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CONTENTS

LAND USE NEWS

Governor Newsom Issues New Executive Order Partially Lifting Drought Declarations and Withdrawing Well Permit Requirements for Counties . . 3

San Francisco Bay Area Affordable Housing Finance Authority Withdraws "First of Its Kind" Ballot Measure 4

LEGISLATIVE DEVELOPMENTS

California Passes Legislation for Challenges to Property-Related Fees . . . 6

California Assembly Bill 98: A Potentially New Floor for Warehousing and Logistics Centers Project Designs and Siting 7

RECENT CALIFORNIA DECISIONS

District Court of Appeal:
Second District Court Affirms Denial of Writ Challenging Expansion of Vested Nonconforming Winery Use Without Conditional Use Permit . . . 9
Holquin Family Ventures, LLC v. County of Ventura, ___Cal.app.5th___, Case No. B328569 (July 24, 2024, published Aug. 13, 2024).

Second District Court Affirms Denial of CEQA Challenge Against Prospective Purchaser Agreement as the Agreement Was Not a Project 11
Malibu Township Council, Inc. v. City Council of the City of Malibu, Unpub., Case No. B321688 (2nd Dist. Aug. 30, 2024).

First District Upholds Use of CEQA Categorical Exemption for Conversion of Oil Well to Injection Well 14
Sunflower Alliance v. California Department of Conservation, ___Cal. App.5th___, Case No. A167698 (1st Dist. Sept. 6, 2024).

Second District Court Affirms Denial of Writ Challenging City Planning Commission "Westside Mobility Plan" under CEQA 16
Westside Los Angeles Neighbors Network v. City of Los Angeles, ___Cal.App. 5th___, Case No. B320547 (July 24, 2024).

Continued on next page

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Second District Court Substantial Evidence Supported City's Approval of Transit Priority Project 19
Zinderman v. City of Los Angeles, Unpub., Case No. B329765 (2nd Dist. Aug. 30, 2024).

LEGISLATIVE UPDATE. 22

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LAND USE NEWS

GOVERNOR NEWSOM ISSUES NEW EXECUTIVE ORDER PARTIALLY LIFTING DROUGHT DECLARATIONS AND WITHDRAWING WELL PERMIT REQUIREMENTS FOR COUNTIES

On September 5, 2024, Governor Gavin Newsom issued an Executive Order (N-3-24) to terminate the drought State of Emergency declaration for 19 counties in light of improved conditions. The Executive Order also rescinds certain provisions from prior drought State of Emergency Proclamations and Executive Orders, including the requirement for counties to obtain verifications and make findings regarding proposed groundwater wells before issuing permits. Despite improvements to overall surface water supplies, groundwater basins have been slower to recover and a drought State of Emergency remains active in certain vulnerable watersheds. Finally, the Executive Order narrows the State of Emergency Proclamations and Executive Orders targeting the flood effects caused by 2023 winter storms.

Background

The California Legislature has empowered the Governor to issue emergency proclamations and executive orders under the California Emergency Services Act during specified conditions. The Governor utilizes those emergency powers to carry out the state's:

> . . .responsibility to mitigate the effects of natural, manmade, or war-caused emergencies that result in conditions of disaster or in extreme peril to the life, property, and resources of the state and generally to protect the health and safety and preserve the lives and property of the people of the state. (Gov. Code, § 8550.)

Pursuant to this power, the Governor can "make, amend, and rescind orders and regulations necessary to carry out the provisions" of the California Emergency Services Act and those orders and regulations have the force and effect of law. (Gov. Code, § 8567.)

The current multi-year drought began in October of 2019, just three years after the drought of 2012-2016. (*See* Executive Order N-3-24, at p. 1.) Through a series of declarations in 2021, the Governor proclaimed a drought State of Emergency in all 58 counties to increase flexibility, set conservation goals, and bolster California's response capabilities. (*See* Executive Order N-3-24 at p. 1.)

Drought conditions continued through Water Year 2023, when cool and wet conditions resulted in record Sierra snowpack and the reemergence of Tulare Lake. (*See* California-Nevada Drought Status Update, National Integrated Drought Information System (Oct. 19, 2023).) Notably, the California-Nevada region started Water Year 2023 with 100 percent of the region in drought, but concluded with less than 1 percent in drought, according to the U.S. Drought Monitor. (*Id.*)

The drastic changes in hydrology during Water Year 2023 and resulting floods prompted a new slate of emergency proclamations and orders throughout the year to address the impacts of the early 2023 winter storms in the Tulare Lake Basin and other regions, even while the drought state of emergency remained in effect. (*See* Executive Order N-3-24 at p. 2.)

Executive Order N-3-24

Considering the reduction in drought conditions since Water Year 2023 and the improvements in areas impacted by the late winter storms of 2023, Executive Order N-3-24 terminates the drought State of Emergency in the Counties of Imperial, Inyo, Los Angeles, Marin, Mendocino, Mono, Monterey, Orange, Riverside, San Bernardino, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sonoma, and Ventura.

The drought State of Emergency remains active in the 39 other counties, given the persistence of significant impacts from the multi-year drought such as including depleted groundwater supplies, domestic well insecurity, and harm to native fish populations. Executive Order N-3-24 calls for continued action by the state to address the ongoing effects of drought

in the Sacramento and San Joaquin River basins, the Tulare Lake Basin, the Shasta, Scott, and Klamath River Watersheds, and the Clear Lake Watershed. Though the Executive Order does not fully terminate the drought State of Emergency in the remaining 39 counties, it narrows or rescinds specific provisions of prior orders that are no longer necessary. Keeping the State of Emergency active in these counties allows the Office of Emergency Services to continue providing disaster assistance funding when needed.

The new Executive Order also withdraws the provisions of prior orders that imposed conditions on counties and other groundwater well permitting authorities. Executive Order N-3-23 restricted approvals of new groundwater well permits or alterations of existing permits for wells located in medium- or high-priority basins subject to the Sustainable Groundwater Management Act (SGMA) without written verification from the respective groundwater sustainability agency that the well would not be inconsistent with the applicable Groundwater Sustainability Plan. (*See* Executive Order N-3-23 at p. 3.) Permitting entities were also barred from issuing a permit for a new or altered groundwater well:

> . . .without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure. (*See id.* at p. 4.)

Counties that had adopted interim procedures to obtain the verification and findings may seek to adjust their procedures with the removal of those requirements.

As to the State of Emergency for the counties impacted by 2023 winter storms, the new Executive Order rescinds provisions deemed no longer necessary, finding that changed conditions "warrant a more targeted emergency response to the effects of those storms." (*See* Executive Order N-3-24, at p.2.)

Conclusion and Implications

Though California has now had two winters with above-average rainfall, the Governor's decision to keep the drought State of Emergency in effect for 39 counties shows the significant and lasting impacts the prior multi-year drought had across the state. Executive Order N-3-24 also highlights the uncertainty of future hydrology, cautioning that wet winters do not necessarily mean another drought is out of the question for California.

A copy of Executive Order N-3-24 is available at: https://www.gov.ca.gov/wp-content/uploads/2024/09/9.4.24-Drought-EO-N-3-24.pdf. (Taylor Strain, Austin Cho)

SAN FRANCISCO BAY AREA AFFORDABLE HOUSING FINANCE AUTHORITY WITHDRAWS "FIRST OF ITS KIND" BALLOT MEASURE

In August of 2024, the Bay Area Housing Finance Authority (BAHFA) withdrew its proposed Regional Measure 4 (RM 4) because of mistakes in the proposal. RM 4 was a first-of-its-kind ballot measure that would have increased property taxes in the region to fund affordable housing development across the Bay Area's nine counties.

Background

RM 4 was set to be voted on by Bay Area voters this November 5th. The measure had been developed over the course of four years, and the proponents were intentionally timed the measure to an historically high voter turnout during a presidential election year with the hopes of addressing the Bay Area's critical housing shortage (ABAG reports that, in 2022, 37,000 people were unhoused in the region). With the depletion of federal and state funding, the high cost of construction financing, and cities facing continuing budget deficits resulting, largely, from the pandemic, development has been on hold for thousands of affordable homes in the Bay Area. BAHFA voted unanimously to put RM 4 on the ballot to fund new subsidized housing projects, purchase existing homes to make them affordable, and support housing-related infrastructure. If passed, RM 4 would authorize BAHFA to loan the nine-county Bay

Area region a sum of $20 billion to aid in affordable housing development. The bond would be funded by increases in property taxes. Each city would receive a cut of the proceeds based on how much its jurisdiction pays in taxes. San Francisco, for example, would get about $2.4 billion to invest, while the city of Oakland would get over $720 million. The funds would be dispersed to each eligible county and city based on expenditure plans developed by each local agency.

Effects of the Proposed Measure

The bond in RM 4 was proposed to be funded by property tax increases, with an estimated tax of $19 per $100,000 of assessed property value. This would amount to an increase of about $190 per year for a home assessed at $1 million. BAHFA had estimated that taxpayers would have had to pay off a total of nearly $50 billion in loans resulting from the bond measure. This increase in property taxes could potentially have been an area of concern for some tax payers. However, these potential concerns were only a small part of the concerns with the bill that eventually led to its withdrawal.

Reasons for Withdrawal of Measure

In August, opponents of the measure challenged the language and annual property tax estimates. A group argued that the measure's wording was biased and inaccurate, which lead to concerns with BAHFA's transparency and ability to manage funds generated by the measure.

One of the most embarrassing discrepancies uncovered was the projected cost to taxpayers through fiscal year 2077-78. On the ballot, RM 4 listed the cost at $670 million, when the amount would actually be about $910 million including interest. This 35 percent discrepancy was too obvious and, by unanimous vote, BAHFA reluctantly agreed to withdraw the proposed measure.

Even if Measure 4 had remained on the ballot and would have benefited from the lowering of this voter threshold, polling for Measure 4 showed borderline chances of passage with voter support at only 54 percent.

Conclusion and Implications

BAHFA has decided to withdraw the measure entirely, in part out of fears that RM 4 would negatively affect other bond measures in the future. While BAHFA will consider re-introducing some form of the measure for the 2026 ballot, it will turn its focus to advocating for Proposition 5, an amendment to the state Constitution that would lower the vote threshold for local bond measures on affordable housing from 66.7 percent to 55 percent. In the authors' opinions, one of the largest obstacles to delivering affordable housing the Californians who need it, is that lack of public funds to finance the construction of affordable units/projects.

(Amara Morrison, Christina Suarez, Darien Key)

LEGISLATIVE DEVELOPMENTS

CALIFORNIA PASSES LEGISLATION FOR CHALLENGES TO PROPERTY-RELATED FEES

The CaliforniaLegislature recently passed Assembly Bill 2257 (AB 2257). This bill affects administrative remedy challenges to property-related fees, including water or sewer fees.

Background

On August 27, 2024, the California legislature passed AB 2257. The bill was submitted by Assembly Member Lori Wilson and sponsored by the Association of California Water Agencies. The bill would require ratepayers to participate and raise specific objections to proposed rate changes before resorting to litigation after the new rates are approved. The bill would also provide an opportunity for local agencies and ratepayers to resolve objections during the public process and avoid surprise litigation down the road. AB 2257 builds on California Proposition 218 by including an exhaustion of administrative remedies requirement for Proposition 218 challenges to property-related water or sewer fees or charges. The bill requires parties interested in challenging a fee under California Constitution Article XIII D (created and modified by Props 218) to submit written objections to the agency that passed those fees. The bill was submitted to Governor Newsom on September 5, 2024, and signed later that month.

Proposition 218

Proposition 218 is designed to ensure that all taxes and most charges on property owners are subject to voter approval. Proposition 218 was developed in the aftermath of Proposition 13, which constrained local governments' ability to raise property taxes. Proposition 13 also specified that any local tax imposed to pay for specific governmental programs—a "special tax"—must be approved by two-thirds of the voters. This led local governments to rely more upon other revenue streams to fund local services such as assessments, property-related fees, and a variety of small general purpose taxes. These local revenue tools became the focus of Proposition 218.

Under Proposition 218, local governments may not tax or charge local property owners with these revenue tools without obtaining voter approval and following a specific set of steps. For example, in order to impose or increase a tax under Proposition 218, the local government would need to: (1) ensure that general taxes are approved by a majority vote of the people, (2) the election for general taxes be consolidated with a regularly scheduled election for members of the local governing body, and (3) any tax imposed for a specific purpose be treated as a "special tax" even if the funds are placed into the community's general fund. In short, Proposition 218 curbed local governments' ability to impose assessments, property-related fees, and other taxes on property owners.

Purpose of AB 2257

AB 2257 builds on California Proposition 218 by including an exhaustion of administrative remedies that Proposition 218 requires for challenges to property-related water or sewer fees or charges. The purpose of the act is also to provide an opportunity for the local public agency to address or resolve the objection or objections before its governing body makes a final decision on whether to establish a new, or amend a current, property-related fee or special assessment pursuant to Proposition 218. The procedure created by AB 2257 is meant to provide an opportunity for a ratepayer to present an objection to a proposed new or amended property-related water or sewer fee or charge, or any special assessment, and allow the local agency the opportunity to resolve the objection, before resorting to litigation after the new or amended rate or special assessment is approved. Even if such an objection is not fully resolved, the local agency considering and responding to the objection can narrow the dispute and create a more robust evidentiary record for court review in deciding any later litigation.

Potential Effects of AB 2257

AB 2257 creates a procedure for submitting and reviewing challenges to fees or assessments proposed

by local governments. First, under AB 2257, a ratepayer or entity is prohibited from alleging noncompliance with the constitutional provisions for any new, increased, or extended fee or assessment unless that ratepayer or entity has timely submitted to the local agency a written objection to that fee or assessment. The written objection must specify the grounds for alleging noncompliance.

Next, AB 2257 provides that local agency responses to the timely submitted written objections shall go to the weight of the evidence supporting the agency's compliance with the substantive limitations on fees and assessments imposed by the constitutional provisions. This means that the agency's responses will be taken as evidence in support of their compliance. AB 2257 would also prohibit an independent cause of action as to the adequacy of the local agency's responses.

Further, AB 2257 provides that in any judicial action or proceeding to review or challenge the fee or assessment setting process, the court's review is limited to a record of proceedings containing specified documents.

Conclusion and Implications

AB 2257 builds on California Proposition 218 by including an exhaustion of administrative remedies that Proposition 218 requires for challenges to property-related water or sewer fees or charges. Under AB 2257, ratepayers and entities would need to follow a more strict administrative procedure to challenge property-related fees imposed by local governments. From the perspective of many landowners, AB 2257 may present a more complex and expensive process to challenge rates and fees that are already inherently both complex and expensive under Proposition 218. The applicability of AB 2257 to a particular fee or charge will depend on applicability and the nuances of Proposition 218 and its case law progeny. (Christina Suarez, Derek Hoffman)

CALIFORNIA ASSEMBLY BILL 98: A POTENTIALLY NEW FLOOR FOR WAREHOUSING AND LOGISTICS CENTERS PROJECT DESIGNS AND SITING

California Assembly Bill 98 (AB 98), introduced by Assemblymembers Juan Carrillo and Eloise Reyes, seeks to address environmental justice and health concerns associated with the proliferation of large-scale warehouse and logistics facilities, particularly in the Inland Empire, and will apply to both charter and general law cities. The bill was approved by the legislature on August 31, 2024, and awaits Governor Gavin Newsom's signature or veto by September 30, or the bill becomes law.

If enacted, AB 98 will establish new land-use regulations aimed at warehouse and logistics facilities by attempting to curb common environmental justice concerns like pollution, traffic, and noise sources in residential areas adjacent to these facilities. The bill is the latest action between balancing economic benefits with public health and environmental protection.

AB 98 Applicability

AB 98 will apply to all new warehouse logistics buildings that do not have a land use entitlement on-file with a jurisdiction by September 30, 2024, AB 98 does not apply to any warehouse logistic building that has a final land use entitlement or vacant currently existing logistics buildings, but will only apply to those projects where the land use entitlement application is submitted after September 30, 2024.

AB 98 introduces detailed siting and design criteria for logistics buildings depending on whether (a) the site is already zoned industrial, (b) whether a zone change must occur, and (c) whether there is a sensitive receptor within 900 feet.

If the site is already zoned industrial and within 900 feet of a sensitive receptor more of the new stringent requirements become applicable on January 1, 2026. If the project site needs to be rezoned to industrial, the stringent requirements apply to any logistics use that does not have an initial application submitted to the relevant jurisdiction by September 30, 2024.

Additionally, starting on January 1, 2026, these facilities must be located on roadways classified as arterials, collectors, or major thoroughfares, pre-

dominantly serving commercial uses. This prevents new warehouses from being established near homes, schools, and parks unless they meet strict buffer zone requirements. Specifically, loading bays must be positioned 300 to 500 feet from sensitive receptors, such as residential areas, schools, and hospitals. These requirements will be required to be adopted into City's General Plans otherwise they could face fines up to $50,000.

Lastly, the bill mandates new design standards for warehouses larger than 250,000 square feet. These standards include energy-efficient measures such as the installation of solar panels with battery storage, building efficiency requirement and the use of zero-emission forklifts by 2030. Facilities must also feature noise-reduction infrastructure, including screening barriers and landscaping to shield nearby communities from adverse effects.

Oppositions and Supports

While AB 98 focuses on environmental justice, it has faced significant opposition from businesses, real estate groups, and certain environmental groups. Critics argue that the bill will increase development costs and limit the availability of suitable sites for new warehouses. The new zoning and buffer zone requirements could restrict logistics centers to fewer locations that are not already zoned for industrial use, potentially slowing industrial development.

Opponents also claim that the bill undermines the ability of cities and counties to regulate land use decisions at the local level with these statewide standards overriding local discretion. This has raised concerns that the legislation could hinder job creation in regions that rely heavily on logistics industries.

Exemptions and Flexibility

To address concerns about ongoing developments, AB 98 includes exemptions for projects already in the approval process, or which will be placed in an existing industrial zone. Logistics centers that have submitted an initial application by September 30, 2024, are not subject to the new siting and design requirements, even if they are located near sensitive receptors.

Additionally, if the project is in an industrial zone these requirements will not apply till January 1, 2026, meaning current buildings will not need to retrofit, but new buildings will be required to have these design features. This provision protects developers who have already invested in projects under the existing regulatory framework.

Lastly, the bill allows cities and counties to implement more stringent regulations if they deem them necessary. This creates flexibility for local governments to retain some control over the specifics of logistics developments in their jurisdictions.

Conclusion and Implications

AB 98 represents attempts at the state level to address the environmental and health impacts of large-scale warehouse developments in California. By establishing new stringent siting, design, and operational standards, the bill aims to protect communities from pollution, noise, and traffic associated with logistics centers. However, the legislation also introduces challenges for developers and local governments, potentially leading to higher costs and slower industrial growth.

Overall, AB 98 reflects California's ongoing efforts to regulate industries with significant environmental footprints while promoting public health and sustainable development and reducing local authority. (Brent McManigal, Darien Key)

RECENT CALIFORNIA DECISIONS

SECOND DISTRICT COURT AFFIRMS DENIAL OF WRIT CHALLENGING EXPANSION OF VESTED NONCONFORMING WINERY USE WITHOUT CONDITIONAL USE PERMIT

Holquin Family Ventures, LLC v. County of Ventura, ___Cal.App.5th___,
Case No. B328569 (July 24, 2024, *published* Aug. 13, 2024).

The Second District Court of Appeal in *Holquin Family Ventures, LLC v. County of Ventura* affirmed the trial court's decision to uphold the County's determination of violations under the County of Ventura's code against a winery with an existing nonconforming use of a wine tasting room for significant expansion of that use to special events without a conditional use permit.

Factual Background

This case involves the Old Creek Ranch Winery north of the City of Ventura at the end of Old Creek Road owned by Holguin Family Ventures, LLC (Holguin). The winery currently encompasses approximately seven acres located within a 329-acre portion of the 800-acre ranch and includes parking areas and roads around it. The ranch is zoned agriculture exclusive.

In December 1981 the County issued a Zoning Clearance permitting a Temporary/Portable Produce Stand inside an Existing Winery. The Zoning Clearance as amended in 1990 was for the Existing Winery of 1,276 square feet with a Produce Stand of 75 square feet located within.

The 1981 Zoning Clearance permitted a public tasting room as part of the Produce Stand with a ministerial Zoning Clearance. In 1985, the County amended the Non-Coastal Zoning Ordinance (NCZO) to require a discretionary Conditional Use Permit (CUP) to authorize a winery with public tours or tasting room, and to authorize any winery with over 2,000 square feet of structures. Because Old Creek Ranch Winery was permitted with a Zoning Clearance before this more stringent CUP requirement took effect, the winery is a legal nonconforming use under the NCZO.

In 2008, the Planning Division worked with the winery to document the 'baseline' size and operations of the then-existing winery with public tasting room to establish the parameters of the winery's nonconforming use which was authorized to continue without a CUP. One of the conditions was that all activities at the Old Creek Ranch Winery must be clearly incidental, accessory, and subordinate to the primary operations of the associated winery as a production facility. The letter established an acceptable range of tasting room patrons per day and limited "events" to those held in conjunction with marketing or wine production educational activities and limited to either 15 or 25 visitors maximum. Events permitted did not include birthday and anniversary parties, family reunions, retirement parties, weddings, receptions and the like, which would require a CUP.

Holguin purchased the approximately 329-acre portion of the ranch property, including the winery, in June 2015. In September 2015 the County issued to Holguin an Inauguration of Use Zoning Clearance for a certificate of occupancy for an existing winery of up to 2,000 sq. ft. (bottling, processing, and storage) which includes a change of ownership. The Zoning Clearance noted that there is a permitted produce stand with a non-conforming wine tasting room.

Despite the prohibition of special events on the site until an approved CUP is issued, Holguin's website advertised the property as a third-party venue for weddings, birthday, retirement, bridal shower, baby shower, gender reveal, celebration of life, rehearsal dinner and includes the statement, "What better venue than Old Creek Ranch Winery."

At Holguin's request, the County issued several permits for improvements on the property. The permits included construction of a 2,000 sq. ft. agricultural barn, a 3,655 sq. ft. agricultural storage building, and a 900 sq. ft. agricultural storage building. A Construction/Demolition Zoning Clearance issued in October 2015 noted that the parcel contains an exist-

ing 2,000 square feet winery office.

On November 1, 2017, Holguin submitted a request for a Zoning Clearance to authorize the relocation of the existing wine tasting room to the newly constructed 2,000 sq. ft. agricultural barn. Starting in March 2018, public complaints were submitted to the Code Compliance Division in regard to the use of the property for unpermitted outdoor winery-related events and associated activities without the required permits and the increase of traffic and noise. Holquin installed electrical infrastructure and electric vehicle charging stations for a newly paved parking lot with approximately 40 parking spaces.

A County site inspection revealed that the winery had expanded significantly from its original footprint and scope as established in the 1980s without a CUP and had changed the principal use of the property from crop production to a wine tasting/associated event venue. Notices of violation were issued and Holquin appealed. The Planning Commission considered Holguin's appeals and unanimously denied those appeals. Holguin appealed to the County Board of Supervisors. After conducting a public hearing in September 2019, the Board unanimously upheld the Planning Commission's decision.

Testimony before the Board included a written statement signed by 13 persons who resided on Old Creek Road that said:

> From weddings that are advertised to have a 200-person capacity, to an international corporate meeting for Volvo where hundreds of people drove test cars originating at the winery, to tour bus operators passing in full-sized tour buses, the venue has advertised and (presumably) held 57 music events and 33 food truck events in their first twelve months.... It has created a nightmare for our road.

After a successful challenge to the Board's decision for lack of findings, the Board held a new hearing, again denying Holquin's appeals. In support of its decision, the Board made 155 findings of fact and conclusions of law.

In December 2021 Holquin filed a writ of mandate with the trial court. Under the substantial evidence standard, the trial court concluded that substantial evidence supported the County's argument that Holquin converted the property's principal use from crop and wine production into a relatively elaborate commercial wine bar and event space, and upheld the violations.

The Court of Appeal's Decision

Under the substantial evidence standard applicable to when a petitioner has a vested right to a nonconforming use and seeks approval to expand it, the Court of Appeal upheld Holquin's violations that, without obtaining a CUP, Holquin: (1) expanded the winery and wine-tasting area beyond the historical use area, and (2) changed the principal use of the ranch from crop production to a wine tasting/associated event venue. The Court of Appeal noted that the County violations did not destroy Holguin's business so as to trigger independent review-- Holguin was allowed to continue to operate the winery and wine-tasting room as they had been operated by previous owners within the parameters of the 1985 legal nonconforming use.

The Violations Determinations

The four violations determinations challenged were: (1) Expansion of the non-conforming winery without a CUP structures/uses beyond the 2,000-sq. ft. ministerial limit; (3) Non-permitted conversion of a 2,000-sq.ft. agricultural storage building to a building for amusement and recreational activities; (4) Non- permitted conversion of a 900 sq. ft. agricultural shed to a large agricultural sales facility that includes the display of items for sale, such as books, china, wine baskets, shirts, and olive oil; and (8) Non-permitted expansion of the non-conforming winery use, by using the approximately 3,000 sq. ft. agricultural storage building for the storage/warehousing of boxes of bottled wine, which should be located within the existing 2,000-sq. ft. wine tasting, wine storage building, without a CUP.

Substantial Evidence Supports the Violations Determinations

With respect to Violation 1, the Court of Appeal cited to the following substantial evidence: The principal use of the property was historically agricultural, and now it is no longer producing crops on site for the production of wine, but rather it's run as a de facto bar, where they've set up several bars throughout the facility, or the property, where they're serving

and selling wine grown and produced off site. They've increased the area occupied by the public wine tasting, and also the occupancy capacity of the buildings, and the parking lots. So the winery footprint has tripled in size, buildings have been converted to winery related uses, which exceed the 2,000 square foot ministerial Zoning Clearance limit, and crop production has become secondary to the winery use.

With respect to Violation 3, the Court of Appeal cited to the following evidence: The Board found that the 2,000 sq. ft. agricultural storage building had been used for winery-related events because on January 1, 2019, Permittee hosted a yoga and wine-tasting event inside the building, which according to Permittee, featured a two-hour yoga class followed by wine tasting including six varietals.

With respect to Violation 4, the Court of Appeal cited to the following evidence: At site inspection conducted by Planning staff on January 9, 2019, the 900 sq. ft. agricultural shed did not contain any agricultural-related equipment or materials but rather included the display of items for winery-related retail sale such as books, china, wine baskets, shirts and olive oil.

With respect to Violation 8, the Court of Appeal cited to the following evidence: the 2015 Zoning Clearance for a certificate of occupancy for an existing winery of up to 2,000 sq. ft. (bottling, processing, and storage) requires that bottles of wine and finished wine in barrels are to be stored within the winery and cannot be stored in the agricultural storage building.

Conclusion and Implications

This opinion by the Second District Court of Appeal makes the important distinction between code violations which pertain to a fundamental vested right to continue operating an existing non-conforming use and code violations which pertain to unpermitted expansion of that use. The former operations are protected and are subject to independent review by the courts, whereas the latter expansions thereof are subject to further permitting and are subject to a more deferential substantial evidence standard of review by the courts. The court's opinion is available online at: https://www.courts.ca.gov/opinions/documents/B328569.PDF
(Boyd Hill)

SECOND DISTRICT COURT AFFIRMS DENIAL OF CEQA CHALLENGE AGAINST PROSPECTIVE PURCHASER AGREEMENT AS THE AGREEMENT WAS NOT A PROJECT

Malibu Township Council, Inc. v. City Council of the City of Malibu, Unpub.,
Case No. B321688 (2nd Dist. Aug. 30, 2024).

In an *unpublished* opinion filed on August 30, 2024, the Second District Court of Appeal affirmed the trial court's finding, holding that the settlement offer was a proper topic for closed session discussion and that the immediate need exception of the Brown Act allowed the City Council to add the settlement to the closed session agenda.

Factual and Procedural Background

Adding Item During Open Session for Closed Session Meeting

In 2009, the City of Malibu (City) initiated litigation against the California Coastal Commission (CCC) and the Santa Monica Mountains Conservancy (SMMC). This litigation, known as the Override Lawsuit, challenged proposed amendments to the City's local coastal plan.

The City's deadline to file a motion for attorney fees in the Override Lawsuit had been extended by stipulation to December 21, 2012. On December 10, 2012, just before the City Council meeting, the City Attorney received a settlement offer in the Override Lawsuit from SMMC, a payment of $175,000 to the City for attorney fees and costs, with an additional $200,000 contingent upon future actions by the SMMC. The timing of the offer and the fact that the CCC was meeting approximately 36 hours later (and only meets once per month) meant that the City needed to add the issue to the December 10, 2012, agenda to provide a timely response to the offer.

Just before the City Council meeting convened, the City Attorney went to the reception area of the

city hall to determine whether there were any members of the public interested in attending, and there were none. When she returned from the reception area, the City Attorney informed the City Council there were no members of the public waiting to attend, and the mayor called the meeting to order. The City Attorney informed the City Council she was requesting it add an item regarding the settlement offer to the closed session agenda before it recessed to closed session and provided an explanation of why it had to discuss the matter immediately, given the timeline and deadlines. Based on the facts presented, the City Council unanimously added the case to the closed session agenda. At that point in the meeting, after the regular meeting had been called to order and the settlement had been added to the closed session agenda, the City Council recessed into closed session.

In April 2013, Malibu Township Council, Inc. (MTC) filed a lawsuit against the City and the City Council, alleging, among other things, violations of the Brown Act during a closed session meeting on December 10, 2012. MTC claimed that the City Council failed to provide proper notice and did not publicly announce the closed session agenda, thus breaching the Brown Act's open meeting laws.

City's Motion for Summary Judgment

The City moved for summary judgment, asserting that the closed session was properly noticed and the subject matter was appropriate. The City presented evidence that the City Attorney informed the Council of a settlement offer after the meeting agenda was posted. The Council added the matter to the closed session due to the urgency of upcoming deadlines. The City argued that no reportable action was taken, complying with legal requirements. The City's motion was supported by declarations and meeting minutes, which documented the sequence of events leading to the closed session. The City Attorney publicly announced the addition of the Override Lawsuit to the agenda, emphasizing the need for immediate action. The City maintained that the settlement discussions fell within the permissible scope of closed-session topics under the Brown Act.

MTC's Opposition

MTC contended that the City did not meet its burden of proof, arguing that triable issues of fact existed. MTC submitted a declaration from its attorney, stating that a video of the meeting did not show an open session announcement. Deposition testimony indicated discrepancies in the timing and announcement of the closed session, challenging the City's compliance with the Brown Act. MTC's argument focused on the lack of transparency and the potential for decisions being made without public oversight.

At the Trial Court

The trial court denied the City's request for summary judgment but granted in part the request for summary adjudication, finding that the City properly added the settlement offer to the agenda due to immediate need. However, the court identified a triable issue of material fact regarding whether the City Council publicly announced the closed session discussion before recessing.

The trial court then considered MTC's claim that the settlement offer was not a proper matter for closed session discussion regardless. However, the court found the City made a prima facie showing it complied with section 54956.9, subdivision (b) because the City Council held a closed session meeting on the advice of the City Attorney to discuss and take action on a settlement offer received for attorney fees in the Override Lawsuit. The court disagreed with MTC's argument that there was no "pending litigation," only a potential attorney fees motion because the parties in the Override Lawsuit still had to litigate the issue of attorney fees. Finally, the court rejected MTC's argument that there was a triable issue concerning whether signing a pre-negotiated attorney fees settlement in open session would have prejudiced the City's position in the Override Lawsuit because the court concluded the City was entitled to ask its attorney questions about the negotiation and preserve the attorney-client privilege. The trial court thus granted summary adjudication and determined the Override Lawsuit was a proper subject matter for closed session.

On the third and final potential violation the court identified as raised by MTC's remaining cause of action, the court granted summary adjudication and found the City did not violate section 54957.1 when announcing it took no reportable action in the closed session on December 10, 2012.

During the bench trial, testimony from City officials, including the City Attorney, supported the

City's position. The City Attorney testified about the urgency of the settlement offer and the need for immediate action due to attorney fees motion deadline. The trial included a site visit to City Hall to assess the visibility and accessibility of public notices.

Ultimately, the trial court concluded that the City had acted within the bounds of the Brown Act. The court found that the City Hall reception area was accessible to the public at the time of the meeting. The City Attorney went to the public area just before the meeting commenced to see if any members of the public wished to attend and speak, and she did not see any. The location of the closed session was posted on the agenda and amended agenda. The Brown Act did not require the closed session to be held in a publicly accessible area, and anyone who was present in the publicly accessible area when the City Attorney went to the area before the meeting could have followed her to the closed session room.

The meeting began with a brief open session, and during that open session, the City Attorney requested the City Council add an item to the closed session agenda. The City Attorney explained she had received an offer of settlement in the Override Lawsuit that afternoon, and the CCC, which met once per month, had requested a response to the offer prior to the meeting they were holding two days later. The City Attorney also explained the City's motion for fees was due later that month. Based on those facts, the City Council unanimously voted to add the Override Lawsuit to the closed session agenda.

The court found the Override Lawsuit was properly placed on the closed session agenda for the meeting because it was adequately described by the City Attorney to the City Council in open session before they voted to make it a closed session agenda item. The court additionally found the timeline of communication of the settlement offer and the Coastal Commission's planned meeting created an immediate need for action and the City Council unanimously voted to place the matter on the closed session agenda based on the information provided to it. The City Council then went into the closed session and properly discussed the Override Lawsuit, as previously established in the summary adjudication order.

The trial court found the City Attorney's testimony credible and consistent with other evidence introduced at trial and accordingly entered judgment in the City's favor.

The Court of Appeal's Decision

The Second District Court of Appeal held that the trial court's resolution of MTC's substantive and procedural Brown Act challenges to the City's actions was correct. The court analyzed it in two ways: whether substantively the Override Lawsuit was a proper issue for closed session and whether procedurally there was any violation of the Brown Act when adding the Override Lawsuit to the closed session agenda.

Override Lawsuit Was a Proper Issue for Closed Session

The court first concluded that the offer to settle the attorney fee dispute in the Override Lawsuit was a proper topic for closed session discussion under the exception for meetings with legal counsel regarding pending litigation, per section 54956.9. The court found the Override Lawsuit was unquestionably litigation that had been initiated formally by the time of the City Council meeting on December 10-, 2012, and that the attorney fees issue was still being actively litigated by the parties.

The court also did not find MTC's argument persuasive, that the City Council's discussion of the $200,000 contingency payment was improper for various reasons. Though the settlement term providing the Conservancy would pay the City if certain events occurred in the future did not directly compensate the City for fees it incurred in the lawsuit, it was nevertheless part and parcel of the settlement agreement, and its inclusion did not violate or circumvent the Brown Act open meeting rules. Thus, the court decided that the trial court correctly concluded that the Override Lawsuit settlement was a proper subject for a closed session.

Adding the Override Lawsuit to Closed Session Agenda Not Violation of the Brown Act

Central to the court's analysis on adding the Override Lawsuit to the closed session agenda was the "immediate need" exception under the Act, which permits closed session discussions without prior public notice if urgent circumstances justify such action. The court found that the City Council's decision to discuss the settlement offer in a closed session was warranted due to the pressing deadlines of filing the motion for attorney fees. This urgency was deemed

sufficient to invoke the exception, allowing the City to address the matter without delay.

The court also examined the adequacy of the public announcement regarding the closed session agenda. Testimonies from City officials, including the City Attorney, were scrutinized to determine whether the City had fulfilled its obligation to inform the public. The court concluded that the City had made a reasonable effort to announce the addition of the Override Lawsuit to the closed session agenda, thereby satisfying the transparency requirements of the Brown Act. The court emphasized the importance of balancing the need for confidentiality in certain municipal matters with the public's right to transparency, and also acknowledged the challenges public agencies face in navigating these competing interests, particularly when dealing with sensitive legal and financial issues.

The court also found MTC's other arguments, such as the meeting room was not sufficiently open to the public given its size and location or that the room was not provided with a diagram or directions specifying the locations, had nothing to do with the Brown Act's requirements. While the court agreed such changes arguably could have improved the effectiveness of the City's public notice procedures, neither the changes nor MTC's arguments establish that what the City did in this case was so deficient as to violate the requirements of the Brown Act.

Conclusion and Implications

The Second District Court of Appeal's ruling reinforced the principle that while the Brown Act mandates open meetings, it also allows municipalities flexibility to conduct necessary closed sessions under specific circumstances. Of course, since this incident occurred back in 2012, the procedural adequacy of providing notice might be different now, but the core principle would remain the same. The court's *unpublished* opinion is available online at: https://www.courts.ca.gov/opinions/nonpub/B321688.PDF (David Song)

FIRST DISTRICT UPHOLDS USE OF CEQA CATEGORICAL EXEMPTION FOR CONVERSION OF OIL WELL TO INJECTION WELL

Sunflower Alliance v. California Department of Conservation, ___Cal.App.5th___, Case No. A167698 (1st Dist. Sept. 6, 2024).

In *Sunflower Alliance v. California Department of Conservation*, the First District Court of Appeal found that substantial evidence supported the California Department of Conservation's Division of Geologic Energy Management's (CalGEM's) determination that converting a former oil well into an injection well constituted a negligible expansion of use and therefore fit within CEQA's Class 1 categorical exemption. The Court of Appeal held that a project is not automatically disqualified from the categorical exemption by any new use but instead depends on whether the change in use, and the environmental risks of the change, are negligible.

Factual and Procedural Background

In 2020, Reabold California LLC filed an application with the Department of Conservation's Division of Geologic Energy Management (CalGEM) to convert a former oil well in Contra Costa County into a Class II injection well. The well was drilled in 1963 and operated for over 20 years before it was plugged. Reabold operates two nearby oil wells that produce about 300 barrels of water per day. Currently, the produced water is transported to a disposal site 32 miles away, which requires ten truck trips per week. Reabold intends to use the proposed injection well to eliminate those trips.

The application proposed minor changes to the existing injection site, including removal of the well plug, installation of injection equipment inside the well, and use of the existing well pad and access road. The application was reviewed by CalGEM, the State Water Resources Control Board, and the Regional Water Quality Control Board. Reabold submitted a technical report from an engineer, a geologist, and a hydrologist, which concluded that the injected water would be confined to the aquifer by a barrier of about 1,000 vertical feet of shale. The agencies ultimately approved the application.

Regarding the California Environmental Quality Act (CEQA), CalGEM found that the project fit within the Class 1 categorical exemption (CEQA Guidelines, § 15301) as a "minor alteration" of an existing facility involving "negligible or no expansion" of a well's former use. CalGEM had previously promulgated a regulation determining that minor well conversions and injections may fall within the Class 1 exemption, based on a case-by-case and fact-intensive inquiry. In this case, CalGEM noted that the injection equipment would be installed within the existing well boring and would require no significant surface equipment or new drilling. In addition, the project would eliminate the need for routine trucking of produced water from Reabold's active wells.

At the Trial Court

Sunflower Alliance filed a petition for writ of mandate challenging CalGEM's use of the categorical exemption. The trial court held that, despite the fact that the physical modifications to the well would be minor and fit within the exemption, the exemption did not apply because injection, rather than extraction, is a "significantly different use." The court entered judgment in favor of Sunflower Alliance and issued a peremptory writ of mandate directing CalGEM to set aside its approval of the project. CalGEM complied with the writ, and Reabold appealed.

The Court of Appeal's Decision

The First District Court of Appeal reversed, holding that well conversion projects are not inherently outside of the Class 1 exemption's scope. In reviewing CalGEM's decision to apply the exemption, the court considered whether the agency abused its discretion in determining that the exemption applied to this project, and whether substantial evidence in the record supported the decision.

First, the court considered whether well conversion projects, as a group, are beyond the exemption's scope. Sunflower Alliance argued that any new use of a modified well is an impermissible expansion. On the other hand, Reabold argued that the applicability of the exemption instead depends on the degree of change; here, since the change essentially just reverses the process, the degree of change is insignificant.

The court did not fully agree with either approach. To determine the applicable rule, the court looked to CEQA's plain language to conclude that the exemption does not inherently bar any new use. Instead, the court interpreted the exemption to allow changes or expansions in use that are inconsequential, and to exclude changes in use that threaten environmental harm. In other words, a "change in use is unimportant, as far as CEQA goes, if the risk of environmental harm from the new use is negligible." The court supported this interpretation of the Guidelines by considering the fundamental purpose of categorical exemptions, which is to exclude from CEQA review certain classes of projects that have been determined to not have significant environmental impacts.

Based on this interpretation, the court found that the project fit within the Class 1 categorical exemption because it only included "minor alterations" to "existing equipment." The court reiterated that conversion to an injection well requires minor alterations to the existing well, and no significant changes to existing roads, the well pad, or surrounding vegetation. Further, the court found that the change in the well's use was negligible, since the well formerly pumped oil and water from an exempt aquifer, and it would simply inject water into the same aquifer. Part of CalGem's regulatory determination in approving the site as a Class II well is ensuring that the injected water cannot escape the aquifer and harm people, property, or the environment. Based on this determination, the court concluded that the environmental risks of the conversion are negligible.

The Court of Appeal then rejected Sunflower Alliance's argument that substantial evidence did not support CalGEM's decision to apply the categorical exemption to the project. The court pointed out that Sunflower Alliance did not dispute any particular findings or argue that the agency made a mistake, but instead "briefly raised concerns that there 'may' be significant adverse impacts although it is 'unclear.'" The court first rejected Sunflower Alliance's concern about the injected water's impact on the aquifer's water quality, finding no evidence in the record of negative effects on the already poor-quality water in the aquifer. The court then found that Sunflower Alliance had no basis to question the agencies' technical conclusions in determining that the injected fluids would not escape from the aquifer. Therefore, the court concluded that substantial evidence supported CalGEM's determination that the project fit within the Class 1 exemption.

Lastly, the court rejected Sunflower Alliance's argument that CalGEM improperly imposed mitigation measures to eliminate the project's alleged environmental impacts. CalGEM adopted several conditions in approving the well, which Sunflower Alliance asserted were mitigation measures used to mitigate the project into the categorical exemption. The court stated that the conditions and regulations that Sunflower Alliance pointed to were imposed in response to CalGEM's standard that it usually required for permit issuance. Compliance with these standards is a legally mandated element of the project, not a CEQA measure to lessen the project's environmental impact in order to fit within a categorical exemption.

Conclusion and Implications

The First District Court of Appeal's opinion clarifies its approach to analyzing whether and how a proposed project qualifies for CEQA's Class 1 categorical exemption. The court emphasized relying on the plain language of Guidelines section 15301 and adhering to the exemption's underlying purpose in interpreting its requirements. Ultimately, the court found that the relevant inquiry is whether a proposed change and the environmental impacts of that change are negligible, and it rejected the contention that the Class 1 categorical exemption inherently does not apply to any new proposed use. The First District Court of Appeal's opinion is available at: https://www.courts.ca.gov/opinions/documents/A167698.PDF.
(Hannah Rider, Bridget McDonald)

SECOND DISTRICT COURT AFFIRMS DENIAL OF WRIT CHALLENGING CITY PLANNING COMMISSION "WESTSIDE MOBILITY PLAN" UNDER CEQA

Westside Los Angeles Neighbors Network v. City of Los Angeles,
___Cal.App.5th___, Case No. B320547 (July 24, 2024).

The Second District Court of Appeal in *Westside Los Angeles Neighbors Network v. City of Los Angeles* affirmed the trial court's decision to uphold under California Environmental Quality Act, Public Resources Code 2 section 21000 *et seq.* (CEQA) actions by the Los Angeles City Planning Commission (CPC) to facilitate and implement three components of the Westside Mobility Plan, a comprehensive study undertaken to develop short-term solutions and long-term plans for addressing congestion and mobility challenges in the western portion of the City of Los Angeles.

Factual Background

The Westside is an urban area experiencing significant traffic congestion due to many factors, including historical over-reliance on cars as the primary mode of transportation. To address transportation issues on the Westside, the Los Angeles City Council (City Council) directed the Department of Transportation and the Department of City Planning to undertake a comprehensive study to develop potential short-term solutions and long-term plans addressing congestion and mobility challenges within that part of the City.

This study, known as the Westside Mobility Plan, seeks to facilitate a more balanced modal approach to improving mobility on the Westside. The Westside Mobility Plan has six components, three of which comprise the project at issue: (1) an update to the Coastal Transportation Corridor Specific Plan (CTCSP); (2) an update to the West Side Los Angeles Transportation Improvement and Mitigation Specific Plan (WLA TIMP); and (3) the Livable Boulevards Streetscape Plan (Streetscape Plan).

The updates to the CTCSP and WLA TIMP are referred to collectively as the "Fee Program Updates." The Fee Program Updates and the Streetscape Plan are referred to collectively as the "Project."

The Fee Program Updates

The CTCSP and WLA TIMP were adopted in 1985 and 1997, respectively, to establish a Transportation Impact Assessment (TIA) fee program. The TIA fees were established by specific plan ordinances and have been a part of the development approval process on the Westside since adoption. These fees

provide a funding mechanism for transportation improvements needed to address and mitigate transportation impacts generated by new development in the areas covered by each specific plan.

Under the TIA fee program, developers pay a one-time fee to the City before issuance of any building, grading, or foundation permit. Those fees are then deposited into trust funds, which are used to implement the transportation improvements identified on lists in each specific plan.

The Fee Program Updates amend the CTCSP and WLA TIMP by: (1) revising the TIA fees through adjusting the formula used to calculate the amounts due for various types of land uses; (2) requiring the TIA fee to be paid for certain previously exempt land uses; (3) offering credits for affordable housing developments and transit oriented developments; and (4) updating each specific plan's list of transportation improvements. Implementation of the transportation improvements on the lists in the CTCSP and WLA TIMP must comply with the Streetscape Plan approved by the CPC.

The Streetscape Plan

The Streetscape Plan provides a blueprint for streetscape improvements on public rights-of-way in five key street segments located in the areas covered by the CTCSP and WLA TIMP. For each street segment, the Streetscape Plan sets guidelines and standards for numerous streetscape elements, including street trees and landscaping, sidewalk paving, street furniture, street lighting, bus zone amenities, pedestrian crossings, and other streetscape improvements. Its overarching goal is to create a safe, attractive, and pedestrian-friendly environment that promotes neighborhood identity, multimodal accessibility, and local commerce.

The Streetscape Plan will be implemented as new projects, both publicly and privately financed, constructed over time. The Streetscape Plan's improvements are eligible for funding through the TIA fees obtained from the Fee Program Updates.

City Action on Project

The City prepared and circulated a draft Environmental Impact Report (DEIR) for the Project, noting that its analysis was limited to the potential environmental effects of the Fee Program Updates, claiming that the Westside Mobility Plan's other components, including the Streetscape Plan, are not subject to CEQA review.

The final EIR noted that, notwithstanding the City's decision to prepare an EIR, the Fee Program Updates were statutorily exempt from CEQA under section 21080, subdivision (b)(8), concluding that the Fee Program Updates will have significant and unavoidable impacts to air quality, noise and vibration, and transportation.

In March 2018, the CPC certified the final EIR, determining that the Fee Program Updates are statutorily exempt from CEQA under section 21080, subdivision (b)(8) and categorically exempt from CEQA under Guidelines sections 15301, 15304, and 153084, and adopting the Streetscape Plan.

The Trial Court Proceedings

Westside Los Angles Neighbors Network (Network) in June 2018 challenged the certification of the EIR, the findings in the NOE, and the related resolutions and Streetscape Plan designed to facilitate the Westside Mobility Plan. The trial court entered judgment for the City, finding that, although substantial evidence did not support the City's determination that the Fee Program Updates are statutorily exempt from CEQA, substantial evidence did support the City's determination that the Streetscape Plan is categorically exempt from CEQA, and the EIR as to the Fee Program Updates was legally adequate.

The Court of Appeal's Decision

Under the abuse of discretion standard applicable to quasi-legislative actions, the Court of Appeal found that the CPC proceeded lawfully in certifying the EIR and in determining that the Streetscape Plan was exempt, and that substantial evidence supported the CPC's factual determinations as to growth inducing impacts and implementation of mitigation measures

CPC Authority to Certify EIR for Multiple Component Project

Appellants argued that, because the Fee Program Updates portion of the Project must be approved by the City Council, that the CPC lacked authority to certify the EIR for the Project. Under the CEQA Guidelines, the lead agency must be the public

agency which has the principal responsibility for carrying out or approving a project. (CEQA Guidelines, § 15367.) However, under CEQA, the lead agency (here the City) may delegate its duties including certification of the EIR as long as there is a process for appeal to the City. (Pub. Res. Code, § 21151(c)) Thus, although only the City Council had authority to adopt the Fee Program Updates as specific plan elements, because the CPC was a decision-making body that had authority to commit the City Council to a definite course of action with respect to the Streetscape Plan component of the Project (CEQA Guidelines, §§ 15352, 15356), it was appropriate to delegate to the CPC the certification of the EIR as the lead agency for the Project.

CEQA Categorical Exemption for Streetscape Plan

The CEQA Class 1 categorical exemption applies to the Streetscape Plan. CEQA Guidelines section 15301 states, in relevant part:

> Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

The Streetscape Plan delineates the standards and guidelines for numerous streetscape elements, but the streetscape improvements do not expand the use of those rights-of-way. Network failed to provide substantial evidence that the Streetscape Plan will have any significant environmental effects so as to fit the unusual circumstance exception to a categorical exemption under CEQA Guidelines section 15300.2.

Substantial Evidence Supports the EIR Findings re: Growth Inducing Impact

CEQA requires an EIR to include a detailed statement setting forth the growth-inducing impact of the proposed project. (Pub. Res. Code, § 21100, subd. (b)(5).) The EIR found that the Fee Program Updates will not induce growth because the Project area is a fully developed, populated urban area. While the Fee Program Updates could lead to transportation improvements, they would not extend infrastructure to undeveloped areas or areas currently lacking adequate infrastructure. Rather, the transportation projects would enhance the existing transportation network in the Project area. Growth is expected in the project area with or without the Project as a result of anticipated infill or density-related growth as already contemplated by the Westside specific plans.

Substantial Evidence Supports the EIR Findings re Mitigation Measure Implementation

CEQA does not expressly require a public agency to find that mitigation measures adopted for a project are feasible or that they will be implemented. Rather, CEQA requires the agency to find, based on substantial evidence, that the mitigation measures are required in, or incorporated into, the project. (Pub. Res. Code, § 21081; CEQA Guidelines, § 15091(b)) The agency must adopt a monitoring program to ensure that the mitigation measures are implemented (Pub. Res. Code, § 21081.6, subd. (a)) Substantial evidence supports that that the City established how the Neighborhood Protection Plan mitigation will be funded (i.e., through the fees obtained through amended TIA program) and required the City's Department of Transportation to implement the NPP upon satisfaction of specific conditions (i.e., when implementation of the other projects on the lists in the CTCSP and WLA TIMP diverts traffic onto adjacent residential streets as determined through project-specific traffic studies based on Department Traffic Study Policies and Procedures guidelines).

Conclusion and Implications

This opinion by the Second District Court of Appeal reaffirms that a planning commission or other subordinate agency which has authority to approve a component of the multi-component project may (and indeed must) certify an EIR that commits the agency to such a multi-component project. It also makes clear that growth inducing impacts cannot be considered impacts that are already contemplated to take place under existing plans. The court's opinion is available onlin at https://www.courts.ca.gov/opinions/documents/B320547.PDF.

Editor's Note: As this article went to print we learned that the court's opinion was vacated on review by the California Supreme Court.
(Boyd Hill)

SECOND DISTRICT COURT FINDS SUBSTANTIAL EVIDENCE SUPPORTED CITY'S APPROVAL OF TRANSIT PRIORITY PROJECT

Zinderman v. City of Los Angeles, *Unpub.*, Case No. B329765 (2nd Dist. Aug. 30, 2024).

In an *unpublished* opinion filed on August 30, 2024, the Second District Court of Appeal affirmed the trial court's decision to deny appellant Zinderman's (appellant) petition to set aside City of Los Angeles's (City) approval of the Project. The court found substantial evidence to support the City's determination of the real parties in interest's (Belmont Village, L.P. (Belmont) and Westwood Presbyterian Church's (Church) (collectively: the RPIs)) construction plan qualified as a transit priority project, rejected Appellant 's argument that eldercare facilities are not "residential" under the California Environmental Quality Act (CEQA), and found that the Project's location in a densely populated area with access to public transportation aligned with the goals of reducing suburban sprawl and promoting sustainable development.

Factual and Procedural Background

The Project

City approved construction on Wilshire Boulevard in Westwood, where Belmont plans to build a 176-room eldercare facility and plans to build a childcare facility. Church owns a 1.62-acre property near the intersection of Wilshire and Westwood Boulevards, where 95 percent of the site is covered with buildings and structures for the Church. RPIs plan to preserve the church and raze the other improvements to build the Project. The Project is almost 90 percent residential and is adjacent to mass transit.

At the north end of the site, Belmont plans to build an eldercare facility with independent living units, assisted living guest rooms, memory care rooms, and amenities for residents. A parking lot now covers the area slated for the eldercare facility, which will have a fellowship hall fronting Wilshire Boulevard for Church's use. At the south end of the site, the Church plans to construct a two-story building that includes a preschool, administrative offices, and a multi-purpose area. School enrollment will increase from its current 80 children to a maximum of 105. There will be surface and subterranean parking and 70 spaces for bicycles.

City's Administrative Decision

RPIs applied for Project approval under CEQA. City's planning department concluded that this is a transit priority project (TPP). After making a TPP determination, City decided that a Sustainable Communities Environmental Assessment (SCEA) would be used to streamline its environmental analysis. The SCEA included various studies, including greenhouse gas (GHG) emissions and transportation impacts. The SCEA concluded that with mitigation measures, the Project would not cause significant environmental impact. The SCEA was circulated for public comment. After a public hearing, it was adopted by City in May 2021. Appellant spoke against the Project, and City denied appeals of its decision.

City approved the Project under an eldercare ordinance that facilitates construction of senior housing, which allowed zoning deviations to increase building height and interior open space and reduce parking requirements and yard setbacks. City acknowledged its historical facilitation of high-rise construction on Wilshire, including a 24-story luxury condominium building next to the Project site.

In February 2022, appellant filed a petition for a writ of mandate, alleging that City violated CEQA. The petition's primary arguments were: (1) the Project did not qualify as a TPP because it was not primarily residential, (2) the eldercare facility, constituting a significant portion of the Project, did not qualify as "residential" under CEQA, and (3) the Project was inconsistent with the density and land use policies outlined in the regional transportation plan that the Project does not qualify as a TPP; therefore, City should not have approved a SCEA for the Project.

At the Trial Court

The trial court found that substantial evidence supported City's findings that the Project is a TPP. It found no dispute that 90 percent of the Project is eldercare, rejecting appellant's claim that the facility areas are not a "residential use," as the City's municipal code defines senior housing as dwelling units, common dining areas, and community rooms.

The court also rejected appellant's claim that a TPP cannot include an eldercare facility, where residents lack the mobility of an average household. The court concluded that section 21155 does not differentiate between residential projects whose occupants can or cannot drive. Residents, visitors, and employees can make use of public transit near the facility.

The court further rejected claims that the Project impermissibly requires removal of a single-family residence or is inconsistent with the sustainable communities policy. The Project is in a highly urbanized area, amid high-rise buildings, and is well served by public transit. City reasonably found that the removal of one house to build a two-story childcare facility will not negatively impact housing. The court determined that approving the SCEA was not a prejudicial abuse of City's discretion. Thus, the court denied appellant's petition and entered judgment for City and RPI's.

The Court of Appeal's Decision

Overview of the Sustainable Communities and Climate Protection Act and Exhaustion of Remedies Requirement

The Second District Court of Appeals first overviewed the Sustainable Communities and Climate Protection Act in Senate Bill No. 375, which requires planning agencies to regularly update regional plans to support the development of transportation networks that reduce emissions and offer a streamlined CEQA process if a TPP is a sustainable community project. To qualify as a sustainable community project, the TPP must be "consistent with the general use designation, density, building intensity, and applicable policies specified for the project area" under the sustainable community strategy. The TPP is reviewed through a SCEA, and subject to a public hearing, but the SCEA is not required to reference, describe, or discuss growth-inducing impacts or the impact of vehicle trips generated by the project on global warming or regional transit networks.

The court then pointed out that exhaustion of remedies is a jurisdictional prerequisite to maintenance of a CEQA action. Thus, the petitioner must show that the alleged noncompliance with CEQA was presented in public comments or at a hearing, and the party filing the CEQA action objected to the project in public comments or at a hearing.

The Project Qualifies as a TPP

Next, the court examined if the Project qualified as a TPP, mainly whether the Project contains at least 50 percent residential use and whether eldercare facilities could qualify as being residential. Both parties admitted that the Project contained at least 70, if not 90, percent residential use, so the court found this requirement satisfied.

Regarding the eldercare facilities being residential, appellant claimed that only "households" are a residential use, and that eldercare facilities were more like a hotel or hospital. While appellant's counsel conceded to City that the Project is largely "residential," whether conventional or non-conventional, counsel reasoned that the Project does not "resemble the multi-family residential land use contemplated in Senate Bill 375" and therefore does not qualify as a TPP.

The court directly rejected this claim as Senate Bill No. 375 does not define "residential." Absent a definition giving a statute special meaning, or an inherent ambiguity, the court refused to limit the meaning of the term "residential" outside of its their ordinary, everyday meaning. The court also stated that the Legislature would not have used a broad term like "residential" if it intended to limit Senate Bill No. 375 to "multi-family households," and found no authority that suggested that housing is not residential if some residents need assistance with daily living activities, or has communal kitchens and dining rooms, or wide hallways. Moreover, the court noted that the City's municipal code section 12.03 deems all types of eldercare to be "residential housing," and the Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) even defines "household" as including a "person living alone in a housing unit" or "a group of unrelated people" sharing housing, showing no support for appellant's claim.

Consistency With Regional Policy

The court turned its attention to see if the Project, as a TPP, is consistent with regional policy. The relevant policy here was the 2016–2040 RTP/SCS, a long-range plan adopted by Southern California Association of Governments (SCAG), affecting land use and transportation strategies to achieve GHG reduction goals of CARB. This includes promoting the development of housing and jobs near existing

transportation networks to encourage public transit use for residents and employees.

The court found that the appellant failed to refute the Project's consistency with the general plan or carry the burden "to affirmatively show there was no substantial evidence in the record to support the City's findings." The court found the appellant's claims unsupported and rather ageist, that residents of the Project will "remain within their housing" and opines that public transit use will be "virtually non-existent." On the contrary, the court found the RPIs' and City's explanation more credible, that Belmont employees working for the eldercare facilities, similar to its Westwood location within the City, would enhance the public transit usage and encourage non-car modes of transportation.

Consideration of the Project's Impact

Lastly, the court noted that appellant did not show that the sustainable communities strategy for the area fails to satisfy state GHG reduction targets. Appellant failed to identify exactly how the City's analysis was wrong, when the City concluded that the Project would have a "Less Than Significant" GHG impact. The court found that, because only 20 out of 176 residents are likely to own cars, the Project would not be a large contributor to GHG, and relocating the Project to the suburbs would bring about contrary effects because it would require lengthier car trips for everyone, residents, visitors, and employees alike.

Therefore, the court concluded that substantial evidence supported the City's decision to approve the Project as a TPP and find it consistent with regional policy.

Conclusion and Implications

While it is up to the person interpreting this case to be a typical NIMBY situation, the Second District Court of Appeal at least made it clear that, without any compelling showing, courts would generally give deference to the agency creating the decision. The court's *unpublished* decision is available online at: https://www.courts.ca.gov/opinions/nonpub/B329765.PDF
(David Song)

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.

Affordable and Other Housing Laws

AB 1413 (Ting)—This bill was signed by the Governor on September 19, 2024. This bill will revise provisions of the HAA added by Assemblymember Ting's AB 1633 in 2023. The prior bill sought to prevent California Environmental Quality Act (CEQA) stall by local municipalities, by making unwarranted agency delays in the CEQA process violations of the HAA. A developer invoking AB 1633 must notify the agency that the law has been violated prior to filing a lawsuit. This bill will move the provisions added by AB 1633 to new statutes—Government Code Sections 65589.5.1 and 65589.5.2. It will also require agencies to publish these notices, and prohibit the agency from making a decision on the notice for 60 days, providing an opportunity for public comment. It also contains provisions that harmonize AB 1413 with AB 1893, which has also now been signed into law.

AB 1893 (Wicks)—This bill was signed by the Governor on September 19, 2024. This bill will primarily address the "builder's remedy" feature of the Housing Accountability Act (HAA). The builder's remedy can allow a residential development project to bypass zoning and General Plan development standards. The provision only applies in jurisdictions that lack a legally compliant housing element, but affords such a jurisdiction limited ability to deny a project meeting applicable criteria, even if the proposal would normally be barred by applicable land use plans. This bill will give jurisdictions potentially subject to the builder's remedy additional abilities to deny otherwise-qualifying projects, including projects that exceed certain extreme density standards or fall below the minimum allowed density. However, as amended, it will also broaden the scope of projects that can make use of the bill by, among other things, lowering the affordability requirements and eliminating those requirements for certain small housing projects. The bill will also expand the HAA's broad limitations on when municipalities can deny housing projects, by defining disapproval to include a course of conduct of sustained inaction or imposition of burdensome processing requirements. The bill will also expand the classes of projects that can make use of the HAA. Currently, mixed-use projects that are at least two-thirds residential qualify for the law's benefits. This law will allow 50 percent residential projects to qualify as well, though it places limits on the projects containing a smaller percentage of residential uses, including that they must include at least 500 units.

AB 1820 (Schiavo)—This bill was signed by the Governor on September 2, 2024. The bill will provide more transparency for housing developers by requiring local agencies to provide robust information about fees and exactions applicable to housing projects earlier in the entitlement process than is currently required. First, it will allow a developer submitting a preliminary application pursuant to SB 330 to also request a preliminary fee and exaction estimate. The local agency will be required to provide a "good faith estimate" covering of applicable fees and exactions within ten days of submittal of a complete preliminary application making such a request. Second, the bill will require local agencies to provide the applicant with an itemized list and total sum amount of all fees applicable to a housing development project at the time they determine the development application to be complete. The bill will also authorize the developer to request that the agency provide the total amount of fees owed under the agency's fee programs, but specifies that the estimate is not binding.

AB 2243 (Wicks)—This bill was signed by the Governor on September 19, 2024. This bill will make

various changes to the Affordable Housing and High Road Jobs Act of 2022 (AB 2011). The Affordable Housing and High Road Jobs Act of 2022 provides for streamlined ministerial approval of qualifying mixed-income and affordable housing development projects along commercial corridors in zoning districts where office, retail, or parking uses are principally permitted. AB 2243 will make various changes to the objective standards, affordability, and site criteria applicable to an affordable housing development or mixed-income housing development subject to the streamlined, ministerial review process under the act. Among other changes to those objective standards, the bill will prohibit an affordable housing development subject to the act from demolishing a historic structure that was placed on a national, state, or local historic register.

AB 2533 (Carrillo)—This bill was signed by the Governor on September 19, 2024. The bill will prohibit local agencies from denying a permit for an unpermitted accessory dwelling unit or junior accessory dwelling unit constructed before January 1, 2020, unless necessary to correct violations that would otherwise deem the building substandard. The bill will also require local agencies to inform the public about these provisions, provide a checklist of substandard conditions, and allow homeowners to obtain a third-party code inspection before applying for a permit. Low- or moderate-income households may be exempt from paying certain fees to obtain permits, and local agencies must inspect units for health and safety compliance and assist with necessary permits without penalizing the homeowner for the unpermitted unit.

AB 2553 (Friedman)—This bill was signed by the Governor on September 19, 2024. The bill will amend definitions in both CEQA and the Mitigation Fee Act (MFA) that govern whether a project is considered to be sufficiently close to transit services for certain benefits to apply. Specifically, the bill will amend CEQA's definition of "major transit stop" to include stops with bus service every 20 minutes during peak commute periods, whereas the current requirement is service every 15 minutes. It will also incorporate the definition by reference into the MFA's provision generally requiring lower transportation impact fees for housing projects near transit services, and include planned stops in the MFA provision.

AB 2584 (Lee)—This bill was not passed out of committee and has died. The bill would have prevented a business entity, as defined, with an interest in more than 1,000 single-family residential properties from acquiring an ownership interest in another single-family residential property and subsequently leasing the property. The bill would have also authorized the Attorney General to bring a civil action against a business entity that violates the provisions of the bill. Each violation would carry a civil penalty of $100,000, reasonable attorney's fees, and the business entity would be required to sell the property to an independent third party within a year of the judgement.

AB 3122 (Kalra)—This bill was signed by the Governor on September 27, 2024. The bill will allow a local government to apply objective planning standards to projects approved under SB 35, which provides a streamlined, ministerial process for approving housing developments that are in compliance with local planning standards. The bill authorizes local governments to apply objective planning standards to a project when a developer seeks to increase or decrease the total square footage of a development by 15 percent or more. Alternatively, the bill will allow local governments to impose objective planning standards if developers seek to increase or decrease the total square footage of the development by 5 percent or more, provided that a local government finds it necessary to apply new standards that were not in place when the development was initially proposed. The bill further stipulates that project applications submitted before January 1, 2019 proposing a minimum of 500 housing units must designate 20 percent of its units as affordable housing. Among those units, at least 9 percent must be affordable to very-low income households, with the rest designated as affordable for lower-income households.

SB 450 (Atkins)—This bill was signed by the Governor on September 19, 2024. The bill makes several changes to SB 9, the 2021 bill that required ministerial approval of urban lot splits in residential zones. SB 450 prohibits local agencies from imposing new development standards on SB 9 projects not applicable on other projects in the zone, puts a timeline on SB 9 application processing, prevents denial of such projects on perceived environmental grounds,

and gives HCD enforcement authority with respect to implementation of the law.

SB 1211 (Skinner)—This bill was signed by the Governor on September 19, 2024. The bill makes several changes to the state law governing accessory dwelling units (ADUs). It requires local agencies to ministerially permit multiple ADUs on lots with existing or proposed multifamily units. It will also prohibit local agencies from requiring replacement of parking that may be lost from ADU development

California Environmental Quality Act

SB 312 (Wiener/Allen)—This bill was signed by the Governor on September 19, 2024. This bill will extend the CEQA exemption for certain qualifying university housing developments from January 1, 2030 to January 1, 2032, and removes and extends certain Leadership in Energy and Environmental Design (LEED) certification filing requirements.

SB 768 (Caballero)—This bill was signed by the Governor on September 27, 2024. The bill will require the Transportation Agency to conduct a study on CEQA's shift to analyzing vehicle miles traveled (VMT) as a measure of transportation impacts. The study will include how VMT targets, analyses, and mitigation are being developed by agencies undertaking CEQA review.

SB 1159 (Dodd)—This bill was not passed out of committee and has died. The Office of Planning and Research and the Secretary of the Natural Resources agency are responsible for developing the list of categorical CEQA exemptions for classes of projects they have determined to generally not have significant environmental impacts. This bill would have directed the agencies, in consultation with other state agencies, to evaluate roadside wildfire risk reduction projects and consider including them as a new categorical exemption class.

SB 1272 (Laird)—This bill was not passed out of committee and has died. The bill would have allowed the California Energy Commission (CEC) to prepare a program EIR (PEIR) evaluating a class or classes of clean energy facilities. The definition of "facility" used in the bill included large terrestrial wind, solar photovoltaic, and thermal power plants, manufacturing facilities for clean energy facilities, and some transmission facilities. If a project is within a class of projects evaluated in a CEC PEIR then it would have been able to tier from the prior environmental review as already provided for in CEQA

SB 1361 (Blakespear)—This bill was signed by the Governor on August 19, 2024. The bill provides a CEQA exemption for actions taken by local agencies to approve contracts for providing services for people experiencing homelessness, including services related to case management, resource navigation, security services, residential services, and counseling. This bill also exempts actions taken by the Department of Housing and Community Development, among others, to provide financial assistance and insurance to low-income housing projects from CEQA.

AB 2091 (Grayson)—This bill was signed by the Governor on September 22, 2024. AB 2091 will create a new statutory exemption from the requirements of CEQA for approval of a change in use to allow public access, as long as exclusively for nonmotorized recreation, and in areas acquired or managed by the public agency for open space or park activities. The bill defines the term "public access" by limiting it to: (1) visitors that are in the agency-managed park or open space in a manner consistent with the park's own or conservational purposes; and (2) whose presence is not likely to result in significant impacts to endangered, threatened, rare, and special status species, or to tribal cultural resources. The statutory exemption also applies to specified "rails to trails" projects approved by the Great Redwood Trail Agency. The bill will sunset on January 1, 2030.

AB 2199 (Berman)—This bill was signed by the Governor on September 19, 2024. This bill will extend the sunset date for CEQA exemptions that apply to qualifying multi-family residential and mixed-use housing projects on infill sites by an additional seven years. AB 2199 will also make the exemption inapplicable to projects that may cause substantial adverse impacts to tribal cultural resources.

AB 2503 (Lee)—This bill signed by the Governor on September 27, 2024. This bill will provide a statutory exemption from environmental review under CEQA for a public project for the institution

of bus rapid transit, bus, or light rail service, including construction or rehabilitation of stations and other existing facilities, which will be used by low- or zero-emission vehicles on existing rights-of-way.

AB 3057 (Wilson)—This bill was signed by the Governor on August 27, 2024. This bill creates a new CEQA exemption for a city or county's adoption of an ordinance that allows creation of junior accessory dwelling units in areas zoned to for single-family residential use.

AB 3238 (Garcia)—This bill did not pass out of committee and has died. This bill would have made several reforms to streamline the permitting and environmental review process for electric transmission projects. This bill would have designated the California Public Utilities Commission as the lead agency for purposes of CEQA for electrical infrastructure projects. The bill would have also given the Commission a shortened 270-day timeline to complete environmental review and limited the alternatives that can be considered in the alternatives analysis under CEQA

Density Bonus

AB 2560 (Alvarez)—This bill did not pass out of committee and has died. This bill would have required any local government in the coastal zone to submit an amendment to the local government's local coastal program that harmonizes the Density Bonus Law and the California Coastal Act. Any entitlements permitted under the Density Bonus Law could not result in significant adverse impacts to coastal resources or public coastal access.

AB 3116 (Garcia)—This bill was signed by the Governor on September 22, 2024. This bill revises and enhances existing density bonus laws for student housing developments. The bill will also prevent developers from restricting lower-income students from sharing a room or unit with non-lower-income students. The bill will allow developers to establish a system for confirming its renters' status as students and prohibit a student housing project with a density bonus exceeding 35 percent from being located on sites that would necessitate the replacement of existing units.

General Plans

AB 1889 (Friedman)—This bill was signed by the Governor on September 27, 2024. This bill, also known as the Room to Roam Act, will require a city or a county General Plan to either include a wildlife connectivity element, or integrate related goals, policies, and objectives into other elements of the General Plan to consider the effect of development within the jurisdiction on fish, wildlife, and habitat connectivity. The bill will require the wildlife connectivity element to identify and analyze connectivity areas, permeability, and natural landscape areas within the jurisdiction, and incorporate and analyze specified guidelines and standards, implementation programs, relevant information from specified sources, and relevant best available science. The bill will also require a city or county to adopt or review the wildlife connectivity element or integrate related goals, policies, and objectives into other elements, upon the adoption or next revision of one or more elements of the General Plan on or after January 1, 2025.

SB 721 (Becker)—This bill did not pass out of committee and has died. Existing planning and zoning law requires a city or county to adopt a General Plan for land use development that includes a housing element, which the city or county required to incorporate into an annual report detailing existing and projected housing needs. This bill would have required a city or county to include suite-style student housing quarters subject to specified requirements in its annual housing report.

Housing Element Law

SB 951 (Wiener)—This bill was signed by the Governor on September 27, 2024. This bill will allow for actions taken by a local government that is both a city and county on qualifying coastal development permit applications to be exempt from requirements for appeal to the Coastal Commission.

AB 1886 (Alvarez)—This bill was signed by the Governor on September 19, 2024. This bill amends Housing Element law to clarify when a local housing element shall be considered to be in substantial compliance with the sÓtate law. As a declaration of existing law, the bill provides that a housing element or amendment is considered substantially compliant

with the Housing Element Law when the local agency has adopted a housing element or amendment, HCD or a court determines that the adopted housing element or amendment is in substantial compliance with the Housing Element Law, and HCD's compliance findings have not been superseded by subsequent contrary findings by HCD or by a decision of a court of competent jurisdiction, or the court's decision has not been overturned or superseded by a subsequent court decision or by statute. The bill further specifies that these provisions do not alter the interpretation of the terms "substantially complies" or "substantial compliance" under existing law. This bill further provides that, for purposes of the HAA, a housing element or amendment is considered in substantial compliance with the Housing Element Law only if the substantial compliance findings determination was made when a preliminary application or complete application was submitted.

AB 2023 (Quirk-Silva)—This bill was signed by the Governor on September 19, 2024. This bill amends provisions of the Housing Element Law to provide that, for the seventh and subsequent revisions of the housing element, local governments must complete the rezoning of sites within one year of the statutory deadline for the adoption of the housing element or the earlier of three years after the date the housing element is adopted or 90 days after receipt of comments from HCD, if the local government satisfies certain requirements, including submitting a draft element or draft amendment to HCD for review within specified timeframes and adopting a draft element or draft amendment that HCD finds to be insubstantial compliance with the Housing Element Law. Further, existing housing element law requires local governments to identify adequate sites for housing and make adequate provision for the current and future needs of all community household income levels. This bill provides that, when the identified inventory of sites is inadequate to meet housing needs, the local government must establish and adhere to a program for rezoning to make the inventory adequate. This bill further provides that nonvacant sites in a prior housing element and vacant sites not approved for development in at least two planning periods, would not be considered adequate sites, unless they are residentially zoned at a particular density and the site is subject to a program requiring rezoning by the applicable deadline. Finally, under existing law related to actions challenging the validity of a housing element, where HCD finds that the housing element substantially complies with the Housing Element Law, there is a rebuttable presumption of validity. This bill provides that, for the same actions, if HCD finds that the housing element does not substantially comply with the law, there is a rebuttable presumption of invalidity.

AB 2580 (Wicks/Quirk-Silva)—This bill did not pass out of committee and has died. Existing law requires cities and counties to prepare annual reports on their progress meeting housing goals, and constraints hindering the development of housing. This bill would have required the annual reports to include additional specificity about affordable units approved and disapproved by the jurisdiction. It would also have required the jurisdiction to provide information about properties with existing or proposed historic designations, which can impede development of housing projects.

AB 3093 (Ward)—This bill was signed by the Governor on September 19, 2024. The bill is the only housing bill of the 2024 session to have been sponsored by Governor Gavin Newsom. Existing law requires the Department of Housing and Community Development and regional councils of governments to determine regional housing needs, and allocate those needs to jurisdictions in a Regional Housing Needs Allocation (RHNA). While RHNA already includes several tiers of affordability, this bill alters the tier definitions and adds an allocation for extremely low income housing. It has also absorbed two provisions previously incorporated into other bills. First, it incorporates AB 2580's former provision requiring each jurisdiction's housing element to include a discussion of how historic preservation practices and policies may constrain the jurisdiction's ability to provide housing. Second, it incorporates SB 951's former provision requiring local coastal program updates required as part of housing element rezoning programs to be completed within a three-year period.

Planning and Zoning

SB 937 (Wiener/Grayson)—This bill was signed by the Governor on September 19, 2024. This bill enacts several modifications to how impact fees are

assessed for housing projects under the Mitigation Fee Act. Among other things, it prohibits assessment of such fees until certificates of occupancy are issued, at the earliest, or unless specified conditions are met. Certain residential development by nonprofit housing developers are exempted from the act if specified conditions are met. If a fee is not fully paid prior to issuance of a building permit, this bill allows the local agency to require the property owner to execute a contract to pay the fee as a condition of issuance of building permits.

SB 1037 (Wiener)—This bill was signed by the Governor on September 19, 2024. The bill will impose civil penalties ranging from $10,000 to $50,000 per month on cities, counties, or local agencies where the Attorney General or HCD has brought an action against the local jurisdiction for failure to comply with housing element revisions or for enforcing state housing laws mandating ministerial approval of housing development projects. However, the penalties set forth in this bill shall only apply when the agency's acts or omissions are arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, or procedurally unfair. The penalties collected will be deposited into the Building Homes and Jobs Trust Fund to support affordable housing in the affected jurisdiction. If a jurisdiction fails to pay the penalties, the court is authorized to direct the State Controller to intercept state and local funds and allocate them to the Trust Fund to address the non-payment.

SB 1123 (Caballero)—This bill was signed by the Governor on September 19, 2024. This bill expands SB 684, which required local governments to ministerially approve a parcel map or tentative and final map of 10 or fewer units on sites zoned multifamily, no larger than five acres, and substantially surrounded by qualified urban uses. SB 684 also required ministerial approval of housing developments using the subdivision process. This bill adds vacant, single family sites to the ministerial subdivision process and the approval process for housing developments on subdivided sites, with a few differences. For example, for sites zoned single-family, a local government could cap the height of units at the height for the applicable height in the zone. This will prevent development of projects that are not consistent in height with surrounding single-family homes. Also, the minimum lot size must be no less than 1,200 square feet, rather than no less than 600 feet on multi-family sites.

AB 2085 (Bauer-Kahan)—This bill was signed by the Governor on September 28, 2024. This bill provides that development of a community clinic licensed under Section 1204 of the Health and Safety Code that provides reproductive health services shall be subject only to ministerial approval, and therefore not subject to CEQA, if among other things, the development is located in an area that is principally permitted for use for offices, retail, health care, or parking. If the agency determines the project does not meet these standards, then the agency must provide written documentation supporting its determination. The agency has 60 days to either approve or provide documentation to the development. The bill further authorizes the project proponent or California Attorney General to bring an action to enforce the bill's provisions.

AB 2117 (Patterson)—This bill was signed by the Governor on September 19, 2024. The bill will extend the expiration date of local development permits and project approvals to not include the time during which the permit or approval is challenged. Under the bill, an action or proceeding involving the permit or project approval would essentially toll the expiration date of the permit until the action or proceeding is resolved.
(Amy Higuera)

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