres of environmentally sensitive farmland.

•Doubling funding for agricultural research programs, including more funding for soil health demonstration trials.

•Tripling USDA funding to provide farmers with expert technical assistance on climate stewardship practices.

•Providing grant funding to tens of thousands of farmers, ranchers and rural businesses for renewable energy production, such as solar panels and wind turbines, and energy efficiency improvements.

•Invest in local and regional food systems to increase resilience in rural and urban communities.

•Restore or protect over 2 million acres of coastal wetlands by 2030 to sequester carbon emissions and reduce coastal flooding. Coastal wetlands act as an important sponge during extreme weather events with heavy rainfall. For example, although New Jersey has lost more than 40 percent of its coastal wetlands, the wetlands remaining helped prevent $625 million of property damage during Hurricane Sandy in 2012.

•Reestablish the Civilian Conservation Corps to provide youth from low-income communities, indigenous communities, and communities of color with skills and work experience in forestry and wetlands restoration.

Former Vice-President Joe Biden

Former Vice-President Joe Biden's plan, the Biden Plan for Rural America (Biden Plan), focuses on economic strategies for rural communities. One of the main climate change strategies in the Biden Plan is the goal of achieving net-zero emissions in the agricultural sector. The following is an excerpt from the Biden Plan:

> Partnering with farmers to make American agriculture first in the world to achieve net-zero emissions, giving farmers new sources of income in the process. Many farmers are some of the best stewards of our land, air, and water. The government needs to partner with them to accelerate progress toward net-zero emissions. As president, Biden will ensure our agricultural sector is the first in the world to achieve net-zero emissions, and that our farmers earn income as we meet this milestone. Toward this end, the Biden administration will dramatically expand and fortify the pioneering Conservation Stewardship Program, created by former Senate Agriculture Committee Chair Tom Harkin, to support farm income through payments based on farmers' practices to protect the environment, including carbon sequestration. In addition to seeking full federal funding for the program, the Biden administration will ensure the program can participate in carbon markets. Corporations, individuals, and foundations interested in promoting greenhouse gas reductions could offset their emissions by contributing to Conservation Stewardship Program payments to farmers for those sequestering carbon — for example, through cover crops. This will not only help combat climate change, which Vice President Biden has called an existential threat, but also create additional revenue sources for farmers at

a time when many are struggling to make ends meet. And, this approach will create a whole series of new businesses that survey, measure, certify, and quantify conservation results. In addition, the Biden Plan will make a significant investment in research to refine practices to build soil carbon while maximizing farm and ranch productivity. Soil is the next frontier for storing carbon.

U.S. Senator Bernie Sanders

Senator Bernie Sanders has laid out a three part plan to "Revitalize Rural America" (Sanders Plan). The Sanders Plan asserts that rural communities and family farms (as compared with large farms and agribusiness) are not only good for the environment, but resistant to climate change, due to "their greater genetic diversity, local knowledge, and likelihood of using livestock and crop breeds suited to the local environment." The second point of his strategy is entitled "Policies to Empower Farmers, Foresters & Ranchers to Address Climate Change and Protect Ecosystems" and includes plans to:

•Pass comprehensive legislation to address climate change that includes a transition to regenerative, independent family farming practices.

•Help farms of all sizes transition to sustainable agricultural practices that rebuild rural communities, protect the climate, and strengthen the environment.

•Provide grants, technical assistance, and debt relief to farmers to support their transition to more sustainable farming practices.

•Support a transition to more sustainable management of livestock systems that are ecologically sound, improve soil health, and sequester carbon in soil.

•Create financial mechanisms that compensate farmers for improving ecosystems.

•Establish a program to permanently set aside ecologically fragile farm and ranch land.

•Enforce the Clean Air and Water Acts for large, factory farms, and ensure all farmers have access to tools and resources to help them address pollution.

•Ensure rural residents have the right to protect their families and properties from chemical and biological pollution, including pesticide and herbicide drift.

Conclusion and Implications

One publication described the Democratic presidential candidates' willingness to discuss the connection between agriculture and climate change at the Iowa State Fair as "unprecedented." Many observers believe that the weather extremes and recent misfortunes faced by many Midwestern farmers this summer may create future inroads for positive steps to address climate change impacts in the agricultural sector. (Kathryn Casey, Miles Schuster)

CALIFORNIA LEGISLATURE APPROVES SENATE BILL 330—THE HOUSING CRISIS ACT OF 2019

Senate Bill (SB) 330, authored by Democratic Senator Nancy Skinner, establishes the Housing Crisis Act of 2019, which, until January 1, 2025, places restrictions on certain types of development standards, amends the Housing Accountability Act (HAA), and makes changes to local approval processes and the Permit Streamlining Act.

Background

The bill's name says it all—California is in the midst of a housing crisis. Rents across the state continue to rise to levels higher than the rest of the country, while homeownership rates have continued to decline. One of the issues is that demand for housing is obviously high, yet builders find themselves unable to meet that demand because of local rules that limit the number of units they can build or simply prohibit building altogether. According to SB 330's stated purpose, the bill is a targeted approach that prohibits the most egregious practices in the areas where housing is most needed. It prevents local governments from downzoning unless they upzone elsewhere, and it stops them from changing the rules on builders who are in the midst of going through the approval process. While SB 330 is aimed at alleviating the difficulties of the state's housing issues, the bill's provisions sunset in the year 2025 so that the Legislature can evaluate its effectiveness. The bill's author, Senator Skinner said that:

> Our failure to build enough housing has led to the highest rents and home ownership costs in the nation. My bill, SB 330, gives a greenlight to housing that already meets existing zoning and local rules and prevents new rules that might limit housing we so desperately need.

SB 330 is consistent with the recent wave of California housing bills, which strive to hold cities and counties accountable for following their own rules on housing. The legislation requires the Department of Housing and Community Development (HCD) to identify affected cities and counties by June 30, 2020, but allows HCD to update the determination after the 2020 census. This determination remains valid until January 1, 2025. A summary of some of the bill's objectives are outlined below.

Restrictions on Local Government

Prohibits affected cities and counties from imposing a moratorium or similar limitation on housing development, including mixed-use development, within all or a portion of the jurisdiction, other than to specifically protect against an imminent threat to health and safety. An affected city or county cannot enforce a moratorium until HCD approves it. HCD assumes approximately 400 jurisdictions would qualify as affected cities and counties, and four jurisdictions per year would make zoning ordinance changes that would impose a moratorium or other restriction on development.

Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected city or county.

Allows an affected city or county to change land use designations or zoning ordinances to allow for less intensive uses if it concurrently changes the density elsewhere to ensure that there is no net loss in residential capacity.

Provisions Relating to Development Application Processes and Timelines

Provides that if a housing development project complies with the applicable objective general plan and zoning standards in effect at the time an application is deemed complete, a city or county shall not conduct more than five hearings in connection with the approval of that housing development project, consistent with the timelines under the Permit Streamlining Act. Also requires the city or county to consider and either approve or disapprove the application at any of the five hearings.

Reduces the time that a local government has to approve or disapprove an application under the Permit Streamlining Act from 120 to 90 days for a housing project that requires CEQA review and from 90 to 60 days if a housing project is at least 49% affordable.

Conclusion and Implications

SB 330 received overwhelming support from the California Legislature, with a 67-8 vote from the California Assembly and a final "ok" from the Senate on a 30-4 vote. SB 330 is currently on the Governor's desk and the bill signing period for the last legislative session ends in October 2019. SB 330 will likely be signed into law by Governor Gavin Newsom, who has publicly endorsed the bill, which is unsurprising given his administration's stated commitment to tackling the cost-of-living crisis in California. The full text and history of Senate Bill 330 is available online at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330
(Nedda Mahrou)

BUTTE COUNTY AND LOCAL WATER SUPPLIERS CONSIDER PROJECT TO SEND WATER FROM PARADISE TO CHICO IN THE WAKE OF THE CAMP FIRE DISASTER

The County of Butte, the California Water Service and the Paradise Irrigation District (PID) have begun studying whether it is economically feasible to pipe water from Paradise, California, where water supplies are considered abundant, to Chico, California, a community that faces strained water resources and water sustainability challenges. All of this comes in the wake of the "Camp Fire" which decimated the town of Paradise.

Background

As a result of the deadliest and most destructive wildfire in California history, the Camp Fire has left the Northern California town of Paradise with only 10 percent of its usual population. A retirement community home to 26,800, has, at recent count, dwindled to a mere 2,034 residents.

While the residential population of Paradise has seen a staggering decline, the community's water resources and water storage system generally remain intact. Reports indicate that the Camp Fire did not substantially damage the PID's water storage system, which includes Paradise Lake and Magalia Reservoir, or its water treatment plant.

As the Paradise community contemplates its immediate future, another community, just west, in Chico, is seeking long-term solutions to manage its groundwater basin, which has experienced reductions in groundwater levels due to increasing urban and agricultural customer demand.

Butte County Board of Supervisors Approve Groundwater Study

The Butte County Board of Supervisors recently approved a $143,800 study to the feasibility of building a water supply pipeline from Paradise to Chico. The study is anticipated to be completed in February 2020 and will address the pipeline's project design, costs and long-term plans for recharging the Chico basin aquifer.

A Creative Solution

Assuming the project is feasible, its proponents consider it to be a creative solution to establish a symbiotic relationship between the two cities. With Paradise losing 90 percent of its population, PID also lost 90 percent of its customer and revenue base, which it needs to help Paradise rebuild. Chico, which is located approximately 15 miles from Paradise, and has been recognized by the California Department of Finance as the fastest growing city in California, could provide a needed revenue supply for PID.

Likewise, PID water supplies could benefit Chico in its implementation of California's Sustainable Groundwater Management Act (SGMA), particularly as Chico remains 100 percent dependent on groundwater supplies. This project has the potential to solve Chico's long-term groundwater sustainability issues and at the same time assist with PID's financial and revenue-based issues. Considering that Paradise's ability to rebuild is also in part dependent on PID's survival, the pipeline project could facilitate Paradise's efforts at rebuilding its community, creating a win-win-win scenario for all three entities.

Opponents of the project, including one Butte County supervisor who voted against conducting the feasibility study, have expressed concerns that the project might invite unwanted growth and unneeded

sprawl into Butte County, between Chico and Paradise. According to one supervisor, such sprawl would not be congruent with the county's General Plan in terms of growth.

Conclusion and Implications

California is increasingly exploring creative water projects and water management solutions at both the local and regional levels. As a result of the horrific and devastating Camp Fire, new challenges, questions and opportunities arise for future water management not only for the town of Paradise, but also for neighboring communities affected by the fire and other trends. Whether this project moves forward or not, water and community leaders in Paradise, Chico and Butte County may be applauded for their efforts in considering thoughtful solutions to sensitive water management issues.
(Chris Carrillo, Michael Duane Davis)

CITY OF SAN FRANCISCO ANNOUNCES OFFER TO ACQUIRE PG&E'S LOCAL ENERGY INFRASTRUCTURE

The City and County of San Francisco (City) recently announced a $2.5 billion offer to acquire Pacific Gas and Electric Company (PG&E)'s electric transmission and distribution system assets that serve the city. PG&E has publicly rebuffed the offer but appears open to negotiation and communication. A PG&E spokesperson, Andy Castagnola stated:

> We don't believe municipalization is in the best interests of our customers and stakeholders, [but] we are committed to working with the city and will remain open to communication on this issue.

Background

Earlier this year the City began reviewing a local PG&E acquisition in the wake of PG&E's announcement in January that it would be filing for bankruptcy protection after incurring significant liabilities related to its role, through its infrastructure, in starting several of California's recent wildfires.

The City already procures energy for its residents through CleanPowerSF, a community choice aggregation program that launched in May 2016. San Francisco residents are automatically enrolled in CleanPowerSF though they have the option to opt-out and back into PG&E's sole service, the City estimates that it provides approximately 80 percent of San Francisco residents with power. CleanPower customers are still billed through PG&E but receive a different line item for CleanPower SF charges related to its energy procurement, while distribution and transmission charges are still incurred by PG&E's network. The City offers CleanPowerSF at competitive rates but with a higher renewable energy content and lower carbon footprint than the resources procured by PG&E in its standard offering (PG&E does offer staggered rates where customers may choose to pay higher prices for cleaner energy resources.) In its latest proposal, the City would be taking on complete energy independence by operating both the distribution and local transmission network in addition to its existing procurement efforts.

The City notes that it has a proven history of providing its residents with its own utilities, and it has provided residents water through the Hetch Hetchy Power Enterprise operated by the San Francisco Public Utilities Commission since 1918. The Hetch Hetchy Power Project, in addition to supply San Francisco residents with water supply, produces approximately 385 megawatts of hydroelectric supply that is used to power the City's municipal facilities (*e.g.*, San Francisco Airport, MUNI services, San Francisco General Hospital, fire stations, *etc.*).

The Report and Options

The City published its report assessing a purchase of PG&E's network on May 13, 2019. The report explains the significant markup and increased costs and infrastructure requirements for developing infrastructure that is beyond the City's actual needs. For example, it notes that for a new transit worker restroom it proposed to build, PG&E would have required that the City install equipment costing $500,000 rather than the $60,000 for usage proposed by the City. The

report examines three different options "for providing affordable, dependable and clean electric service to San Francisco." The first scenario is described as "limited independence," whereby the City continues "fighting for fair treatment and reasonable service from PG&E" by growing its customer base, but the report notes that under this approach the City will remain at risk "to the extent PG&E is able to continue imposing requirements that impact the City's ability to serve customers."

The second, called "Targeted Investment for More Independence," involves targeted investment in electric distribution infrastructure as the City-owned grid is rebuilt and modernized. The report notes that the passage of Proposition A in 2018, which allows for additional city-improvement bonds, enables the City to accelerate its existing efforts in this realm. The last option would create "full [energy] independence" by acquiring PG&E's local assets. This last option appears to be the selected choice as the City has now moved forward with its $2.5 billion offer to PG&E. The report notes that under this scenario, the City would continue to offer jobs to PG&E's union and other employees who currently operate the grid, and would work to upgrade and modernize the City facilities, and would be "able to better control the pace and priority of those improvements."

City Statement on the Plan

In a joint statement announcing the plan, Mayor London Breed and City Attorney Dennis Herrera stated:

> Our offer to PG&E is the result of detailed financial analysis conducted by industry experts and encompassing an extensive examination into the company's assets in San Francisco. The offer we are putting forth is competitive, fair and equitable. It will offer financial stability for PG&E, while helping the City expand upon our efforts to provide reliable, safe, clean and affordable electricity to the residents and businesses of San Francisco. It also considers equity for PG&E's remaining customers and the City's responsibility for ongoing costs.

Conclusion and Implications

A poll conducted earlier this year showed that 68 percent of city-voters favor the SF Public Utilities Commission over PG&E as a utility provider. However, some have warned that a City purchase of PG&E's San Francisco assets and complete removal of its constituents from PG&E's customer base would only serve to increase the burden of non-departing customers and infrastructure network in already fire-prone areas. It is likely that any possible sale will take significant time to negotiate, and would require court approval or emergence from PG&E's ongoing bankruptcy proceeding before Judge Montali.
(Lilly McKenna)

CITY PROPOSES USE OF RECYCLED WATER FOR GOLF COURSE IRRIGATION TO MAKE GROUNDWATER AVAILABLE FOR NEW DEVELOPMENT IN ADJUDICATED BASIN

As Groundwater Sustainability Agencies (GSAs) across California consider whether to include production allocations in Groundwater Sustainability Plans (GSPs) to implement the Sustainable Groundwater Management Act (SGMA), there may be lessons to learn from allocation programs already being implemented in adjudicated groundwater basins.

On September 4, 2019, the City of Seaside (Seaside or City) filed a motion with Monterey County Superior Court seeking approval of an in lieu groundwater storage program under a judgment entered more than a decade ago in the Seaside Basin groundwater rights adjudication. (*See*, *California American Water v. City of Seaside et al.*, Case No. M66343 (Monterey County Super. Ct.), Amended Decision dated February 9, 2007.)

The judgment and a related statement of decision (Decision) created a production allocation program to implement a ramp-down to achieve safe yield. Under Seaside's proposed in lieu program, the City would purchase recycled water to irrigate City-owned golf courses in lieu of pumping water under an adjudicated groundwater right in the Seaside Groundwater Basin (Basin). The unused groundwater would be stored in the Basin and ultimately would provide a water supply that might be used to serve anticipated real estate development projects.

If the program were approved, it might serve as an example for managers of adjudicated or SGMA-regulated basins to support economic growth while furthering state policy goals (use of recycled water) and achieving groundwater sustainability. Seaside's proposal highlights the need for careful consideration in how production allocations and their transferability are defined in adjudication judgments and GSPs.

Background

The Basin underlies the Cities of Seaside, Sand City, Del Rey Oaks, Monterey, and portions of unincorporated northern Monterey County, including portions of former Fort Ord and the Laguna Seca area.The Basin was adjudicated in 2006, resulting in a judgment and related Decision establishing a Watermaster with continuing court jurisdiction to oversee implementation of a physical solution to achieve safe yield with minimal disruption to the overlying economy. The program proponent, Seaside, is a party to the adjudication judgment and Decision governing Basin groundwater rights.

As is common with basinwide groundwater rights adjudications, the Decision establishes a Watermaster board. Here, that board is comprised of 11 pumper representatives that oversee and administer the judgment and Decision, including providing annual reports to the court on basin status and efforts to prevent seawater intrusion.

The Decision establishes two classes of production rights: Standard Production Allocations (SPAs), more or less reflecting common law appropriative groundwater rights; and Alternative Production Allocations (APAs), more or less reflecting common law overlying groundwater rights. Seaside exercises an SPA to produce groundwater for public water service to residents and exercises an APA to produce groundwater for irrigating two City-owned golf courses that overlie the Basin.

Proposed Program Overview

Under the proposed program, Seaside would purchase recycled water from Marina Coast Water District to irrigate the City-owned golf courses in lieu of continuing to produce approximately 450 acre-feet per year (AFY) of groundwater for irrigation under the City's APA. The groundwater previously used for irrigation would be stored in the Basin to provide replenishment benefits until its recapture by the City to serve customers, potentially including anticipated new land development projects. Such projects could include infill as part of the re-use plan for the former Fort Ord military base that was shuttered decades ago. (*See*, Motion at p. 8.)

Watermaster Seeks Direction from the Court

Seaside submitted an application for approval of the proposed in lieu program for review by the Watermaster in August 2019. According to a letter from the Watermaster to the court, the Watermaster:

> . . .appreciates the benefits of water stored in the [B]asin, and provided any technical issues that may arise are satisfactorily addressed, does not oppose the proposed City of Seaside program in concept.

However, the Watermaster concluded it was unclear whether it had authority to approve the program and instructed Seaside to bring a motion requesting judicial guidance on two points: 1) whether the Decision allows an SPA aquifer storage and recovery program using APA unpumped water in-lieu of recharge injection and later use beyond the overlying parcel, or 2) whether the Decision would require a party to convert its APA to an SPA to provide water service outside the golf courses. Under the Decision, converting an APA to an SPA triggers a rampdown on the APA production amount that could make less water available.

Seaside's Argument

Seaside's Motion explains that the proposed program would positively affect the City, its residents, and the environment and would further state policy of putting water to maximum beneficial use and preventing waste under article X, § 2 of the state Constitution. Seaside further explained that the program would be consistent with the Basin adjudication Decision because the City, as a public entity using water for the public welfare, has a right to store water in the Basin and to recapture it for future use. Finally, Seaside asserts that the Decision does not require the City to convert its APA to an SPA to undertake in lieu storage, because it intends to leave the APA appurtenant to the golf course properties and to substitute recycled water for the exercise of the APA. Seaside also explains that the program would be consistent with California's policies regarding conjunctive use of surface and groundwater resources, the use of recycled water for non-potable uses, and in lieu storage as a preferred method of groundwater replenishment. Finally, the motion concludes by pointing out less desirable alternatives to the proposed program and encourages the court to avoid an interpretation of the decision that yields "counterproductive" results.

Conclusion and Implications

Seaside's proposed program would use recycled water to meet non-potable golf course irrigation needs in lieu of continuing to use potable groundwater for irrigation under the City of Seaside's adjudicated golf course production allocation. Although the Basin's adjudication Decision creates transferrable production allocations as part of a framework for bringing the Basin into sustainability, its complex allocation rules create uncertainty for projects that would augment water availability to support local land-use priorities. A court hearing on the motion is scheduled for October 25, 2019. As GSAs across the state consider incorporating production allocations into their GSPs to implement SGMA, they should consider how their allocation rules would affect in-lieu storage and recapture projects like the one Seaside seeks to carry out.
(Kaitlin Harr, Dan O'Hanlon).

REGULATORY DEVELOPMENTS

U.S. FISH AND WILDLIFE SERVICE AND NOAA FISHERIES JOINTLY ANNOUNCE REVISIONS TO REGULATIONS IMPLEMENTING PORTIONS OF THE ENDANGERED SPECIES ACT

The U.S. Fish and Wildlife Service (Service) and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) (collectively: The Services) have revised their regulations implementing the federal Endangered Species Act (ESA). These changes are focused on three aspects: 1) the standards under which listings, delisting, reclassifications, and critical habitat designations are made; 2) the manner in which protections are applied to threatened species; and 3) the parameters under which federal agencies must consult with the Services to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify critical habitat.

Factual Background

The ESA provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. The lead federal agencies for implementing ESA are the Service and NOAA Fisheries. Species include birds, insects, fish, reptiles, mammals, crustaceans, flowers, grasses, and trees.

The ESA generally serves to accomplish these goals by way of two principle means. First, it prohibits any action that causes a "taking" of any listed species of endangered fish or wildlife. Likewise, the import, export, interstate, and foreign commerce of listed species are all generally prohibited. Second, the ESA requires federal agencies, in consultation with the Service and/or NOAA Fisheries, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species.

Revisions to Regulations

Listing and Delisting of Species

The ESA prescribes certain standards for the listing and delisting of threatened and endangered species. Among other things, the ESA requires the Services to decide whether to list a species "solely on the basis of the best scientific and commercial data available." The Services' prior regulations provided that they would make listing decisions "without reference to possible economic or other impacts of such determination." That phrase has now been deleted and would allow introduction of economic data (for informational purposes) into some listing decisions.

The ESA provides that a species may be listed as "threatened" if it:

> . . .is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The new regulations also now specify that:

> . . .[t]he term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely.

The Services will now:

> . . .describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability.

The rule also adds that "[t]he Services need not identify the foreseeable future in terms of a specific period of time."

The new regulations also address the delisting of species and clarify that:

> . . .[t]he standard for a decision to delist a species is the same as the standard for a decision not to list it in the first instance.

The Services stated that this is consistent with their existing practice and interpretation of the ESA.

Designating Critical Habitat

The ESA requires the Services to designate "critical habitat" for a listed species at the time of listing "to the maximum extent prudent." A critical habitat designation increases the level of protection afforded a listed species from a jeopardy standard to a recovery standard. The new rules clarify the circumstances under which the Services can decline to designate critical habitat. In particular, they limit the Services' ability to designate as critical habitat areas that are not currently occupied by a listed species—unoccupied habitat will be designated only if the Services determine that occupied critical habitat is inadequate for the conservation of the species.

The rules also add a requirement that, at a minimum, an unoccupied area must have one or more of the physical or biological features essential to the conservation of the species in order to be considered as potential critical habitat, and there must be a "reasonable certainty" that the land "will contribute to the conservation of the species."

Protection of Threatened Species

While the ESA prohibits the "take" of species listed as "endangered," this prohibition does not extend to species listed as "threatened" unless the Service or NOAA Fisheries adopts a rule extending that protection to such species. Historically, the Service has relied on a "blanket" rule that automatically extends these protections to threatened species. The new rules would rescind this blanket protection and permit the Service to extend protection on a species-by-species basis, consistent with the manner in which NOAA Fisheries has treated threatened species. The regulations do not alter any prohibitions for species already listed as threatened.

Agency Consultation

The new rules also change a number of definitions and procedural steps associated with the "Section 7" consultation process. These include, among other things: a simplified definition of "effects of the action"; a definition of "environmental baseline"; and a revision to the definition of "destruction or adverse modification."

Conclusion and Implications

These new and very substantial revisions to the Endangered Species Act modify important standards and procedures under which the ESA is implemented and have been the source of considerable debate. The new regulations are available online at: https://www.fws.gov/endangered/improving_ESA/regulation-revisions.html
(James Purvis)

LAWSUITS FILED OR PENDING

FISHING GROUPS AND TRIBES CHALLENGE BIOLOGICAL OPINION ON KLAMATH PROJECT OPERATIONS

On July 31, 2019 a coalition of environmental, fishing, and Native American groups (collectively: plaintiffs) filed suit against the U.S. Bureau of Reclamation (Bureau) and the National Marine Fisheries Services (NMFS). The plaintiffs challenged a recent Biological Opinion that governs how the Bureau manages Klamath River flows, including irrigation water and water for the protection of species including coho salmon. The lawsuit was filed by the Yurok Tribe, the Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resource, and generally claims the Biological Opinion is improper because it found no jeopardy to protected species and fails to require dilution flows in the event of disease outbreak among salmonids. [*Yurok Tribe, et. al. v. U.S. Bureau of Reclamation et. al.*, Case No. 3:19-cv-04405 (N.D. Cal.).]

Background

Congress authorized construction and development of the Klamath Project (Project) in 1905, and the Project includes over 185 miles of various diversions, canals, and pumping stations. The Project provides irrigation water to approximately 200,000 acres of agricultural land each year, as well as to four national wildlife refuges within its boundaries.

In 1997, NMFS listed the Southern Oregon Northern California coho (coho) as threatened under the federal Endangered Species Act (ESA). According to plaintiffs, the Bureau subsequently established a real-time program that could produce flows, including dilution flows, for species' benefits when infection rates for the parasite Ceratonova Shasta (C. shasta) were observed above certain thresholds. Water was made available for the flows from an Environmental Water Account (EWA), which is an amount of Klamath River water set aside to meet the needs of coho between March 1 and September 30.

In NMFS' subsequent May 2013 Biological Opinion (BiOp), it determined that a Project operations plan that would have covered the period of 2013-2023 would not jeopardize the species because it found that the plan would improve conditions for coho. The related 2013 Incidental Take Statement—the part of the BiOp that specifies the extent to which a proposed action may result in the incidental taking of a threatened or endangered species—set a take limit of 49 percent of annual juvenile coho outmigrating from the Shasta River, based on incidence of previously observed C. shasta infections. According to plaintiffs, C. shasta infection rates spiked in 2014 and 2015, and the District Court in response required water flows, including dilution flows, for disease management until formal reinitiated consultation completed.

On March 29, 2019, the Bureau and NMFS completed consultation, and issued a new BiOp (2019 BiOp) and Incidental Take Statement for the Bureau's Project operations for the 2019-2024 period (Plan). The 2019 BiOp concluded the Plan is not likely to jeopardize coho and established a take limit of the same 49 percent.

Plaintiffs' Allegations

By their action plaintiffs seek declaratory and injunctive relief under both the federal Endangered Species Act and the National Environmental Policy Act (NEPA).

Flawed No Jeopardy Conclusion

Specifically, the plaintiffs argue that NMFS' no-jeopardy conclusion for coho is flawed because it is improperly based on whether impacts will be reduced by the Project's operations instead of whether impacts will impede species' survival or recovery. Plaintiffs claim that minimum flows and surface flushing flows designed to reduce disease risks would not eliminate elevated risks from C. shasta observed during 2014 and 2015, or otherwise bring them into acceptable levels. Plaintiffs also claim NMFS did not assess whether the prior elevated infection rates will impede coho recovery.

Discretionary Dilution Flows

According to plaintiffs, the Plan also improperly makes dilution flows discretionary and is contrary to NMFS' past findings and the best available science. Plaintiffs complain the Plan does not require dilution flows when C. shasta infection rates spike and that no water is set aside for such dilution flows. Plaintiffs further object that both the irrigation allocation and EWA allocation are locked in on April 1 of each year, without regard to whether hydrologic conditions later show that more EWA water is needed.

2019 Biological Opinion's Take Limit

Plaintiffs also assert the 2019 BiOp's limit on take is invalid. NMFS set the take limit at a maximum prevalence of mortality of 49 percent, which NMFS estimated would have been the highest on record. Plaintiffs assert that setting the take limit at the highest estimated C. shasta mortalities allows an unacceptably high level of take which could cause adverse population effects.

The Environmental Assessment

Under NEPA, plaintiffs claim the Bureau's Environmental Assessment failed to compare the Plan to the prior court-ordered dilution flows. According to plaintiffs, the court ordered flows in 2014 and 2015 are a viable alternative to the Plan that should be analyzed.

The Finding of No Significant Impacts

Plaintiffs also assert that the EA's Finding of No Significant Impact is unlawfully based on a belief that conditions will improve under the Plan, as opposed to whether impacts will be insignificant. Plaintiffs claim that because the Bureau's 2019-2024 Plan may have significant adverse environmental impacts, an environmental impact statement must be prepared.

Remedies Sought

By its action plaintiffs seek a declaration that the 2019 BiOp and the limits NMFS set for allowable take are arbitrary and capricious, and contrary to the ESA. Plaintiffs also seek a declaration that the Bureau's EA be set aside as arbitrary, capricious, and contrary to NEPA. Plaintiffs thus request the court vacate the 2019 BiOp and take limits, and instruct NMFS to reopen and complete reinitiated consultation. During the reinitiated consultation, plaintiffs seek to enjoin the Bureau to provide sufficient flows to prevent irreparable harm to species.

Conclusion and Implications

As it stands, the current 2019 Biological Opinion will cover the Bureau operations on the Klamath River through 2024. However, conditions on the Klamath River could significantly change during this time period under a plan by the Klamath River Renewal Corp to remove four dams on the river. Such action requires its own Endangered Species Act and National Environmental Policy Act compliance and is pending approval by federal and state energy regulators. It remains to be seen how the court will evaluate the Bureau's 2019-2024 Plan in light of the potential for significant physical change on the river. (David E. Cameron, Meredith Nikkel)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT DENIES INVERSE CONDEMNATION CLAIM AGAINST CITY OF OROVILLE AND CLARIFIES LEGAL STANDARD FOR ASSESSING SUCH CLAIMS

City of Orovillle v. Superior Court of Butte County, 7 Cal.5th 1091 (2019).

A commercial property owner brought an action against the City of Oroville for inverse condemnation arising from a sewer backup. After the city petitioned for review, the California Supreme Court denied the property owners' claim, clarifying that a court assessing such claims must find more than just a causal connection between the public improvement and the damage to private property. Rather, the damage must be substantially caused by an inherent risk presented by the deliberate design, construction, or maintenance of the public improvement. Here, the Supreme Court found that the private property owner had failed to meet that standard.

Factual and Procedural Background

Raw, untreated sewage from the City of Oroville's sewer main backed up into a private sewer lateral in December 2009, invading the sinks, toilets, and drains of a local office building. The building was owned by three dentists doing business as WGS Dental Complex (collectively: WGS). WGS filed claims against its insurer and also sued the city for inverse condemnation and nuisance for losses it claimed were not covered by insurance. The insurer then filed a complaint in intervention for negligence, nuisance, trespass, and inverse condemnation. In turn, the city filed a cross-complaint against WGS for its failure to ensure that a backwater valve was properly installed on its private sewer lateral, alleging violation of the Oroville Municipal Code, public nuisance, strict liability, and negligence.

The city moved for summary judgment, citing WGS's failure to install the backwater valve. WGS opposed, asserting it had no role in constructing the building and was unaware of any issue with the backwater valve until the sewage backed up into the building and alleging that the city's plan of maintenance for the sewer main allowed the blockage to form.

The trial court denied the motion, finding that:

> . . .it appears that either prevention of the blockage or installation of the backflow prevention device could have prevented the damage. The relative importance of these two factors in causing the damage will be something for the trier of fact to decide.

WGS then sought a judicial determination under Code of Civil Procedure § 1260.040 regarding the city's liability for inverse condemnation, deferring the issue of damages. After considering the evidence, the trial court found that the evidence established the following: there was a blockage in the city's sewer main; the blockage was most likely caused by roots; the blockage resulted in sewage backup in WGS's offices; and the backup caused damage to WGS's property. Finding that these facts were not in dispute, the court concluded that the only issue for determination was the legal responsibility for the damage that resulted from the sewage backup.

The trial court concluded that an inverse condemnation had occurred even though the city shared causal responsibility for the damage with WGS for having failed to install backwater valves. The "primary cause of the blockage," the court found, was root intrusion in the sewer main and "a significant secondary cause of the damage" was WGS' failure to install a backwater valve on their private sewer lateral, "a necessary part of the sewer design and plan." Citing *California State Automobile Association v. City of Palo Alto*, 138 Cal.App.4th 474 (2006), the trial court held it was constrained to find the city liable in inverse condemnation because one of the causes of damage was root blockage, which was described in *California State Automobile Association* as an inherent risk of sewer operation.

At the Court of Appeal

The city then petitioned the Court of Appeal for a peremptory writ of mandate. After the Court of Appeal concluded that the trial court had correctly found the city liable in inverse condemnation, the California Supreme Court granted review to address whether the city is liable in inverse condemnation were sewage backs up onto private property because of a blockage in the city's sewer main and the absence of a backwater valve that the affected property owner was legally required to install and maintain.

The California Supreme Court's Decision

The basis for an inverse condemnation claim arises from article I, § 19 of the California Constitution, which requires a public entity to pay "just compensation" when it takes or damages private property for public use. Two types of actions are possible under this constitutional provision: 1) a conventional eminent domain proceeding, instituted by a public entity to acquire private property for public use; and 2) an inverse condemnation action, where government does not recognize that a particular circumstance amounts functionally to a taking of private property for public use or otherwise fails to pay the requisite compensation.

After describing this constitutional backdrop and examining its prior cases on inverse condemnation, the Supreme Court explained that what makes it a challenge to set the precise limits of a public entity's responsibility is that multiple concerns, some arguably in tension with each other, are at stake in the interpretation of these claims. One such concern is to pool the burden to the individual property owner and distribute throughout the community the losses resulting from the public improvement. Another is to mitigate concerns that:

> . . .compensation allowed too liberally will seriously impede, if not stop, beneficial public improvements because of the greatly increased cost.

The facts of this case, the Court noted, aptly illustrate how these concerns may diverge.

More than a Casual Connection between Public Improvement and Damage to Private Property

Balancing these various concerns, the Supreme Court concluded that:

> . . .a court assessing inverse condemnation liability must find more than just a causal connection between the public improvement and the damage to private property.

The Court continued:

> What we hold is that the damage to private property must be substantially caused by an inherent risk presented by the deliberate design, construction, or maintenance of the public improvement.

This approach, the Court concluded, will protect private property owners by allocating the financial losses resulting from public improvements across the community and provide public entities with an incentive to internalize the reasonable risks of such improvements.

Applying this rule, the Supreme Court found that, in order to prevail on its claim of inverse condemnation liability, WGS must demonstrate that the inherent risks posed by the sewer system as deliberately designed, constructed, or maintained manifested and were a substantial cause of its property damage. This would include an assessment of whether the damages were the result of a risk created not by the public improvements, but by the acts of the private property owner. That is:

> . . .[a] causal connection between the public improvement and the property damage alone is insufficient to sustain a finding of inverse condemnation liability.

Otherwise, the Court found, inverse condemnation would be turned:

> . . .into a basis for automatic imposition of liability on the public entity if even a tenuous causal connection exists between the public improvement and private property damage, irre-

spective of whether a plaintiff's act or omission materially contributes to the risk.

WGS Failed to Demonstrate an Inherent Risk

The Supreme Court then concluded that, on the facts of the present case, WGS had failed to show that the invasion of raw sewage onto its private property was an inherent risk of the sewer system as deliberately designed and constructed. It likewise declined to find that the backup of sewage into WGS's offices was the necessary or probably result of the sewer system's operations. The city, the Court found, also did not unreasonably in expecting private property owners to comply with the law to install backwater valves. Following these findings, the Supreme Court concluded that the city was not liable in inverse condemnation for the damage caused to WGS's private property.

Conclusion and Implications

The case is significant because it is the first time that the California Supreme Court has analyzed inverse condemnation claims in a number of years. It provides a thorough background on inverse condemnation, including an analysis of the Court's prior opinions, and articulates the relevant legal standard for assessing such claims. The decision is available online at: https://www.courts.ca.gov/opinions/documents/S243247.PDF
(James Purvis)

SIXTH DISTRICT COURT AFFIRMS COUNTY'S APPROVAL OF SUBDIVISION IDENTIFIED IN RECIRCULATED EIR AS ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Highway 68 Coalition v. County of Monterey, Case No. H04253, *unpub*. (6th Dist. July 26, 2019).

In a unanimous, yet *unpublished* opinion, the Sixth District Court of Appeal affirmed the 142-page decision of the trial court denying the petition for a writ of mandate by petitioners Highway 68 Coalition (Highway 68) and Landwatch Monterey County (Landwatch). The petitions sought to set aside Monterey County's (County's) approval of an 870-acre residential development consisting of residential units, agricultural industrial uses, roadway improvements, and several hundred acres of open space, known as the Ferrini Ranch project (Project). In a point-by-point analysis, the Court of Appeal determined that the Environmental Impact Report (EIR) complied with the California Environmental Quality Act (CEQA) and the County made no prejudicial errors in its analysis. The court also held that the County was not required to recirculate the document because no post-EIR significant new information arose. The County's approval of the Project as the environmentally preferred alternative (Alternative 5) was appropriate because CEQA requires agencies to approve environmentally superior alternatives, if they are feasible.

Factual and Procedural Background

In 2005, the County Planning Commission deemed complete the application for approval submitted by Domain (formerly Bollenbacher & Kelton, Inc.) (Applicant) for 212 lot residential development project on 870 acres in Monterey County. The original Project consisted of 212 total residential lots comprised of 146 clustered single-family residential lots on 178 acres with another 23 clustered single-family lots and 43 inclusionary housing units on 13 acres. The Project also included 35 acres of agricultural industrial uses, 43 acres of roadway improvements, and 600 acres of open space all fronting Highway 68 to the south and split by Toro Regional Park. The DEIR was circulated for public review in 2012 with a recirculated draft EIR (DEIR) released in 2014 that identified a new Alternative 5 as the environmentally superior alternative because it reduced residential lots to 185 and increased open space to 700 acres from the original Project. Subsequently, the County prepared a final EIR (FEIR) and responded to comments received on the DEIR and recirculated DEIR.

The planning commission held several public hearings in 2014 on the Project and ultimately

recommended that the board of supervisors (Board) certify the EIR and approve the Project as described in Alternative 5, which it did. The Board adopted findings and a statement of overriding considerations for each potentially significant environmental effect and found the benefits of the project outweighed its unavoidable impacts. The Board simultaneously approved a combined development permit for Alternative 5 including use permits for tree removal and for development on slopes exceeding 30 percent.

Highway 68—a "social welfare organization" comprised of property owners and tenants living near the Project site—filed a petition for writ of mandate to set aside the County's certification and approval due to CEQA violations. Highway 68 alleged, among other things, that the County violated CEQA because the EIR inadequately analyzed environmental impacts to traffic, water, air quality, and project alternatives, and presented an unstable project description. Landwatch filed a similar petition also alleging the County had failed to comply with CEQA. After four days of hearing, denied the writ petitions in full. Petitioners appealed from the judgment on select issues.

The Court of Appeal's Decision

Highway 68 Issues on Appeal

Highway 68 asserted that the EIR did not comply with CEQA or was otherwise legally inadequate regarding the project description, alternatives analysis, and visual resources impacts analysis.

First, the court rejected Highway 68's claim that the project description was "unstable" because it had undergone substantial changes between the DEIR and the project that was approved. The court acknowledged that the Project had changed but concluded that the changes did not alter the "basic characteristics of the project"—as it remained a residential subdivision on 870 acres. The court further explained that any changes made in Alternative 5 were to "reduce or avoid environmental impacts," and were therefore allowable as a "key" purpose of CEQA.

With respect to alternatives, the court concluded that Highway 68 did not meet their burden of showing that the analysis was inadequate because information provided in the EIR allowed for "informed decision making." Highway 68 argued that the EIR no longer evaluated a reasonable range of alternatives because the Project's original access point through Toro Regional Park was rendered infeasible due to a nearby conservation easement. The court disagreed on the ground that the "basic objectives of the project" could still be accomplished even assuming, for the sake of argument, that the conservation easement rendered the original access point infeasible. Furthermore, the DEIR and RDEIR sufficiently discussed the impacts of the approved alternative access point. The court noted that Alternative 5's access point presented significantly fewer impacts overall, as a signalized intersection on a highway that already hosts several similar intersections, in contrast to the original access point through a public park that would require more tree cutting and habitat disturbance.

Lastly, Highway 68 claimed that the EIR's visual impacts analysis did not comply with County policies requiring visually sensitive properties to be "staked and flagged." The court found that even if the County was required to comply with this policy prior to certification of the EIR, it was not prejudicial because the EIR's extensive analysis of the visual impacts of the Project adequately and properly informed public involvement and decision-making. The court similarly rejected Highway 68's claim that the County had improperly deferred mitigation because the County made permits "contingent upon compliance" with this mitigation measure and others—which is allowable under CEQA.

Landwatch Issues on Appeal

Landwatch claimed that the EIR's cumulative groundwater impact analysis was inadequate for two reasons: 1) the EIR relied on unreviewed or unconstructed groundwater management projects to determine no cumulative impacts; and 2) the EIR failed to disclose that existing overdraft and seawater intrusion will continue with Project implementation without full development of those projects. The court disagreed. Initially, the court pointed out that it is beyond the scope of an EIR to solve existing water supply problems. The court, nevertheless, found that the EIR adequately disclosed that overdraft and seawater intrusion problems will remain post-Project—but would not be further exacerbated.

Landwatch also claimed that the EIR improperly used the "ratio theory" when it determined that the Project's impact on water supply was not cumulatively considerable. The ratio theory is the disallowed notion that a project's impact can be relatively measured

against the existing environmental impact to determine if it is cumulatively considerable. The court found, however, that the EIR did not use the ratio theory. It concluded that the EIR included enough information to make a reasonable determination that the Project's estimated water use of 6 percent over existing demand from the supplying wells does not constitute a cumulatively considerable impact.

With respect to recirculation, the court rejected Landwatch's claim that new information regarding ongoing overdraft and seawater intrusion triggered recirculation. The court reiterated that CEQA does not require a project to resolve an existing problem. The court held that any new information on this issue "cannot constitute significant new information under CEQA" because the EIR did not base its conclusions on the ability of groundwater management projects to solve the ongoing problem.

Lastly, the court found that fee-based mitigation is allowable for cumulative impacts if there is evidentiary support proving a financial contribution was, or will be, made. Here, the Project site property owner had been making financial contributions in the form of a "'special tax'" to the Salinas Valley Water Project. The EIR included these contributions as mitigation for groundwater impacts. Landwatch argued this approach was inadequate because the groundwater management project does not, by itself, "'halt seawater intrusion'" in the affected basin. But, as the court explained, mitigation is "not defined as elimination of an adverse environmental effect" but only a minimization of significant effects. Further, Landwatch offered no evidence showing the Salinas Valley Water Project does not reduce adverse effects of the Project.

Conclusion and Implications

Although the decision is *unpublished*, the decision provides helpful guidance to CEQA practitioners regarding modifying a project in response to environmental concerns and evaluating cumulative groundwater impacts. The case makes clear that an agency does not violate CEQA by approving an environmentally superior alternative analyzed in an EIR. Further, CEQA does not require individual development projects to solve regionwide groundwater problems.

The unpublished opinion is available at: https://www.courts.ca.gov/opinions/nonpub/H045253.PDF (Casey Shorrock, Laura Harris, and Christina Berglund)

SECOND DISTRICT COURT INVALIDATES MILLENIUM HOLLYWOOD PROJECT'S EIR FOR FAILING TO PROVIDE AN ACCURATE, STABLE, AND FINITE PROJECT DESCRIPTION

Stopthemillenniumhollywood.com v. City of Los Angeles, 39 Cal.App.5th 1 (2nd Dist. 2019).

The Second District Court of Appeal affirmed the trial court's judgment invalidating the final Environmental Impact Report (EIR) for a mixed-use development project proposed by Millennium Hollywood LLC (Millenium) and certified by the City of Los Angeles (City). The court held the project description violated the California Environmental Quality Act (CEQA) as a matter of law because it failed to provide an accurate, stable, and finite project and prejudicially impaired the public's ability to participate in the CEQA process.

Factual and Procedural Background

In 2008, developer Millennium filed a master land use permit application with the City for a 1,163,079 square foot, mixed use development project on a 4.47-acre site in Hollywood. The development would construct three towers arising from two low-rise buildings and feature 492 residential units, a 200-unit luxury hotel, 100,000 square feet of office space, a 35,000 square-foot sports club and spa, more than 11,000 square feet of commercial uses, and 34,000 square feet of food and beverage uses. The development's proposed uses would require a zone change and a variance to allow for greater development density. The City subsequently informed Millennium that a separate variance from the general plan's allowable floor area would also be necessary. In light of this, the developers placed the project on hold.

Millennium took no further action on the project until 2011, when it submitted another master land

use permit to the City. The 2011 proposal mirrored the 2008 proposal and described a 1,166,970 square-foot development featuring the same mix of uses. The application also noted that the project was presented as "concept plan" and was designed to create an "impact envelope" within which various development scenarios could occur. As such, the application and initial study did not describe, identify, quantify, or locate the buildings that would be built. Instead, a 25-year development agreement between Millennium and the City would embody the project's flexible pre-defined limits regarding site-specific development standards, and a Land Use Equivalency Program (LUEP) would permit Millennium to transfer floor area among the project's parcels to create different development scenarios.

The Draft EIR (DEIR) analyzed the greatest environmental impacts that could arise under any development scenario contemplated by the project. Given the development agreement's flexible parameters, the DEIR's analysis centered on three potential development scenarios (a concept plan, a residential scenario, and a commercial scenario) and provided conceptual architectural renderings for each. Public comments on the DEIR complained that the project description made it impossible to meaningfully participate in the CEQA process. Commenters noted that they could not ascertain the types of uses that would be built or the environmental impacts that would ensue. Nevertheless, the City certified the EIR without modification in 2013.

Stopthemillenniumhollywood.com, Communities United for Reasonable Development, and George Abrahams (petitioners) filed a petition for a peremptory writ of mandate directing the City to set aside the project's approval and certification of the EIR. The petition alleged the City abused its discretion in: 1) failing to provide an accurate, stable, and finite project description; 2) declining to study traffic impacts to the 101 freeway despite Caltrans' direction that it do so; and 3) failing to consult with the California Geological Survey about potential seismic hazards at the site. The trial court granted the petition as to the first and second causes of action, but denied the third. Millennium, the City, and petitioners timely appealed.

The Court of Appeal's Decision

Reviewing the matter *de novo*, the Second District Court of Appeal affirmed the trial court's holding and found the project description failed to comply with CEQA. Because an EIR's project description is "at the heart of the CEQA process," the Court of Appeal declined review of the second and third causes of action.

Analysis under the *County of Inyo* Decision

The court affirmed the trial court's reliance on *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185 (1977) for the proposition that a definite and unambiguous project description is central to CEQA's public participation process. The court reasoned that an enigmatic or unstable project description vitiates the purpose of an EIR, even if the document adequately describes a project's broader environmental impacts. The court agreed that Millennium's project description merely provided a "blurred view" and impermissibly deferred environmental analysis by analyzing a "set" of environmental impacts for an undefined project.

Analysis under the *Washoe Meadows* Decision

The court also relied upon *Washoe Meadows Community v. Department of Parks and Recreation*, 17 Cal.App.5th 277 (2017) to reiterate how failing to identify a project impairs the public's right to participate in CEQA review. In the case before it, the court found that the project description did not describe a development at all, thus precluding public participation. Unlike the project in *South of Market Community Action Network v. City and County of San Francisco*, 33 Cal.App.5th 321 (2019), the proposal did not identify the size, mass, siting, or appearance of any particular structure, and failed to include site plans, cross-sections, building elevations, or illustrative massing of what would be built.

Distinguishing the *Citizens for a Sustainable Treasure Island* Case

The court agreed with the trial court's distinguishing of *Citizens for a Sustainable Treasure Island v. City and County of San Francisco*, 227 Cal.App.4th 1036 (2014), finding that no practical impediments prevented Millennium from providing these technical characteristics, and that future development of the project would not be subject to supplemental review. For these reasons, the court held that the EIR failed as an informational document. Its failure to include

an accurate, stable, and finite project description impermissibly thwarted the purpose CEQA by prejudicially interfering with informed public participation.

Conclusion and Implications

The Second District's opinion limits the flexibility with which an urban infill project is analyzed. Under this decision, an environmental analysis accounting for the "worst-case-scenario" does not satisfy CEQA review. The opinion further identifies the specificity it finds necessary for describing a project under CEQA. In the future lead agencies may be requesting much more detailed project information from developers, i.e., site plans, elevations massing studies, to avoid the outcome reached here. The court's opinion is available online at: http://www.courts.ca.gov/opinions/documents/B282319.PDF
(Bridget McDonald, Christina L. Berglund)

LEGISLATIVE UPDATE

This Legislative Update is designed to apprise our readers of potentially important land use legislation. When a significant bill is introduced, we will provide a short description. Updates will follow, and if enacted, we will provide additional coverage.

We strive to be current, but deadlines require us to complete our legislative review several weeks before publication. Therefore, bills covered can be substantively amended or conclusively acted upon by the date of publication. All references below to the Legislature refer to the California Legislature, and to the Governor refer to Gavin Newsom.

Coastal Resources

AB 65 (Petrie-Norris)—This bill would require specified actions be taken by the State Coastal Conservancy when it allocates any funding appropriated pursuant to the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018, including that it prioritize projects that use natural infrastructure to help adapt to climate change impacts on coastal resources.

AB 65 was introduced in the Assembly on December 3, 2018, and, most recently, on September 19, 2019, was enrolled and presented to the Governor for signature at 3:30 p.m.

AB 552 (Stone)—This bill would establish the Coastal Adaptation, Access, and Resilience Program for the purpose of funding specified activities intended to help the state prepare, plan, and implement actions to address and adapt to sea level rise and coastal climate change.

AB 552 was introduced in the Assembly on February 13, 2019, and, most recently, on August 30, 2019, was held under submission in the Committee on Appropriations.

AB 1011 (Petrie-Norris)—This bill would direct the Coastal Commission to give extra consideration to a request to waive the filing fee for an application for a coastal development permit required for a private nonprofit organization that qualifies for tax-exempt status under specified federal law.

AB 1011 was introduced in the Assembly on February 21, 2019, and, most recently, on August 30, 2019, was approved by the Governor and chaptered by the Secretary of State at Chapter 185, Statutes of 2019.

Environmental Protection and Quality

AB 296 (Cooley)—This bill would establish the Climate Innovation Grant Program, to be administered by the Climate Innovation Commission, the purpose of which would be to award grants in the form of matching funds for the development and research of new innovations and technologies to address issues related to emissions of greenhouse gases and impacts caused by climate change.

AB 296 was introduced in the Assembly on January 28, 2019, and, most recently, on September 12, 2019, was enrolled and presented to the Governor at 3:30 p.m.

AB 394 (Obernolte)—This bill would exempt from the California Environmental Quality Act (CEQA) projects or activities recommended by the State Board of Forestry and Fire Protection that improve the fire safety of an existing subdivision if certain conditions are met.

AB 394 was introduced in the Assembly on February 6, 2019, and, most recently, on September 11, 2019, the Senate concurred in the proposed amendments to the bill and it was sent to engrossing and enrolling.

AB 430 (Gallagher)—This bill would exempt from the California Environmental Quality Act projects involving the development of new housing in the County of Butte.

AB 430 was introduced in the Assembly on February 7, 2019, and, most recently, on September 11, 2019, was enrolled and presented to the Governor at 3:30 p.m.

AB 454 (Kalra)—This bill would amend the Fish and Game Code to make unlawful the taking or possession of any migratory nongame bird designated in the federal Migratory Bird Treaty Act as of January 1, 2017, any additional migratory nongame bird that may be designated in the federal act after that date.

AB 454 was introduced in the Assembly on Febru-

ary 11, 2019, and, most recently, on September 9, 2019, was enrolled and presented to the Governor.

SB 226 (Nielsen)—This bill would require the Natural Resources and Environmental Protection agencies to jointly develop and implement a watershed restoration grant program, as provided, for purposes of awarding grants to eligible counties to assist them with watershed restoration on watersheds that have been affected by wildfire. This bill would further provide that projects funded by the grant program are exempt from the requirements of the California Environmental Quality Act.

SB 226 was introduced in the Senate on February 7, 2019, and, most recently, on August 30, 2019, was held under submission in the Committee on Appropriations.

SB 632 (Galgiani)—This bill would amend the California Environmental Quality Act to until a specified date, exempt from CEQA any activity or approval necessary for, or incidental to, actions that are consistent with the draft Program Environmental Impact Report for the Vegetation Treatment Program issued by the State Board of Forestry and Fire Protection in November of 2017.

SB 632 was introduced in the Senate on February 22, 2019, and, most recently, on September 10, 2019, was enrolled and presented to the Governor.

Housing / Redevelopment

AB 68 (Ting)—This bill would amend the law relating to accessory dwelling units to, among other things, 1) prohibit a local ordinance from imposing requirements on minimum lot size, lot coverage, or floor area ratio, and establishing size requirements for accessory dwelling units that do not permit at least an 800 square feet unit of at least 16 feet in height to be constructed; and, 2) require a local agency to ministerially approve or deny a permit application for the creation of an accessory dwelling unit or junior accessory dwelling unit within 60 days of receipt.

AB 68 was introduced in the Assembly on December 3, 2018, and, most recently, on September 13, 2019, the Senate concurred in the proposed amendments to the bill and it was sent to engrossing and enrolling.

AB 69 (Ting)—This bill would require the Department of Housing and Community Development to propose small home building standards governing accessory dwelling units and homes smaller than 800 square feet, which would be submitted to the California Building Standards Commission for adoption on or before January 1, 2021.]

AB 69 was introduced in the Assembly on December 3, 2018, and, most recently, on September 5, 2019, was ordered to the inactive file at the request of Senator Skinner.

AB 168 (Aguiar-Curry)—This bill would amend existing law, which allows for the ministerial approval of multi-family housing projects meeting certain objective planning standards, to require that the standards also include a requirement that the proposed development not be located on a site that is a tribal cultural resource.

AB 168 was introduced in the Assembly on January 9, 2019, and, most recently, on September 9, 2019, was ordered to the inactive file at the request of Senator Weiner.

Public Agencies

AB 485 (Medina)—The bill would prohibit a local agency from signing a nondisclosure agreement regarding a warehouse distribution center as part of negotiations or in the contract for any economic development subsidy.

AB 485 was introduced in the Assembly on February 12, 2019, and, most recently, on September 11, 2019, was enrolled and presented to the Governor at 3:30 p.m.

AB 1483 (Grayson)—This bill would require a city or county to compile a list that provides zoning and planning standards, fees imposed under the Mitigation Fee Act, special taxes, and assessments applicable to housing development projects in the jurisdiction. In addition, this bill would require each city and county to annually submit specified information concerning pending housing development projects with completed applications within the city or county, the number of applications deemed complete, and the number of discretionary permits, building permits, and certificates of occupancy issued by the city or county to the Department of Housing and Community Development and any applicable metropolitan planning organization.

AB 1483 was introduced in the Assembly on February 22, 2019, and, most recently, on September 12, 2019, the Senate concurred in the proposed amendments to the bill and it was sent to engrossing and enrolling.

AB 1484 (Grayson)—This bill would prohibit a local agency from imposing a fee on a housing development project unless the type and amount of the exaction is specifically identified on the local agency's internet website at the time the application for the development project is submitted to the local agency, and to include the location on its internet website of all fees imposed upon a housing development project in the list of information provided to a development project applicant.

AB 1484 was introduced in the Assembly on February 22, 2019, and, most recently, on September 9, 2019, was re-referred to the Committee on Rules pursuant to Senate Rule 29.10(b).

SB 47 (Allen)—This bill would amend the Elections Code provisions relating to initiatives and referendums to require, for a state or local initiative, referendum, or recall petition that requires voter signatures and for which the circulation is paid for by a committee, as specified, that an Official Top Funders disclosure be made, either on the petition or on a separate sheet, that identifies the name of the committee, any top contributors, as defined, and the month and year during which the Official Top Funders disclosure is valid, among other things.

SB 47 was introduced in the Senate on December 3, 2018, and, most recently, on September 19, 2019, was enrolled and presented to the Governor at 3:00 p.m.

SB 53 (Wilk)—This bill would amend the Bagley Keene Open Meeting Act to specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

SB 53 was introduced on December 10, 2018, and, most recently, on August 30, 2019, was held under submission in the Committee on Appropriations.

SB 295 (McGuire)—This bill would prohibit an ordinance passed by the board of directors of a public utility district from taking effect less than 45 days, instead of 30 days, after its passage and would make conforming changes.

SB 295 was introduced in the Senate on February 14, 2019, and, most recently, on August 30, 2019, was held under submission in the Committee on Appropriations.

Zoning and General Plans

AB 139 (Quirk-Silva)—This bill would amend the Planning and Zoning Law to require the annual report prepared by local planning agencies regarding reasonable and practical means to implement the General Plan or housing element to include: 1) the number of emergency shelter beds currently available within the jurisdiction and the number of shelter beds that the jurisdiction has contracted for that are located within another jurisdiction; 2) the identification of public and private nonprofit corporations known to the local government that have legal and managerial capacity to acquire and manage emergency shelters and transitional housing programs within the county and region; and 3) to require an annual assessment of emergency shelter and transitional housing needs within the county or region.

AB 139 was introduced in the Assembly on December 11, 2018, and, most recently, on September 11, 2019, the Senate concurred in the proposed amendments to the bill and it was sent to engrossing and enrolling.

SB 182 (Jackson)—This bill would amend the Planning and Zoning Law to require the safety element of a General Plan, upon the next revision of the housing element or the hazard mitigation plan, on or after January 1, 2020, whichever occurs first, to be reviewed and updated as necessary to include a comprehensive retrofit plan.

SB 182 was introduced in the Senate on January 29, 2019, and, most recently, on September 13, 2019, was in the Assembly where it was held at the desk. (Paige Gosney)

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