Housing, Land Use & Transportation Policy Committee

2011 CSAC Legislative Conference

Thursday, June 2, 2011 ▪ 8:30 a.m. to 10:00 a.m.
Sheraton Grand ▪ Gardenia ▪ Grand Nave Ballroom
Sacramento ▪ California

AGENDA

Chair, Supervisor Efren Carrillo, Sonoma County
Vice Chair, Supervisor Matt Rexroad, Yolo County

8:30 a.m. I. **Welcome, Introductions, & Approval of the Agenda**
Chair, Supervisor Efren Carrillo, Sonoma County
Vice Chair, Supervisor Matt Rexroad, Yolo County

8:35 a.m. II. **Tribal-State Gaming Compacts under the Brown Administration**
Bruce Goldstein, County Counsel, Sonoma County
Attachment One: CSAC Memo to Governor Brown on Tribal-State Gaming Compacts

8:55 a.m. III. **PPIC Report: Driving Change: Reducing VMT in California**
Louise Bedsworth, Research Fellow, Public Policy Institute of California
Ellen Hanak, Senior Fellow, Public Policy Institute of California
Attachment Two: Summary: Driving Change: Reducing VMT in California

9:15 a.m. IV. **Institute for Local Government's Beacon Award**
Yvonne Hunter, Program Director, Institute for Local Government
Lindsay Buckley, Program Coordinator, Institute for Local Government
Attachment Three: Beacon Award: Local Leadership Toward Solving Climate Change

9:30 a.m. V. **State Budget & Legislative Update**
DeAnn Baker, CSAC Senior Legislative Representative
Kiana Buss, CSAC Senior Legislative Analyst
Attachment Four: FY 2011-12 New HUTA Estimates by County
Attachment Five: AB 720 (Hall): Road Commissioner Authority
Attachment Six: AB 1220 (Alejo): Housing Element: Statute of Limitations
Attachment Seven: SB 244 (Wolk): Disadvantaged Communities
Attachment Eight: AB 147 (Dickinson): Traffic Impact Mitigation Fees
Attachment Nine: AB 931 (Dickinson): CEQA Exemption for Affordable Infill Housing

9:50 a.m. VI. **Other Items & Adjournment**

ATTACHMENTS

Attachment One ..... CSAC Memo to Governor Brown on Tribal-State Gaming Compacts

Attachment Two ..... Summary: Driving Change: Reducing VMT in California

Attachment Three ..... Beacon Award: Local Leadership Toward Solving Climate Change

Attachment Four ..... FY 2011-12 New HUTA Estimates by County

Attachment Five ..... AB 720 (Hall): Road Commissioner Authority

Attachment Six ..... AB 1220 (Alejo): Housing Element: Statute of Limitations

Attachment Seven ..... SB 244 (Wolk): Disadvantaged Communities

Attachment Eight ..... AB 147 (Dickinson): Traffic Impact Mitigation Fees

Attachment Nine ..... AB 931 (Dickinson): CEQA Exemption for Affordable Infill Housing

Attachment One

CSAC Memo to Governor Brown on Tribal-State Gaming Compacts

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Date: May 13, 2011

To: Jacob A. Appelsmith
Senior Advisor to the Governor and Director of the Department of Alcoholic Beverage Control

From: Supervisor Mike McGowan
Chair, CSAC Indian Gaming Working Group; CSAC First Vice-President

cc: Supervisor Efren Carrillo, Chair, CSAC Housing, Land Use and Transportation Committee
DeAnn Baker, Senior Legislative Representative, CSAC
Kiana Buss, Senior Legislative Analyst, CSAC
Bruce Goldstein, Sonoma County Counsel
Cathy Christian, Nielsen Merksamer, et al.

Re: CSAC Comments on Tribal-State Compact Between the State of California and The Habematolel Pomo of Upper Lake

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The California Association of Counties (CSAC) submits the comments below regarding the Tribal-State Compact between the State of California and the Habematolel Pomo of Upper Lake ("Upper Lake Compact"). CSAC understands that the Upper Lake Compact will be considered as a template for future compacts including renegotiation of the 1999 Compacts. The comments provided reflect CSAC policies regarding Tribal-State Compacts (attached as Exhibit A) and are intended to address key county policy concerns. However, each county has its own unique circumstances and priorities. CSAC therefore applauds the Governor's stated intention to consult with affected counties during the negotiation of individual compacts. As the only organization representing all 58 county governments, CSAC stands ready to assist the Governor's office as a resource as the Governor works through the compact negotiation process. As you know, compact negotiations are of keen interest to counties as large casino facilities often have very significant impacts on the off-reservation environment.

The overriding goals of the Policies and these comments are to meet the following key objectives: promote local government agreements; improve the integrity of tribal environmental review documents; insure that off-reservation impacts of tribal casinos are fully mitigated; and provide adequate time for both comment on environmental documents and meaningful negotiations. The comments below address these objectives and refer to provisions of the Upper Lake Compact.

Section 2.0 Definitions

Sec. 2.1 – "Applicable Codes" – CSAC appreciates the focus on locally applicable codes. Need to insure section covers local Fire Codes.

Sec. 2.16 – "Interested Persons" – Add new (ii) to add the County in which the Project will operate.

Sec. 2.24 – "State Designated Agency – Specify that designated agency could include a County. The role of counties needs to be reconsidered in this process as the political entity most impacted and responsible for providing public services to the casino, its patrons and employees.

Sec. 2.28 - (Land) – As is the case with Upper Lake Compact, policy should require that land is held in trust by a Tribe, and designated as "Indian Lands," prior to negotiation of Compact. Limit compacts to authorization for a single gaming facility.

Section 4.0 Authorized Location of Gaming Facility, Number of Gaming Devices, and Revenue Contribution

Sec. 4.3.1 – Revenue Contribution – (h) Use of Funds – Add – Compensation for environmental review costs incurred by county; make clear that (2) is not exclusive and is additive to mitigation costs for off-reservation impacts identified by the applicable local government

Section 5.0 Revenue Sharing With Non-Gaming Tribes

Sec. 5.1 (c) - Revenue Sharing Distribution – Require that distributed funds be used for government programs unrelated to gaming development unless otherwise agreed to by the affected county.

Section 6.0 Licensing

Sec. 6.4.2 (b) – Gaming Facility – Specifically allow option for Tribe to contract with County for code inspection services.

Sec. 6.4.2 (c)-(d) – Gaming Facility (Plan Check) – Upon request of County, allow local government inspectors to be eligible to accompany state inspectors as well as review plans. Require copy set of plans also go to applicable local jurisdiction. Serious problems in the past have included State's limited interest and resources to identify code problems while local governments and first responders bear the safety and other risks for code and construction inadequacies. (*See* Exhibits B - Decision in *County of Sonoma v. Dry Creek Rancheria* (lack of authority of local fire chief to exert authority on Indian lands shows need for voluntary process); and Exhibit C - sample fire inspection protocol).

Sec.6.4.2 (f) – Section should make clear that a sufficient waiver exists for State to obtain court order to prevent further construction or occupancy until alleged compact violation is resolved. Provision should provide preponderance of the evidence standard to prove violation.
Sec. 6.4.2 (h) – Gaming Facility (Fire Suppression Services) – "Reasonably ensure" not sufficiently stringent standard to protect public. Section should be amended to require consultation with local fire suppression entities if tribe does not have sufficient fire fighting

resources to handle events without mutual aid. "Reasonable standard of fire safety and life safety" threshold is inadequate and should be replaced by required code compliance. County or local fire representatives also should be allowed to attend inspections under this section. Compact should require coordination and protocol agreements (see Exhibit C) with fire chief and districts that would be responding to emergencies at the casino either directly or through mutual aid. Tribe should also be required to develop and share disaster and emergency plans with county and to consult on coordinated emergency response.

Sec. 6.5.0 – Tribal Gaming License Section – Coordination with local law enforcement should be more carefully considered throughout this section. It is not clear if state resources have been adequate in the past to effectively monitor licenses.

Section 9.0 Rules and Regulations for the Operation and Management of the Gaming Operation and Facility

Sec. 9.2 – Mitigate Problem Gaming – Add requirement for funding local program based upon best practices model to treat and provide support for pathological and problem gamblers.

Section 11.0 Off-Reservation Environmental and Economic Impacts

Section 11.0 is a critical area for CSAC. The proposed compact carries four fundamental flaws with the current process: 1) the time periods are too short to afford meaningful review (and essentially demonstrate the lack of integrity in the process); 2) the environmental process should be revised to require independent third party involvement to bolster the adequacy of the review; 3) there must be a mechanism to challenge a patently inadequate TEIR prior to any arbitration on the adequacy of mitigation and meaningful consequences imposed for filing a materially faulty document (it is impossible to determine appropriate mitigation until impacts are thoroughly analyzed); and 4) there must be a mechanism by which local governments can obtain reimbursements for the significant costs entailed with TEIR review and analysis.

Sec. 11.8.1 – Contents of TEIR - The Compact does not require the TEIR to include a description of the existing physical environmental conditions in the vicinity of the Project (the environmental setting). This could significantly reduce the utility of the environmental impact discussion, as there may not be sufficient information of baseline conditions against which to measure a proposed Project's impacts.

The "Off-Reservation Environmental Impact Analysis Checklist attached as Exhibit A to the Compact does not include some relevant impact areas, such as forestry resources and GHG emissions, and some of the typical CEQA Guideline Appendix G questions within impact areas are not included, even though they seem applicable to off-reservation impacts. (*See* Exhibit D.)

Sec. 11.8.2 – Notice of Preparation of Draft TEIR - The Compact requires the Tribe to issue the Notice of Preparation (NOP) to the State Clearinghouse and the County, and the County is responsible for distributing the Notice to the public (§ 11.8.2). The Tribe is only required to reimburse the County for its copying and mailing costs (§ 11.8.5), but not staff time. Compact should be amended to require Tribe to be responsible for distributing to public e.g., posting electronic version on its website, making copies available at public libraries and, sending notice to Interested Parties.

The issuance of the Notice of Preparation triggers a 30-day period for interested persons to comment on the scope of the TEIR's discussion of off-reservation environmental issues and mitigation measures (§ 11.8.2). *However, the Tribe may then publish the Notice of Completion and draft TEIR at the end of that 30-day scoping period (§ 11.8.3).* There is no other requirement for consultation with local or trustee agencies or other Interested Persons prior to publication of the Draft TEIR. (In contrast, the CEQA Guidelines require that for projects of statewide, regional, or area wide significance, the lead agency must conduct at least one scoping meeting (CEQA Guidelines § 15082(c)(1)).) At least one scoping hearing should be required in the Compact. A minimum of 120 days should be provided between end of scoping period and draft TEIR to insure opportunity to take into consideration scoping comments in TEIR design. Current approach makes scoping process appear to be a meaningless exercise.

There is also not any requirement that the Draft TEIR include a summary of comments received during the scoping process or otherwise address the concerns raised. (Note: § 11.8.4 does require the *Final* TEIR to address significant environmental points raised in the "review and consultation process," but it's not clear whether that would include comments received in response to the Notice of Preparation or only comments received during the official comment period on the Draft TEIR.) The Draft TEIR should include a response to comments requirement. As stated above, the proposed process almost insures lack of meaningful consideration of compacts as the Tribe can publish the Draft immediately after the scoping process – a process which is generally intended to inform the scope of the appropriate environmental review. The draft TEIR should be available at least for a 60 day comment period.

Sec. 11.8.3 – Notice of Completion and publication of the draft TEIR - The Compact requires the County to post the Notice of Completion, furnish it to public libraries, and serve it "to" all interested persons (§ 11.8.3(b)). Again, the Tribe is only required to reimburse the County for its copying and mailing costs (§ 11.8.5), but not staff time. Tribe should bear responsibility for notice.

Sec. 11.8.4 – Issuance of Final TEIR – Compact should be amended to require that there be a "good faith, reasoned analysis" in responses to comments and that recirculation take place if significant new information is added in the Final TEIR. The Tribe also should be required to adopt or certify the TEIR or make findings that the TEIR serves the purposes for which it was prepared.

Sec. 11.8.6 – Tribe's failure to prepare an adequate TEIR as determined by an independent third party e.g., Office of Planning and Research, Arbitrator etc. must be considered a material breach of the Compact (not just failure to prepare one at all).

Prior to the triggering of the 55 day negotiation period, there must be an independent finding that the document is adequate in its analysis and complies with the Compact. Otherwise, and is commonly the case, the 55 days is spent trying to figure out the impacts, due to poor analysis, which precludes meaningful negotiations. Time period for negotiating agreements should be 180 days.

Sec. 11.8.7 (a)(1) – Intergovernmental Agreement – Mitigation areas should specifically include greenhouse gas emissions, county administrative costs related to the casino, and impacts on public services. Section (4) should be broadened to include areas of analysis described in above subsections, not just limited to public safety.

A key component of the compact should identify a calculation of lost taxes and fees based on facility size, usage, number of slots, improved property value, and infrastructure etc. which can create a presumption that adequate mitigation is in place regarding public service impacts. The compact should also contain provisions for collection and remittance of sales tax Compact may also want to address issue of collection of child support from tribal members from distributions made from casino profits.

(c) Tribe should also be required to pay for fair share of mitigation of traffic impacts on County roads and money paid to the State should be required to be used in the impacted area. Casino should not be allowed to open until identified mitigation, including road and highway work, is in place.

(d) It is not clear why this section is necessary. Tribes should be encouraged (even if not required) to reach other intergovernmental agreements on areas of mutual interest including protocols for public safety cooperation.

Sec. 11.8.8 Arbitration – If arbitrator finds that TEIR was not adequate based on the compact requirements and, by analogy, CEQA standards, the arbitrator shall make such a finding and award the claimant reimbursement for its reasonable costs in reviewing the TEIR and developing information, including expert reports, to demonstrate the inadequacy of the document. The Arbitrator can determine that an inadequate TEIR should be corrected and recirculated so that the purposes of the Compact are met in determining Project impacts and the reasonableness of mitigation. If found inadequate, casino can not open until TEIR is recertified and approved by third party. Parties should be able to avail themselves of JAMS appeal procedure to review arbitrator's decision.

Sec. 12.3 (a) and (b) Health and Safety Standards – If local government inspectors are used, compact must provide for recovery of reasonable costs and make clear that reports are not confidential. It is not clear if local government chooses not to inspect on tribal land, who will do inspections if they are not conducted by U.S. government. Notice should be given to County of who is doing inspection and copies of reports provided.

Sec. 12.8 Alcoholic Beverage Service – Tribe should be precluded from serving alcohol on casino floor.

Conclusion

Compact negotiations and casino development are of critical concern to local government. Counties support the Administration's efforts to facilitate agreements between tribes and counties. However, local government experience with recent compacts requires that the new generation of tribal-state agreements benefit from the experience of the last decade. In particular, the difficulty, expense, and frustration caused on all sides by inadequate environmental review demand a revised approach. While some suggestions are included above, CSAC stands ready to work with the Administration to solve current problems and help develop solutions which benefit tribes, the State, as well as local government.

EXHIBIT A

CSAC Combined Indian Gaming Policy
June 2006

Original CSAC Policy Document Regarding Compact Negotiations for Indian Gaming

Adopted by the CSAC Board of Directors
February 6, 2003

In the spirit of developing and continuing government-to-government relationships between federal, tribal, state, and local governments, CSAC specifically requests that the State request negotiations with tribal governments pursuant to section 10.8.3, subsection (b) of the Tribal-State Compact, and that it pursue all other available options for improving existing and future Compact language.

CSAC recognizes that Indian Gaming in California is governed by a unique structure that combines federal, state, and tribal law. While the impacts of Indian gaming fall primarily on local communities and governments, Indian policy is largely directed and controlled at the federal level by Congress. The Indian Gaming Regulatory Act of 1988 is the federal statute that governs Indian gaming. The Act requires compacts between states and tribes to govern the conduct and scope of casino-style gambling by tribes. Those compacts may allocate jurisdiction between tribes and the state. The Governor of the State of California entered into the first Compacts with California tribes desiring or already conducting casino-style gambling in September 1999. Since that time tribal gaming has rapidly expanded and created a myriad of significant economic, social, environmental, health, safety, and other impacts.

CSAC believes the current Compact fails to adequately address these impacts and/or to provide meaningful and enforceable mechanisms to prevent or mitigate impacts. The overriding purpose of the principles presented below is to harmonize existing policies that promote tribal self-reliance with policies that promote fairness and equity and that protect the health, safety, environment, and general welfare of all residents of the State of California and the United States. Towards that end, CSAC urges the State to consider the following principles when it renegotiates the Tribal-State Compact:

1. A Tribal Government constructing or expanding a casino or other related businesses that impact off-reservation[1] land will seek review and approval of the local jurisdiction to construct off-reservation improvements consistent with state law and local ordinances including the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.

2. A Tribal Government operating a casino or other related businesses will mitigate all off-reservation impacts caused by that business. In order to ensure consistent regulation, public participation, and maximum

[1] As used here the term "reservation" means Indian Country generally as defined under federal law, and includes all tribal land held in trust by the federal government. 18 U.S.C. § 1151.

environmental protection, Tribes will promulgate and publish environmental protection laws that are at least as stringent as those of the surrounding local community and comply with the California Environmental Quality Act with the tribal government acting as the lead agency and with judicial review in the California courts.

3. A Tribal Government operating a casino or other related businesses will be subject to the authority of a local jurisdiction over health and safety issues including, but not limited to, water service, sewer service, fire inspection and protection, rescue/ambulance service, food inspection, and law enforcement, and reach written agreement on such points.

4. A Tribal Government operating a casino or other related businesses will pay to the local jurisdiction the Tribe's fair share of appropriate costs for local government services. These services include, but are not limited to, water, sewer, fire inspection and protection, rescue/ambulance, food inspection, health and social services, law enforcement, roads, transit, flood control, and other public infrastructure. Means of reimbursement for these services include, but are not limited to, payments equivalent to property tax, sales tax, transient occupancy tax, benefit assessments, appropriate fees for services, development fees, and other similar types of costs typically paid by non-Indian businesses.

5. The Indian Gaming Special Distribution Fund, created by section 5 of the Tribal-State Compact will not be the exclusive source of mitigation, but will ensure that counties are guaranteed funds to mitigate off-reservation impacts caused by tribal gaming.

6. To fully implement the principles announced in this document and other existing principles in the Tribal-State compact, Tribes will meet and reach a judicially enforceable agreement with local jurisdictions on these issues before a new compact or an extended compact becomes effective.

7. The Governor should establish and follow appropriate criteria to guide the discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by the Indian Gaming Regulatory Act. 25 U.S.C § 2719. The Governor should also establish and follow appropriate criteria/guidelines to guide his participation in future compact negotiations.

CSAC Combined Indian Gaming Policy
June 2006

CSAC Revised Policy Document Regarding Development on Tribal Lands

Adopted by CSAC Board of Directors
November 18, 2004

Background

On February 6, 2003, CSAC adopted a policy, which urged the State of California to renegotiate the 1999 Tribal-State Compacts, which govern casino-style gambling for approximately 65 tribes. CSAC expressed concern that the rapid expansion of Indian gaming since 1999 created a number of impacts beyond the boundaries of tribal lands, and that the 1999 compacts failed to adequately address these impacts. The adopted CSAC policy specifically recommended that the compacts be amended to require environmental review and mitigation of the impacts of casino projects, clear guidelines for county jurisdiction over health and safety issues, payment by tribes of their fair share of the cost of local government services, and the reaching of enforceable agreements between tribes and counties on these matters.

In late February, 2003, Governor Davis invoked the environmental issues re-opener clause of the 1999 compacts and appointed a three member team, led by former California Supreme Court Justice Cruz Reynoso, to renegotiate existing compacts and to negotiate with tribes who were seeking a compact for the first time. CSAC representatives had several meetings with the Governor's negotiating team and were pleased to support the ratification by the Legislature in 2003 of two new compacts that contained most of the provisions recommended by CSAC. During the last days of his administration, however, Governor Davis terminated the renegotiation process for amendments to the 1999 compacts.

Soon after taking office, Governor Schwarzenegger appointed former Court of Appeal Justice Daniel Kolkey to be his negotiator with tribes and to seek amendments to the 1999 compacts that would address issues of concern to the State, tribes, and local governments. Even though tribes with existing compacts were under no obligation to renegotiate, several tribes reached agreement with the Governor on amendments to the 1999 compacts. These agreements lift limits on the number of slot machines, require tribes to make substantial payments to the State, and incorporate most of the provisions sought by CSAC. Significantly, these new compacts require each tribe to negotiate with the appropriate county government on the impacts of casino projects, and impose binding "baseball style" arbitration on the tribe and county if they cannot agree on the terms of a mutually beneficial binding agreement. Again, CSAC was pleased to support ratification of these compacts by the Legislature.

The problems with the 1999 compacts remain largely unresolved, however, since most existing compacts have not been renegotiated. These compacts allow tribes to develop two casinos, expand existing casinos within certain limits, and do not restrict

casino development to areas within a tribe's current trust land or legally recognized aboriginal territory. In addition, issues are beginning to emerge with non-gaming tribal development projects. In some counties, land developers are seeking partnerships with tribes in order to avoid local land use controls and to build projects, which would not otherwise be allowed under the local land use regulations. Some tribes are seeking to acquire land outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust and beyond the reach of a county's land use jurisdiction.

CSAC believes that existing law fails to address the off-reservation impacts of tribal land development, particularly in those instances when local land use and health and safety regulations are not being fully observed by tribes in their commercial endeavors. The purpose of the following Policy provisions is to supplement CSAC's February 2003 adopted policy through an emphasis for counties and tribal governments to each carry out their governmental responsibilities in a manner that respects the governmental responsibilities of the other.

Policy

1. CSAC supports cooperative and respectful government-to-government relations that recognize the interdependent role of tribes, counties and other local governments to be responsive to the needs and concerns of all members of their respective communities.

2. CSAC recognizes and respects the tribal right of self-governance to provide for the welfare of its tribal members and to preserve traditional tribal culture and heritage. In similar fashion, CSAC recognizes and respects the counties' legal responsibility to provide for the health, safety, environment, infrastructure, and general welfare of all members of their communities.

3. CSAC also supports Governor Schwarzenegger's efforts to continue to negotiate amendments to the 1999 Tribal-State Compacts to add provisions that address issues of concern to the State, tribes, and local governments. CSAC reaffirms its support for the local government protections in those Compact amendments that have been agreed to by the State and tribes in 2004.

4. CSAC reiterates its support of the need for enforceable agreements between tribes and local governments concerning the mitigation of off-reservation impacts of development on tribal land[2]. CSAC opposes any federal or state limitation on the ability of tribes, counties and other local governments to reach mutually acceptable and enforceable agreements.

5. CSAC supports legislation and regulations that preserve—and not impair—the abilities of counties to effectively meet their governmental responsibilities,

[2] As used here the term "tribal land" means trust land, reservation land, rancheria land, and Indian Country as defined under federal law.

including the provision of public safety, health, environmental, infrastructure, and general welfare services throughout their communities.

6. CSAC supports federal legislation to provide that lands are not to be placed into trust and removed from the land use jurisdiction of local governments without the consent of the State and the affected county.

7. CSAC opposes the practice commonly referred to as "reservation shopping" where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the affected county.

8. CSAC does not oppose the use by a tribe of non-tribal land for development provided the tribe fully complies with state and local government laws and regulations applicable to all other development, including full compliance with environmental laws, health and safety laws, and mitigation of all impacts of that development on the affected county.

CSAC Principles Related Federal Tribal Lands Policy

Adopted by the CSAC Board of Directors
February 23, 2006

Background

Congress continues to show an interest in the land-into-trust process and revisiting portions of the Indian Gaming Regulatory Act (IGRA) in 2006, with hearings expected for Senator Feinstein's S. 113, Congressman Pombo's draft legislation to address "reservation shopping" and Senator McCain's newly introduced S. 2078. To give insight into its position on these and future bills relating to the tribal lands into trust process, CSAC, through its Indian Gaming Working Group, wishes to reiterate those policy principles sponsored or adopted by CSAC over the past four years that directly relate to the purposes of the legislative proposals mentioned above.

The overriding principle supported by CSAC is that when tribes are permitted to engage in gaming activities under federal legislation, then **judicially enforceable** agreements between counties and tribal governments must be required in the legislation. These agreements would fully mitigate local impacts from a tribal government's business activities and fully identify the governmental services to be provided by the county to that tribe.

The bold language set forth below presents the applicable principle and the italicized language applies that principle to the legislation as currently proposed.

1 of 1 DOCUMENT

In re: THE MATTER OF SONOMA COUNTY FIRE CHIEF'S APPLICATION FOR AN INSPECTION WARRANT RE: SONOMA COUNTY ASSESSOR'S PARCEL NUMBER 131-040-001 OR 3250 HIGHWAY 128, GEYERSVILLE, COUNTY OF SONOMA SUPERIOR COURT CASE NO. 231201, SONOMA COUNTY FIRE CHIEF, Petitioner - Appellant, v. DRY CREEK RANCHERIA BAND OF POMO INDIANS, Respondent - Appellee.

No. 05-16011

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

228 Fed. Appx. 671; 2007 U.S. App. LEXIS 8118

February 12, 2007, Argued and Submitted, San Francisco, California
April 5, 2007, Filed

NOTICE: [**1] PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: Appeal from the United States District Court for the Northern District of California. D.C. No. CV-02-04873-JSW. Jeffrey S. White, District Judge, Presiding.
In re Sonoma County Fire Chief's Application, 2005 U.S. Dist. LEXIS 33933 (N.D. Cal., Apr. 29, 2005)

COUNSEL: For SONOMA COUNTY FIRE CHIEF, Petitioner - Appellant: Steven M. Woodside, Gregory Dion, Esq., OFFICE OF COUNTY COUNSEL, Santa Rosa, CA.

For DRY CREEK RANCHERIA BAND OF POMO INDIANS, Respondent - Appellee: Jerome L. Levine, Esq., David M. Gonden, Esq., HOLLAND & KNIGHT LLP, San Francisco, CA; Frank Lawrence, Nevada City, CA.

JUDGES: Before: B. FLETCHER, CLIFTON, and IKUTA, Circuit Judges.

OPINION

[*672] MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as provided by *9th Cir. R. 36-3*.

Before: B. FLETCHER, CLIFTON, and IKUTA, Circuit Judges.

The district court ruled against the Sonoma County Fire Chief (County) on the County's lawsuit for an inspection warrant, dismissing in part and granting summary [**2] judgment against the County in part. The County appeals. We have jurisdiction pursuant to *28 U.S.C. § 1291*, and we affirm.

The district court properly had jurisdiction over this case, as the County's complaint raised a federal question by arguing that Public Law 280 (*18 U.S.C. § 1162*; *28 U.S.C. § 1360*) and federal case law allowed the County to enforce fire codes on the casino. *See 28 U.S.C. § 1331*. Thus, it was proper for the district court to refuse to remand after the Dry Creek Rancheria Band of Pomo Indians (Tribe) had removed the case from state court. *See 28 U.S.C. § 1441(b)*.

The district court also correctly held that the County could not enforce fire codes on reservation lands. Under *California v. Cabazon Band of Mission Indians, 480 U.S. 202, 207-10, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987)*, Public Law 280 does not authorize states to enforce civil/regulatory laws on tribal land, and the fire codes in question here fall into that category. Much as the state regulates driving through the creation of civil/regulatory speeding laws, *see Confederated Tribes of the Colville*

Reservation v. Washington, 938 F.2d 146, 148-49 (9th Cir. 1991) [**3] (holding that speeding laws were civil/regulatory), it regulates building through the creation of civil/regulatory fire codes. *See also Doe v. Mann, 415 F.3d 1038, 1054-55 (9th Cir. 2005), cert. denied, 547 U.S. 1111, 126 S. Ct. 1909, 164 L. Ed. 2d 663 (2006)* and *547 U.S. 1111, 126 S. Ct. 1911, 164 L. Ed. 2d 663 (2006)* (citing *Colville* for this reasoning and noting that relying on tribal enforcement does not undermine state policy).

Although *Cabazon* recognized that there might exist "exceptional circumstances" justifying a state's "'jurisdiction over the on-reservation activities of tribal members'" even when Congress has not expressly consented, *480 U.S. at 214-15* (quoting *New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 331-32, 103 S. Ct. 2378, 76 L. Ed. 2d 611 (1983))*, the fire codes do not constitute such an "exceptional circumstance." In making this determination, "[t]he asserted exceptional circumstances are weighed against traditional notions of Indian sovereignty and the congressional goal of encouraging tribal self-determination, self-sufficiency, and economic development." *Gobin v. Snohomish County, 304 F.3d 909, 917 (9th Cir. 2002)*. Because of factual similarities, [**4] we find *Gobin's* balancing instructive here. The County is correct that the casino impacts substantially more non-tribal members than the residential development held in *Gobin* to be beyond state jurisdiction, *see id. at 918*, but the state's interests here are also lesser than those in *Gobin* due to the existence of a comprehensive Compact between California and the Tribe. The Compact imposes safety obligations upon [*673] the Tribe and provides means of enforcement and of dispute resolution, thus giving the state an alternative method of vindicating its interests in safety, should the state come to believe that the Tribe is failing on this front. *See Cabazon Band of Mission Indians v. Wilson, 37 F.3d 430, 435 (9th Cir. 1994)* (noting, in the similar context of federal preemption of state regulation of Indians, that a state's interest in taxing on-reservation off-track betting operations to pay for the state's off-track betting regulatory apparatus is diminished when a Compact provides an alternative method by which the state can be reimbursed). Significantly, the Compact does not establish a role for the County, and the state has not supported the [**5] County's position. Balancing the relevant competing interests leads us to conclude that no exceptional circumstance exists here.

As for the easement, it is undisputed that title to the easement is held by the United States. If the easement is held in trust for the Tribe, our previous analysis dictates that the fire codes cannot be enforced on it. If it is not held in trust, it remains undisputed that the Tribe uses the easement for access to the reservation with the government's permission. Since the United States is not a party to this action, its rights, including its right to permit the Tribe to use the easement under the current conditions, cannot be affected by this litigation.

AFFIRMED.

EXHIBIT C

DRY CREEK RANCHERIA – SONOMA COUNTY
DEPARTMENT OF EMERGENCY SERVICES
FIRE PROTOCOL

I. GENERAL

A. **Background:** The Dry Creek Rancheria Band of Pomo Indians of California ("Tribe") is a federally recognized Indian Tribe, with federal trust reservation lands ("Rancheria") located within the boarders of Sonoma County. The Tribe retains sovereign governmental authority over its reservation lands and its tribal members. The Tribe has exclusive jurisdiction over building, safety and fire code matters pertaining to its Rancheria. To that end, the Tribe, its Board of Directors and its Gaming Commission retain the services of qualified specialists in the fields of Fire Safety and Building Codes Administration (collectively, the Board of Directors, Gaming Commission, Tribal Certified Building Official and Tribal Fire Marshal are referred to herein as "Tribal Officials"), to oversee Fire Life Safety elements of operating the existing Rancheria and River Rock Casino ("Casino"), and review and approval of future projects, including a recently proposed Resort Project encompassing a proposed casino and hotel on the Rancheria, as well as non-gaming Tribal projects.

In addition to its own resources, the Tribe currently relies in part upon Geyserville Fire Protection District ("GFPD") to provide first response fire and emergency medical services on the Rancheria. The Tribe also is the beneficiary of wildland fire fighting services provided by the Bureau of Indian Affairs and California Department of Forestry and Fire Protection. In addition, through mutual aid agreements, the Tribe may benefit from services from other local public agencies, including the Sonoma County Department of Emergency Services ("County Fire"), which may individually and/or collectively be called upon by GFPD and/or the Tribe to provide emergency response services to the Rancheria, including mutual aid and hazardous materials response services (collectively first response, mutual aid, and hazardous materials are hereinafter referred to as "Emergency Response Services"). The Tribe, Tribal Officials and County Fire shall collectively be referred to in this Fire Protocol as "the Parties."

B. **Purpose:** The purpose of this Fire Protocol is to provide for a process by which County Fire will be allowed access by the Tribe to review building and safety plans and to participate in inspections of tribal buildings and areas which may receive Emergency Response Services from GFPD, other local public agencies, and/or County Fire. The Protocol is exclusively technical in nature, focusing only on life/safety issues related to patrons, employees, Tribal members, and the First Responders to the Rancheria under codes made applicable under Tribal law. Nothing in this Protocol is intended to, or may be interpreted to, alter the Tribe's exclusive jurisdiction over the subjects of this Fire Protocol and the Tribal Officials' authority to make final, binding code determinations.

C. **Geyserville Fire Protection District:** The Tribe currently is party to a Memorandum of Agreement with the Geyserville Fire Protection District ("GFPD") to alleviate impacts resulting from providing EMS and Fire Suppression Services to the Rancheria. This Protocol does not modify said Memorandum of Agreement. As such, GFPD will continue to be invited to participate in future discussions, meetings and inspections related to fire/life safety issues pertaining to the Rancheria.

D. **Retention of Consultants:** County Fire may retain consultants to assist County Fire in plan review and/or inspections. Any consultants retained by County Fire shall be subject to the same confidentiality requirements that are applicable to County Fire, as set forth herein below. With respect to any Gaming Facility plan review or inspection, such County Fire consultants shall be subject to conflict-of-interest clearance, background investigation and licensing by the Dry Creek Gaming Commission. With respect to non-gaming project plan review or inspections, such County Fire consultants shall be subject to a conflict-of-interest check by the Tribal Officials which will review a consultant's resume and other information as requested to insure the consultant does not have a divergent financial or other potentially relevant conflict with the Tribe. If such a gaming or non-gaming conflict is found, the Tribal Officials will inform County Fire within seven (7) days of submission of a complete application for a gaming license, or for a non-gaming project, submittal of the consultant's name and resume to the Tribe. If the Tribal Officials determine there is a conflict County Fire shall select a different consultant, any dispute over whether a conflict of interest exists shall be resolved through the MOA dispute resolution process.

II. FIRE PLAN REVIEW PROTOCOL

A. **Notification/Response:** When the Tribal Officials receive a proposed building plan relevant to the design, development or construction of a proposed project(s) which may receive Emergency Response Services, Tribal Officials shall provide timely notice via e-mail of receipt of such plan to County Fire. County Fire shall respond promptly via e-mail to the Tribal Officials to propose dates and times to review the proposed plan. Such review shall take place within five (5) business days from notice. Alternatively, County Fire may decline review, again via e-mail notification.

B. **Comment Format/Feedback:** County Fire shall provide comments regarding potential fire/life safety concerns at the time of viewing of plans, and shall provide written comments, if any, within two (2) business days of such plan review to the Tribal Officials as designated below. The Tribe's Building Official is generally required to process plan check review within 10 days. As a result, the initial plan review process as provided for in this Fire Protocol shall not exceed a total of 10 business days. Any recheck of corrections to the initial plan review shall not exceed 5 business days.

C. **Location for Site Plan Reviews:** All plan review shall occur at the Gaming Commission office unless the Parties agree otherwise in writing prior to the plan review. Custody of all plans shall remain exclusively with Tribal Officials at all times.

D. **Review of As Built Plans:** For projects that have already been completed, the Tribe shall allow County Fire an opportunity to review the as built drawings upon reasonable notice. Said plan review shall occur at the Gaming Commission office unless the Parties agree otherwise in writing prior to the plan review:

E. **Notices:** Notices under this protocol will be sent to the following:

Dry Creek Fire Marshall
Vernon Brown & Associates, Inc.
6060 Sunrise Vista Dr, Ste 1425
Citrus Heights, CA 95610
Phone: 916-726-0404
Fax: 916-726-0464
Cell: 916-995-7650
Email: vernon@vbi2.com

Dry Creek Building Official
Lowell Brown
190 Foss Creek Circle, Suite B
Phone 707-473-2188
Fax (707) 473-2172
Email: lowell.brown@us.bureauveritas.com

Dry Creek Gaming Commission
190 Foss Creek Circle, Suite B
Phone (707) 473-2100
Fax (707) 473-2172
Email: vwattles@dcgc.net; ljohnson@dcgc.net; kadams@dcgc.net; dcastaneda@dcgc.net

Dry Creek Board of Directors
190 Foss Creek Circle, Suite A
Healdsburg, CA 95448
Phone (707) 473-2106
Fax (707) 473-2197
Email: HarveyH@DryCreekRancheria.com; DCRBOD@DryCreekRancheria.com; LynnL@DryCreekRancheria.com

Department Director
Sonoma County
Department of Emergency Services
2300 County Center Drive #221A
Santa Rosa, CA 95403
Phone-707.565.1152
Fax-707.565.1172
Email: vlosh@sonoma-county.org

County Administrator

County of Sonoma
575 Administration Drive.
Santa Rosa, CA 95403
Phone: 707-565-2431
Fax: 707-565-3778
Email: cthomas@sonoma-county.org

Any party may designate in writing, to all of the above persons, alternate designated contact(s).

III. FIRE INSPECTION PROTOCOL

A. **Inspections per Fire Code:** The Tribe's fire inspections are performed as required by Tribal law. County Fire's participation in the Tribe's fire inspections shall be performed as outlined in this Fire Protocol and subject to the terms and conditions of the Memorandum of Agreement ("MOA") by and between the County and Tribe, to which this Protocol is appended. Inspections are to be scheduled as the work progresses on an area-of-work basis, an example of which would be: installation of underground fire piping included placement and thrust blocks, and hydrostatic and flush testing. The Parties anticipate that these inspections may be repeated in several areas of a site, depending on construction requirements, schedules and other variables. The Parties anticipate a similar routine occurring for interior sprinkler piping inspections and fire alarm systems. Annual fire code inspections of trust lands and the Rancheria improvements, including any proposed projects, shall be conducted to the extent mandated by the Tribe's Fire Code, and County Fire will be given two (2) business days advance notice via e-mail and shall have an opportunity to attend such inspections. If County Fire is unable to participate in inspections it may review, in the Tribal Gaming Commission Office, or other location mutually agreed upon by the Parties, documents showing the results of the inspection(s) or other certifications related to the project.

B. **Notification of Inspections:** When a contractor notifies the Tribal Officials of the need to have a fire code inspection, a Tribal Official representative shall notify County Fire of the inspection request via e-mail. Should County Fire desire to participate in the inspection, it shall respond via e-mail within two (2) business days of notice to the Tribal Officials, and shall view the work at the same time the normal inspection occurs.

C. **No Delay:** Under no circumstance will construction inspections be delayed or performed at a time outside the normal business schedule to accommodate peer viewing by County Fire.

D. **Comment Format/Feedback:** Potential concerns or suggestions discussed in the field shall be based upon good faith interpretations of the Tribe's Fire Code. The Parties recognize that such code interpretations may vary among reasonable, qualified code officials, depending upon, among other things, individual understandings of the applicable code and individual professional experiences. Thus, the Parties acknowledge that County Fire may have a code interpretation as to a specific matter that may differ from the Tribal Official constituting the Authority Having Jurisdiction

("AHJ" defined as the officer or other designated Authority charged with the administration and enforcement of the Tribe's code, or duly authorized representative). Under such circumstances, County Fire shall have an opportunity to express its concerns to the Tribal Officials within two (2) business days of the relevant inspection. Nothing in the foregoing may be deemed to alter or modify the Tribe's exclusive jurisdiction over building and fire safety issues and code interpretations.

IV. MEET & CONFER PROCEDURE

A. **Informal Discussion:** If as a result of plan review, inspections, or other information, County Fire transmits fire or other life safety concerns to the Tribe's Fire Marshal and/or Building Official, they shall meet or teleconference within two (2) business days on an informal basis with County Fire to discuss the issue. The Parties shall use good faith, best efforts to resolve the issue informally.

B. **Meet and Confer:** If informal discussions outlined above do not resolve an issue, County Fire shall prepare and deliver to all Tribal Officials, in accordance with the notice designations above, a written explanation of the factual basis and/or code interpretation underlying its view of the issue (hereinafter "County Fire's Position Paper"). The Tribe's Fire Marshal and/or Building Official shall provide a written response (the "Determination") to County Fire within two (2) business days after receipt of County Fire's Position Paper. County Fire's Position Paper and the Tribe's Fire Marshall and/or Building Official's Determination shall be discussed at a meeting to be scheduled within one week after the Determination in response to County Fire's Position Paper is provided, unless the Parties mutually agree to a different schedule. The meeting may be in person or via teleconference and may involve an inspection if the Tribe determines that it would be useful in resolving the dispute.

C. **Tribal Board/Gaming Commission Decision:** Should the above efforts not result in satisfactory resolution of a concern, County Fire may request a meeting with the Tribal Board of Directors with respect to non-Gaming Facility projects, or alternatively the Gaming Commission with respect to Gaming Facility projects. The meeting is subject to Tribal and Gaming Commission laws and procedures but, notwithstanding the foregoing, shall be scheduled within 10 days of County Fire's express written request under this section and the notice provisions contained herein. The Board is the final authority for such decisions with respect to non-Gaming Facility projects, and the Gaming Commission is the final authority for such appeals with respect to Gaming Facility projects, and their respective determinations shall not be subject to reversal or modification by any person or entity. Unless a revised written Determination is made by Tribal Officials within seven (7) business days of the meeting, pursuant to the Tribe's exclusive jurisdiction in this area, the prior Determinations by the Tribal Fire Marshal and/or Building Official shall be final.

D. **State Fire Marshall Notification:** Upon conclusion of the Meet and Confer and Dispute Resolution procedures provided for in this Fire Protocol, including review by the Tribal Board/Gaming Commission, County Fire may notify the State Fire Marshal, Bureau of Indian Affairs ("BIA") (as to non-gaming related issues) and/or

the National Indian Gaming Commission (as to gaming related issues) of its concerns, provided County Fire simultaneously provides the Tribal Officials with a copy of its comments to the State Fire Marshall, BIA and/or National Indian Gaming Commission.

E. **Timelines:** The timelines contained in this Protocol may only be revised by the written mutual agreement of the Parties.

V. SCOPE OF FIRE REVIEWS

A. **Areas of Site and Building Improvements:** The scope of County Fire's review of plans and inspections of buildings and areas shall include all areas which may receive Emergency Response Services.

B. **Gaming Facility Projects:** Existing Casino & Parking Garage, proposed Gaming Facility project, and future Gaming Facility projects are subject to the Tribe's Fire Code, conditions of the MOA and Fire Protocol, Compact, and other applicable Tribal laws.

C. **Non-Gaming Facility Projects on Trust Lands:** Other non-Gaming Facility projects which may receive Emergency Response Services from County Fire on Tribal trust lands shall be subject to the Tribe's Fire Code, the MOA and Fire Protocol, and other applicable Tribal laws. Examples include, but are not necessarily limited to, the Rancheria Emergency Response Plan, Proposed Roadway Improvements, Dugan Projects,, and tribal housing.

D. **Emergency Plan Review:** With respect to the Rancheria Emergency Response Plan, and any amendments thereto, Tribal Officials shall consult with County Fire for the purpose of improving coordination and response to any emergencies or disasters. Notwithstanding the consultation, nothing in this Protocol or the MOA shall give County Fire jurisdiction over the Tribe's Emergency Response Plan.

E. **Fee Lands:** Projects on fee lands located within Sonoma County are subject to applicable law and are not governed by this Fire Protocol.

VI. CONFIDENTIALITY

The Parties agree that the subjects addressed in the Protocol, including plan review and fire code inspections, encompass matters that involve significant governmental, proprietary and security concerns. The Parties further acknowledge that the MOA by and between the County and Tribe, to which this Protocol is appended, includes significant confidentiality provisions and that those confidentiality provisions are essential components of this Protocol. County Fire expressly recognizes the importance of maintaining the confidentiality information obtained under or related to this Fire Protocol and the MOA, and expressly agrees to do so. Any breach of the confidentiality provisions of this Fire Protocol or MOA shall be subject to the dispute resolution provisions of the MOA, including possible damages.

EXHIBIT D

Off-Reservation Environmental Impact Analysis Checklist

I. Aesthetics

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b) Substantially damage off-reservation scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Create a new source of substantial light or glare, which would adversely affect day or nighttime views of historic buildings or views in the area?	☐	☐	☐	☐

[Missing I.(c) of App. G re: substantially degrade visual environment.]

II. Agricultural Resources

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Involve changes in the existing environment, which, due to their location or nature, could result in conversion of off-reservation farmland to non-agricultural use?	☐	☐	☐	☐

[Does not address conversion of forest land to non-forest uses.]

III. Air Quality

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	☐	☐	☐	☐
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?	☐	☐	☐	☐
d) Expose off-reservation sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
e) Create objectionable odors affecting a substantial number of people off-reservation?	☐	☐	☐	☐

IV. Biological Resources

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Have a substantial adverse impact, either directly or through habitat modifications, on any species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife	☐	☐	☐	☐

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
Service?				
b) Have a substantial adverse effect on any off-reservation riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on federally protected off-reservation wetlands as defined by Section 404 of the Clean Water Act?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
[Does not include IV.(e) of App. G re: local ordinances.]				
e) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐

V. Cultural Resources

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Cause a substantial adverse change in the significance of an off-reservation historical or archeological resource?	☐	☐	☐	☐
b) Directly or indirectly destroy a unique off-reservation paleontological resource or site or unique off-reservation geologic feature?	☐	☐	☐	☐
c) Disturb any off-reservation human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☐

VI. Geology and Soils

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Expose off-reservation people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial off-reservation soil erosion or the loss of topsoil?	☐	☐	☐	☐

VII. Hazards and Hazardous Materials

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Create a significant hazard to the off-reservation public or the off-reservation environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐
b) Create a significant hazard to the off-reservation public or the off-reservation environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed off-reservation school?	☐	☐	☐	☐
d) Expose off-reservation people or structures to a significant risk of loss, injury or death involving wildland fires. [Does not include VIII.(e)-(g) of App. G.]	☐	☐	☐	☐

VIII. Water Resources

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☐	☐
b) Substantially deplete off-reservation groundwater supplies or interfere substantially with groundwater recharge such that there should be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☐

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion of siltation off-site?	☐	☐	☐	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding off-site?	☐	☐	☐	☐
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff off-reservation? [Does not include IX.(f) re: degradation of WQ.]	☐	☐	☐	☐
f) Place within a 100-year flood hazard area structures, which would impede or redirect off-reservation flood flows?	☐	☐	☐	☐
g) Expose off-reservation people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☐

IX. Land Use

Would the project: [Does not include X(a) re: physically divide an established community.]	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Conflict with any off-reservation land use plan, policy, or regulation of an agency adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐
b) Conflict with any applicable habitat conservation plan or natural communities conservation plan covering off-reservation lands?	☐	☐	☐	☐

X. Mineral Resources

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Result in the loss of availability of a known off-reservation mineral resource classified MRZ-2 by the State Geologist that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of an off-reservation locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	☐	☐	☐	☐

XI. Noise

Would the project result in:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Exposure of off-reservation persons to noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☐	☐
b) Exposure of off-reservation persons to excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
c) A substantial permanent increase in ambient noise levels in the off-reservation vicinity of the project?	☐	☐	☐	☐
d) A substantial temporary or periodic increase in ambient noise levels in the off-reservation vicinity of the project?	☐	☐	☐	☐

XII. Population and Housing

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Induce substantial off-reservation population growth?	☐	☐	☐	☐
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere off-reservation?	☐	☐	☐	☐

[Does not include XIII(c).]

XIII. Public Services

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered off-reservation governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the off-reservation public services:				
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐

XIV. Recreation

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Increase the use of existing off-reservation neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☐

XV. Transportation / Traffic

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Cause an increase in off-reservation traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	☐	☐	☐	☐
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated off-reservation roads or highways?	☐	☐	☐	☐
c) Substantially increase hazards to an off-reservation design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
d) Result in inadequate emergency access for off-reservation responders?	☐	☐	☐	☐

[Does not reflect updated App. G.]

XVI. Utilities and Service Systems

Would the project:	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporation*	*Less than Significant Impact*	*No Impact*
a) Exceed off-reservation wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☐	☐
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing	☐	☐	☐	☐

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
facilities, the construction of which could cause significant off-reservation environmental effects?				
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant off-reservation environmental effects?	☐	☐	☐	☐
d) Result in a determination by an off-reservation wastewater treatment provider (if applicable), which serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐

[Does not include App. G XVII(f) and(g) re: landfill and compliance with solid waste rep.]

XVII. Cumulative Effects

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less than Significant Impact	No Impact
a) Have impacts that are individually limited, but cumulatively considerable off-reservation? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past, current, or probable future projects.	☐	☐	☐	☐

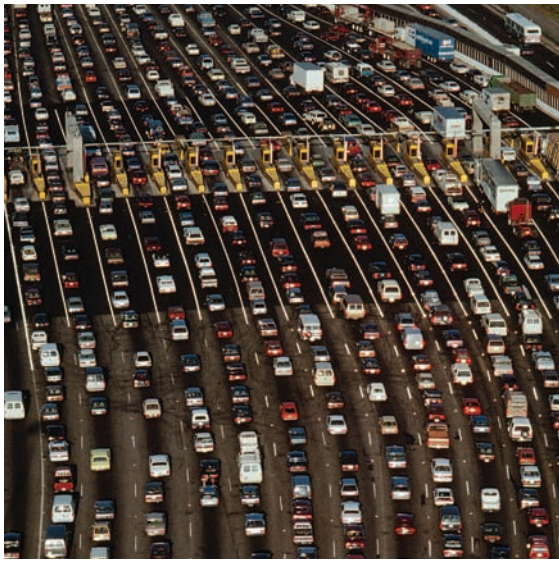
Attachment Two

Summary: Driving Change: Reducing VMT in California

PPIC PUBLIC POLICY INSTITUTE OF CALIFORNIA

Driving Change

Reducing Vehicle Miles Traveled in California



JAMES A. SUGAR/NATIONAL GEOGRAPHIC/GETTY IMAGES

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with research support from Marisol Cuellar Mejia, Davin Reed, Eliot Rose, Eric Schiff, Elizabeth Stryjewski, and Maggie Witt

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SUMMARY

Senate Bill (SB) 375, adopted in 2008, calls on regional transportation planning agencies and local governments to develop strategies for reducing greenhouse gas emissions from passenger vehicles by reducing per capita vehicle miles traveled (VMT). Three specific strategies, traditionally used to reduce traffic congestion and improve air quality, are to be employed to help reduce emissions:

Higher-density development, particularly in areas well-served by transit;

Investments in alternatives to solo driving, such as transit, biking, walking, and carpooling; and

Pricing policies that raise the cost of driving and parking.

Although SB 375 is expected to reduce emissions only modestly relative to vehicle efficiency standards and low-carbon fuels, it is also expected to improve public health and reduce energy and water use by encouraging denser development and more "livable" communities. The integration of these three approaches is consistent with an emerging research consensus that policies integrating all three strategies have a much greater chance of reducing VMT than any one approach on its own. This report reviews the opportunities and challenges of each of these strategies and assesses California's recent experience and future prospects for successfully integrating them.

On balance, California has started with the right approach by attempting to integrate its emission-reduction policies. However, recent experiences within the state and elsewhere have revealed numerous challenges—some quite formidable. On the plus side, more local governments are undertaking climate change activities, and many local planners see significant potential for reducing VMT, especially in localities that have experience in implementing these strategies and in more populous areas of the state. Also, planners are beginning to recognize the importance of using multiple approaches. And transit ridership in California is increasing, with recent transit investments appropriately directed toward higher-density areas.

But red flags abound, potentially limiting California's ability to reduce VMT. Employment density (the number of jobs per square mile) is low and declining, and employment density matters more than residential density for encouraging transit use as an alternative to driving. Furthermore, major transit investments since the early 1990s have not produced an overall reduction in VMT, and densities around new stations have not increased. The vast majority of commuters still drive to work, even if they live or work near a transit station. And planners are skeptical about pricing policies—a key component of integrated strategies—especially in localities with higher-income households, which tend to be less sensitive to changes in the cost of driving and parking. Finally, funding transit investments and operations remains a perennial challenge.

If California is to make the most of SB 375, several priorities require attention. Regions and localities should encourage greater commercial (that is, nonresidential) development around transit stations. Pricing policies need to accompany land use and transportation strategies, despite public resistance. State or federal leaders need to raise general road use fees (either the traditional gas tax or a new VMT-based fee), both to provide incentives to reduce driving and to help fill the widening gap in transportation funding. And, finally, regional strategies must recognize the wide variation in attitudes and conditions among localities and address the lack of coordination (even among transit systems within the same region) that exists today.

This report is based on reviews of the research literature, our survey of local governments and planning agencies, and our analysis of population, employment, and transportation data. The report draws heavily on two companion papers: "Views from the Street" (Bedsworth, Hanak, and Stryjewski 2011) and "Making the Most of Transit" (Kolko 2011). To find these and other related resources, please visit the report's publication page: http://www.ppic.org/main/publication.asp?i=948

Attachment Three

Beacon Award: Local Leadership Toward Solving Climate Change

INSTITUTE FOR LOCAL GOVERNMENT

FOUNDED 1955

SUSTAINABILITY/CLIMATE CHANGE

Beacon Award: Local Leadership Toward Solving Climate Change

OVERVIEW

1. What is the Beacon Award?

The Beacon Award recognizes and celebrates California cities and counties that:

- Reduce greenhouse gas emissions and energy use;
- Adopt policies and programs to address climate change; and
- Promote sustainability.

Cities and counties will be honored with Silver, Gold and Platinum Beacon Awards for achieving specified measurable reductions in greenhouse gas emissions and energy savings in agency facilities and by achieving measurable greenhouse gas reductions and promoting energy conservation in the community. They will also be recognized for achieving interim accomplishments.

2. Why should my agency participate in the Beacon Award?

Participating in the Beacon Award lets cities and counties receive recognition for saving energy, conserving resources, promoting sustainability and reducing greenhouse gas emissions. It lets them shine a bright light on their accomplishments for their residents, colleagues and others. To hear what local officials are saying about participating in the Beacon Award program, visit www.ca-ilg.org/BeaconAward/Testimonials.

3. How can my agency participate in the Beacon Award?

Becoming a Beacon Award participant is a simple process. We welcome agencies at every step of the climate action journey to consider applying. To be accepted as a Beacon Award participant, cities and counties will complete a simple application form and do the following:

- Adopt a resolution by the governing body committing the agency to participate in the program;
- Designate a lead staff person as a point of contact;
- Prepare, or commit to prepare, a baseline greenhouse gas emissions inventory for agency facilities and the community as a whole (previously completed inventories using a commonly accepted methodology will be accepted);
- Prepare, or commit to prepare, a climate action plan that includes actions in each of the Best Practice Areas (previously completed plans using a commonly accepted methodology will be accepted);

- Demonstrate compliance with AB 939, the California Integrated Waste Management Act of 1989; and
- Achieve specified measurable greenhouse gas reductions and energy savings in agency facilities, and achieve measurable greenhouse gas reductions and promote energy conservation activities in the community.

There is no deadline to apply; applications will be accepted on an ongoing basis. For an application to participate, sample resolution and sample staff report, visit www.ca-ilg.org/BeaconAward. Once accepted a city or county will be designated as a Beacon Award program participant. It will then begin working toward achieving the first Beacon Award level.

4. What are the criteria for the Silver, Gold and Platinum Beacon Awards?

To become a Beacon Award winner, agencies must achieve specified measurable greenhouse gas reductions and energy savings in agency facilities, and achieve specified measurable greenhouse gas reductions and promote energy conservation activities in the community. The agency will also complete activities in each of the Best Practice Areas. The minimum requirements listed for each award level must be completed to receive the respective award. We will also recognize and celebrate interim achievements.

Silver Beacon Award

Agency facilities and operations

Greenhouse gas reduction:	Five percent in agency facilities and operations
Energy savings:	Five percent in agency facilities and operations from energy efficiency retrofits

Community

Greenhouse gas reduction:	Five percent in the community as a whole
Energy efficiency:	One activity that promotes energy efficiency in the community
Best Practice Areas	One activity in each of the Best Practice Areas

Gold Beacon Award

Agency facilities and operations

Greenhouse gas reduction:	Ten percent in agency facilities and operations
Energy savings:	Ten percent in agency facilities and operations from energy efficiency retrofits

Community

Greenhouse gas reduction:	Ten percent in the community as a whole
Energy efficiency:	Two activities that promote energy efficiency in the community
Best Practice Areas	Two activities in each of the Best Practice Areas

Platinum Beacon Award	
Agency facilities and operations	
Greenhouse gas reduction:	Twenty percent in agency facilities and operations
Energy savings:	Twenty percent in agency facilities and operations from energy efficiency retrofits
Community	
Greenhouse gas reduction:	Twenty percent in the community as a whole
Energy efficiency:	Four activities that promote energy efficiency in the community
Best Practice Areas	Three activities in each of the Best Practice Areas

5. What do we do once our agency has been accepted into the Beacon Award program?

Once a city or county is accepted as a Beacon Award participant, it will work towards achieving one or more of the three award levels at its own pace. Understanding that each agency has its own unique opportunities and challenges, there is no timeline for meeting award level criteria. Participants will be asked to provide periodic information about their efforts to reduce greenhouse gas emissions and save energy, as well as progress in completing a greenhouse gas inventory and climate action plan. Visit www.ca-ilg.org/BeaconAward/Participants to see who is participating and learn about their climate action activities.

6. What kinds of recognition will my agency receive for participating in the Beacon Award?

Beacon Award program participants will receive recognition for participating in the program, as well as for achieving interim accomplishments and reaching one or more of the award levels. They will receive special recognition at League of California Cities and California State Association of Counties events, be highlighted on the Beacon Award website, and receive certificates and other materials for use at agency facilities and on agency websites. We will also help participants let their residents know about the leadership activities.

7. What are the Best Practice Areas that need to be included in a climate action plan?

The Best Practice Areas, which are based upon the Institute's Climate Action and Sustainability Best Practices Framework, are:

1. Energy Efficiency and Conservation;
2. Water and Waste Water Systems;
3. Green Building;
4. Waste Reduction and Recycling;
5. Climate-Friendly Purchasing;
6. Renewable Energy and Low-Carbon Fuels;
7. Efficient Transportation;
8. Land Use and Community Design;
9. Open Space and Offsetting Carbon Emissions;
10. Promoting Community and Individual Action.

Visit www.ca-ilg.org/ClimatePractices to download the Best Practices Framework. In order to receive the Silver, Gold or Platinum Beacon Award, the agency must meet the greenhouse gas and energy savings for each award level and demonstrate that it has completed activities in each of the Best Practice Areas.

8. Our agency has already reduced greenhouse gas emissions by 5 percent in agency facilities and saved energy by 5 percent through energy efficiency retrofits. Can we receive any recognition for this achievement?

Congratulations! A city or county that demonstrates it has reduced greenhouse gas emissions and energy savings by five percent in agency facilities and operations will be eligible to receive interim recognition while it continues working to complete the remaining criteria for the Silver Beacon Award.

9. Where do we get information about selecting a base year, conducting a greenhouse gas inventory, preparing a climate action plan and measuring energy savings?

View the Beacon Award program guidelines at www.ca-ilg.org/BeaconAward/Guidelines for more detailed information regarding base year selection and links to additional resources. Also visit www.californiaseec.org to register for free greenhouse gas inventory and climate action planning trainings offered through the Statewide Energy Efficiency Collaborative.

10. Who is sponsoring the Beacon Award?

The Beacon Award is sponsored by the California Climate Action Network, a program of the Institute for Local Government. The Institute is the non-profit research and education arm of the League of California Cities and the California State Association of Counties.

The program is funded by California utility ratepayers and administered by Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison and Southern California Gas Company under the auspices of the California Public Utilities Commission.

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For more information about the Beacon Award, including frequently asked questions, guidelines for participation and recognition, a sample resolution, sample resolution and an online application, please visit www.ca-ilg.org/BeaconAward

March 2011

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Attachment Four

FY 2011-12 New HUTA Estimates by County

Estimated FY 2011-12 New HUTA
$387.9 Million for Counties

ID	COUNTY	NO. OF REGISTERED VEHICLES (4/08)	NO. OF MAINTAINED MILEAGE (4/08)	PROJECTED REVENUE FY 2011-12 (Estimated)
1	Alameda	1,149,575	495.39	$ 12,204,091
2	Alpine	2,038	134.96	$ 218,030
3	Amador	51,051	410.84	$ 1,111,526
4	Butte	211,423	1,353.70	$ 4,093,904
5	Calaveras	67,318	689.22	$ 1,681,712
6	Colusa	25,929	716.75	$ 1,308,767
7	Contra Costa	851,398	659.84	$ 9,467,686
8	Del Norte	25,932	300.88	$ 699,652
9	El Dorado	209,802	1,075.50	$ 3,670,225
10	Fresno	670,649	3,563.16	$ 11,915,597
11	Glenn	33,370	863.19	$ 1,597,572
12	Humboldt	137,005	1,205.06	$ 3,133,123
13	Imperial	139,950	2,561.57	$ 5,149,494
14	Inyo	26,116	1,133.10	$ 1,920,498
15	Kern	630,683	3,327.67	$ 11,171,603
16	Kings	98,731	946.10	$ 2,371,641
17	Lake	79,421	612.36	$ 1,689,981
18	Lassen	35,722	878.64	$ 1,643,685
19	Los Angeles	7,054,048	2,966.98	$ 74,780,331
20	Madera	120,519	1,532.06	$ 3,447,487
21	Marin	226,626	419.82	$ 2,877,790
22	Mariposa	26,599	560.41	$ 1,086,456
23	Mendocino	104,206	1,018.92	$ 2,532,972
24	Merced	190,480	1,726.96	$ 4,431,529
25	Modoc	13,187	987.40	$ 1,577,983
26	Mono	16,452	684.42	$ 1,166,786
27	Monterey	326,055	1,242.60	$ 5,075,763
28	Napa	129,175	445.01	$ 1,941,642
29	Nevada	120,739	560.79	$ 2,027,001
30	Orange	2,353,013	313.86	$ 23,954,480
31	Placer	346,883	1,052.75	$ 5,005,646
32	Plumas	33,470	687.96	$ 1,341,899
33	Riverside	1,577,871	2,671.26	$ 19,667,749
34	Sacramento	1,140,198	2,194.40	$ 14,599,117
35	San Benito	51,651	383.63	$ 1,077,660
36	San Bernardino	1,548,162	2,822.22	$ 19,592,228
37	San Diego	2,451,387	1,921.25	$ 27,291,188
38	San Francisco	448,004	930.75	$ 5,836,635
39	San Joaquin	532,969	1,653.70	$ 7,743,960
40	San Luis Obispo	267,197	1,321.49	$ 4,603,624

Estimated FY 2011-12 New HUTA
$387.9 Million for Counties

ID	COUNTY	NO. OF REGISTERED VEHICLES (4/08)	NO. OF MAINTAINED MILEAGE (4/08)	PROJECTED REVENUE FY 2011-12 (Estimated)
41	San Mateo	650,661	313.12	$ 6,955,475
42	Santa Barbara	345,484	892.68	$ 4,757,214
43	Santa Clara	1,399,998	684.10	$ 14,980,974
44	Santa Cruz	225,039	602.94	$ 3,130,172
45	Shasta	206,029	1,191.19	$ 3,802,004
46	Sierra	5,289	390.25	$ 624,438
47	Siskiyou	62,487	1,361.34	$ 2,617,976
48	Solano	348,017	586.95	$ 4,334,682
49	Sonoma	450,716	1,384.62	$ 6,528,527
50	Stanislaus	420,414	1,545.37	$ 6,461,419
51	Sutter	87,191	786.69	$ 2,022,917
52	Tehama	64,133	1,089.38	$ 2,236,052
53	Trinity	19,367	698.14	$ 1,215,989
54	Tulare	322,713	3,047.10	$ 7,685,566
55	Tuolumne	71,821	607.16	$ 1,606,479
56	Ventura	699,159	545.51	$ 7,780,120
57	Yolo	167,229	794.60	$ 2,833,679
58	Yuba	62,559	650.59	$ 1,577,613
	TOTAL	29,133,310	66,198.30	**$ 387,860,000**

Attachment Five

AB 720 (Hall): Road Commissioner Authority

AMENDED IN ASSEMBLY MAY 9, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 720

Introduced by Assembly Member Hall

February 17, 2011

An act to amend Sections 22031 and 22032 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 720, as amended, Hall. Public contracts: uniform construction cost accounting provisions: alternative procedures.

Existing law establishes procedures for local public agencies to follow when engaged in public works projects, and authorizes agencies to elect to become subject to uniform construction cost accounting provisions. Existing law specifies that a board of supervisors or a county road commissioner is not prohibited by those provisions from utilizing, as an alternative, other procedures governing county highway contracts.

This bill would revise the above provision that specifies that a board of supervisors or a county road commissioner is not prohibited from using alternative procedures governing county highway contracts to limit the use of those alternative procedures for maintenance and emergency work.

Existing law authorizes public projects of $30,000 or less to be performed by the employees of the public agency by force account, negotiated contract, or purchase order.

This bill would increase ~~that authorization~~ *the amount for which public projects are authorized to be performed by the employees of the public agency as specified above* to $45,000.

Existing law also *authorizes public projects of $125,000 or less to be let to contract by informal procedures, as specified, and* requires public projects of more than $125,000 to be let to contract by formal bidding procedure, except as provided.

This bill *would increase the amount for which public projects are authorized to be let to contract by informal procedures to $175,000, and* would increase ~~that~~ *the* amount for which public ~~contracts~~ *projects* are required to be let by formal bidding procedure to projects of more than $175,000.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 22031 of the Public Contract Code is amended to read:

22031. Nothing in this article shall prohibit a board of supervisors or a county road commissioner from utilizing, as an alternative to the procedures set forth in this article, the procedures set forth in Article 25 (commencing with Section 20390) of Chapter 1 for maintenance and emergency work.

SEC. 2. Section 22032 of the Public Contract Code is amended to read:

22032. (a) Public projects of forty-five thousand dollars ($45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

(b) Public projects of one hundred seventy-five thousand dollars ($175,000) or less may be let to contract by informal procedures as set forth in this article.

(c) Public projects of more than one hundred ~~twenty-five~~ *seventy-five* thousand dollars ~~($125,000)~~ *($175,000)* shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

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Attachment Six

AB 1220 (Alejo): Housing Element: Statute of Limitations

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1220

Introduced by Assembly Member Alejo
(Principal coauthor: Senator Steinberg)
(~~Coauthor: Assembly Member~~ *Coauthors: Assembly Members Atkins and* Cedillo)

February 18, 2011

An act to amend Sections 65009, 65589.3, and 65755 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1220, as amended, Alejo. Land use and planning: cause of actions: time limitations.

(1) The Planning and Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action, if it meets certain requirements. Where the action or proceeding is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time within 5 years after a specified action pursuant to existing law. The bill would declare the intent of the Legislature that its provisions modify a specified court opinion. The bill would also provide that in that specified action or proceeding, no remedy pursuant to specified provisions of law abrogate, impair, or otherwise interfere with the full exercise of the rights and

protections granted to a tentative map application or a developer, as prescribed.

(2) The Planning and Zoning law establishes a rebuttable presumption, in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, of the validity of a housing element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with specified provisions of existing law.

This bill would provide that in any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with specified provisions, the element or amendment be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding of housing element compliance.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting Section 2 of this act to modify the court's opinion in Urban Habitat Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561, with respect to the interpretation of Section 65009 of the Government Code.

SEC. 2. Section 65009 of the Government Code is amended to read:

65009. (a) (1) The Legislature finds and declares that there currently is a housing crisis in California and it is essential to reduce delays and restraints upon expeditiously completing housing projects.

(2) The Legislature further finds and declares that a legal action or proceeding challenging a decision of a city, county, or city and county has a chilling effect on the confidence with which property owners and local governments can proceed with projects. Legal actions or proceedings filed to attack, review, set aside, void, or annul a decision of a city, county, or city and county pursuant to this division, including, but not limited to, the implementation of general plan goals and policies that provide incentives for affordable housing, open-space and recreational opportunities, and

other related public benefits, can prevent the completion of needed developments even though the projects have received required governmental approvals.

(3) The purpose of this section is to provide certainty for property owners and local governments regarding decisions made pursuant to this division.

(b) (1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following:

(A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence.

(B) The body conducting the public hearing prevented the issue from being raised at the public hearing.

(2) If a public agency desires the provisions of this subdivision to apply to a matter, it shall include in any public notice issued pursuant to this title a notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or prior to, the public hearing."

(3) The application of this subdivision to causes of action brought pursuant to subdivision (d) applies only to the final action taken in response to the notice to the city or clerk of the board of supervisors. If no final action is taken, then the issue raised in the cause of action brought pursuant to subdivision (d) shall be limited to those matters presented at a properly noticed public hearing or to those matters specified in the notice given to the city or clerk of the board of supervisors pursuant to subdivision (d), or both.

(c) (1) Except as provided in subdivision (d), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

(A) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan.

This paragraph does not apply where an action is brought based upon the complete absence of a general plan or a mandatory element thereof, but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.

(B) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance.

(C) To determine the reasonableness, legality, or validity of any decision to adopt or amend any regulation attached to a specific plan.

(D) To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement. An action or proceeding to attack, review, set aside, void, or annul the decisions of a legislative body to adopt, amend, or modify a development agreement shall only extend to the specific portion of the development agreement that is the subject of the adoption, amendment, or modification. This paragraph applies to development agreements, amendments, and modifications adopted on or after January 1, 1996.

(E) To attack, review, set aside, void, or annul any decision on the matters listed in Sections 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit.

(F) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in subparagraphs (A), (B), (C), (D), and (E).

(2) In the case of an action or proceeding challenging the adoption or revision of a housing element pursuant to this subdivision, the action or proceeding may, in addition, be maintained if it is commenced and service is made on the legislative body within 60 days following the date that the Department of Housing and Community Development reports its findings pursuant to subdivision (h) of Section 65585.

(d) (1) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause of action as provided in this subdivision, except that in no case shall the action or proceeding be commenced more than five years after an action described in subparagraph (B), if the action or proceeding meets both of the following requirements:

(A) It is brought in support of or to encourage or facilitate the development of housing that would increase the community's

supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

(B) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, Section 65863.6, or Chapter 4.2 (commencing with Section 65913), or to challenge the adequacy of an ordinance adopted pursuant to Section 65915.

(2) A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or clerk of the board of supervisors by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. This notice may be filed at any time within five years after an action described in subparagraph (B) of paragraph (1). A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

(3) After the adoption of a housing element covering the current planning period, no action shall be filed pursuant to this subdivision to challenge a housing element covering a prior planning period.

(e) Upon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding.

(f) Notwithstanding Sections 65700 and 65803, or any other provision of law, this section shall apply to charter cities.

(g) Except as provided in subdivision (d), this section shall not affect any law prescribing or authorizing a shorter period of limitation than that specified herein.

(h) Except as provided in paragraph (4) of subdivision (c), this section shall be applicable to those decisions of the legislative

body of a city, county, or city and county made pursuant to this division on or after January 1, 1984.

SEC. 3. Section 65589.3 of the Government Code is amended to read:

65589.3. (a) In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

(b) In any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with all of the requirements of this article, including, ~~without limitation~~ *but not limited to*, the requirements for public participation set forth in paragraph (7) of subdivision (c) of Section 65583, the element or amendment shall be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding that the housing element substantially complies with the requirements of this article.

SEC. 4. Section 65755 of the Government Code is amended to read:

65755. (a) The court shall include, in the order or judgment rendered pursuant to Section 65754, one or more of the following provisions for any or all types or classes of developments or any or all geographic segments of the city, county, or city and county until the city, county, or city and county has substantially complied with the requirements of Article 5 (commencing with Section 65300):

(1) Suspend the authority of the city, county, or city and county pursuant to Division 13 (commencing with Section 17910) of the Health and Safety Code, to issue building permits, or any category of building permits, and all other related permits, except that the city, county, or city and county shall continue to function as an enforcement agency for review of permit applications for appropriate codes and standards compliance, prior to the issuance of building permits and other related permits for residential housing for that city, county, or city and county.

(2) Suspend the authority of the city, county, or city and county, pursuant to Chapter 4 (commencing with Section 65800) to grant any and all categories of zoning changes, variances, or both.

(3) Suspend the authority of the city, county, or city and county, pursuant to Division 2 (commencing with Section 66410), to grant subdivision map approvals for any and all categories of subdivision map approvals.

(4) Mandate the approval of all applications for building permits, or other related construction permits, for residential housing where a final subdivision map, parcel map, or plot plan has been approved for the project, where the approval will not impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element, and where the permit application conforms to all code requirements and other applicable provisions of law except those zoning laws held to be invalid by the final court order, and changes to the zoning ordinances adopted after such final court order which were enacted for the purpose of preventing the construction of a specific residential development.

(5) Mandate the approval of any or all final subdivision maps for residential housing projects which have previously received a tentative map approval from the city, county, or city and county pursuant to Division 2 (commencing with Section 66410) when the final map conforms to the approved tentative map, the tentative map has not expired, and where approval will not impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element.

(6) Mandate that notwithstanding the provisions of Sections 66473.5 and 66474, any tentative subdivision map for a residential housing project shall be approved if all of the following requirements are met:

(A) The approval of the map will not significantly impair the ability of the city, county, or city and county to adopt and implement those elements or portions thereof of the general plan which have been held to be inadequate.

(B) The map complies with all of the provisions of Division 2 (commencing with Section 66410), except those parts which would require disapproval of the project due to the inadequacy of the general plan.

(C) The approval of the map will not affect the ability of the city, county, or city and county to adopt and implement an adequate housing element.

(D) The map is consistent with the portions of the general plan not found inadequate and the proposed revisions, if applicable, to the part of the plan held inadequate.

(b) Any order or judgment of a court which includes the remedies described in paragraphs (1), (2), or (3) of subdivision (a) shall exclude from the operation of that order or judgment any action, program, or project required by law to be consistent with a general or specific plan if the court finds that the approval or undertaking of the action, program, or project complies with both of the following requirements:

(1) That it will not significantly impair the ability of the city, county, or city and county to adopt or amend all or part of the applicable plan as may be necessary to make the plan substantially comply with the requirements of Article 5 (commencing with Section 65300) in the case of a general plan, or Article 8 (commencing with Section 65450) in the case of a specific plan.

(2) That it is consistent with those portions of the plan challenged in the action or proceeding and found by the court to substantially comply with applicable provisions of law.

The party seeking exclusion from any order or judgment of a court pursuant to this subdivision shall have the burden of showing that the action, program, or project complies with paragraphs (1) and (2).

(c) Notwithstanding Section 65754.4 or subdivisions (a) and (b), in any action or proceeding brought pursuant to subdivision (d) of Section 65009, no remedy pursuant to this section or injunction pursuant to Section 65754.5 shall abrogate, impair, or otherwise interfere with the full exercise of the rights and protections granted to (1) an applicant for a tentative map pursuant to Section 66474.2, or (2) a developer pursuant to Sections 65866 and 66498.1

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Attachment Seven

SB 244 (Wolk): Disadvantaged Communities

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 15, 2011

SENATE BILL No. 244

Introduced by Senator Wolk
(Coauthors: Senators Price and Rubio)
(Coauthor: Assembly Member Perea)

February 10, 2011

An act to amend Sections 56425 and 56430 of, and to add Sections 56033.5 and 65302.10 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 244, as amended, Wolk. Land use: general plan: disadvantaged unincorporated communities.

(1) The Planning and Zoning Law requires a city or county to adopt a comprehensive, long-term general plan for the physical development of the city or county and of any land outside its boundaries that bears relation to its planning. That law also requires the general plan to contain specified mandatory elements, including a housing element for the preservation, improvement, and development of the community's housing.

This bill would require, upon the next revision of its housing element, and each revision thereafter, a city or county to review and update one or more elements of its general plan, as necessary to address the presence of island, fringe, or legacy unincorporated communities, as defined, inside or near its boundaries, and would require the updated general plan to include specified information. This bill would also require the city or county planning agency, after the initial revision and update of

the general plan, to review, and if necessary amend, the general plan to update the information, goals, and program of action relating to these communities therein. By adding to the duties of city and county officials, this bill would impose a state-mandated local program.

(2) The Cortese-Knox-Hertzberg Act of 2000 requires a local agency formation commission to develop and determine the sphere of influence of each local governmental agency within the county and to enact policies designed to promote the logical and orderly development of areas within the sphere, and requires the commission, in preparing and updating spheres of influence to conduct a service review of the municipal services provided in the county or other area designated by the commission, and to prepare a written statement of its determinations with respect to the growth and population projections for the affected area, the present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies, financial ability of agencies to provide services, status of, and opportunities for, shared facilities, accountability for community service needs, including governmental structure, and operational efficiencies, as specified.

This bill would also require the agency to include in its written statement a determination with respect to the location and characteristics, including infrastructure needs or deficiencies, of any disadvantaged inhabited communities within or adjacent to the sphere of influence, thereby imposing a state-mandated local program. The bill would also require a commission, upon the review and update of a sphere of influence on or after July 1, 2012, to include in the review or update of each sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection to include the present and probable need for public facilities and services of disadvantaged inhabited communities within or adjacent to the sphere of influence, and would authorize the agency to assess the feasibility of governmental reorganization of particular agencies, as specified.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts

may pursue any available remedies to seek reimbursement for these costs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Hundreds of disadvantaged unincorporated communities, commonly referred to as "colonias," exist in California. There are more than 200 of these communities in the San Joaquin Valley alone. Many of these communities are geographically isolated islands, surrounded by the city limits of large and medium-sized cities.

(2) Conditions within these disadvantaged unincorporated communities evidence a distinct lack of public and private investment that threatens the health and safety of the residents of these communities and fosters economic, social, and educational inequality. Many of these communities lack basic infrastructure, including, but not limited to, streets, sidewalks, storm drainage, clean drinking water, and adequate sewer service.

(3) The Clean Water State Revolving Fund, the Safe Drinking Water State Revolving Fund, the Clean up and Abatement Account, and the Community Development Block Grant are robust and continuous sources of funding for drinking water, wastewater, and other basic infrastructure.

(b) It is the intent of the Legislature to encourage investment in these communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities.

SEC. 2. Section 56033.5 is added to the Government Code, to read:

56033.5. "Disadvantaged inhabited community" means inhabited territory, as defined by Section 56046, or as determined by commission policy, that constitutes all or a portion of a "disadvantaged community" as defined by Section 79505.5 of the Water Code.

SEC. 3. Section 56425 of the Government Code is amended to read:

56425. (a) In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies to advantageously provide for the present and future needs of the county and its communities, the commission shall develop and determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere.

(b) Prior to a city submitting an application to the commission to update its sphere of influence, representatives from the city and representatives from the county shall meet to discuss the proposed new boundaries of the sphere and explore methods to reach agreement on development standards and planning and zoning requirements within the sphere to ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere. If an agreement is reached between the city and county, the city shall forward the agreement in writing to the commission, along with the application to update the sphere of influence. The commission shall consider and adopt a sphere of influence for the city consistent with the policies adopted by the commission pursuant to this section, and the commission shall give great weight to the agreement to the extent that it is consistent with commission policies in its final determination of the city sphere.

(c) If the commission's final determination is consistent with the agreement reached between the city and county pursuant to subdivision (b), the agreement shall be adopted by both the city and county after a noticed public hearing. Once the agreement has been adopted by the affected local agencies and their respective general plans reflect that agreement, then any development approved by the county within the sphere shall be consistent with the terms of that agreement.

(d) If no agreement is reached pursuant to subdivision (b), the application may be submitted to the commission and the commission shall consider a sphere of influence for the city consistent with the policies adopted by the commission pursuant to this section.

(e) In determining the sphere of influence of each local agency, the commission shall consider and prepare a written statement of its determinations with respect to each of the following:

(1) The present and planned land uses in the area, including agricultural and open-space lands.

(2) The present and probable need for public facilities and services in the area. Upon the next review and update of a sphere of influence that occurs pursuant to subdivision (g) on or after July 1, 2012, the review and update of each sphere of influence of a city or special district that provides public facilities or services related to sewers, municipal and industrial water, or structural fire protection shall include the present and probable need for public facilities and services of any disadvantaged inhabited communities within or adjacent to its sphere of influence.

(3) The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

(4) The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency.

(f) Upon determination of a sphere of influence, the commission shall adopt that sphere.

(g) On or before January 1, 2008, and every five years thereafter, the commission shall, as necessary, review and update each sphere of influence.

(h) In determining the sphere of influence, the commission may assess the feasibility of governmental reorganization of particular agencies and recommend reorganization of those agencies when they are found to be feasible and if reorganization will further the goals of orderly development as well as efficient and affordable service delivery. The commission shall make all reasonable efforts to ensure wide public dissemination of the recommendations.

(i) When adopting, amending, or updating a sphere of influence for a special district, the commission shall do all of the following:

(1) Require existing districts to file written statements with the commission specifying the functions or classes of services provided by those districts.

(2) Establish the nature, location, and extent of any functions or classes of services provided by existing districts.

SEC. 4. Section 56430 of the Government Code is amended to read:

56430. (a) In order to prepare and to update spheres of influence in accordance with Section 56425, the commission shall conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the subregion, or any other geographic area as is appropriate for an analysis of the service or services to be reviewed, and shall prepare a written statement of its determinations with respect to each of the following:

(1) Growth and population projections for the affected area.

(2) The location and characteristics of any disadvantaged inhabited communities.

(3) Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies, with attention to ~~water, wastewater, storm water drainage,~~ *sewers, municipal and industrial water,* and structural fire protection needs or deficiencies of disadvantaged, unincorporated communities within or adjacent to the agency's proposed sphere of influence.

(4) Financial ability of agencies to provide services.

(5) Status of, and opportunities for, shared facilities.

(6) Accountability for community service needs, including governmental structure and operational efficiencies.

(7) Any other matter related to effective or efficient service delivery, as required by commission policy.

(b) In conducting a service review, the commission shall comprehensively review all of the agencies that provide the identified service or services within the designated geographic area. The commission shall assess various alternatives for improving efficiency and affordability of infrastructure and service delivery within and adjacent to the sphere of influence, including, but not limited to, the consolidation of governmental agencies.

(c) The commission shall conduct a service review before, or in conjunction with, but no later than the time it is considering an action to establish a sphere of influence in accordance with Section 56425 or Section 56426.5 or to update a sphere of influence pursuant to Section 56425.

SEC. 5. Section 65302.10 is added to the Government Code, to read:

65302.10. (a) As used in this section, the following terms shall have the following meanings:

(1) "Disadvantaged unincorporated community" means a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income.

(2) "Unincorporated fringe community" means any inhabited and unincorporated territory that is within a city's sphere of influence.

(3) "Unincorporated island community" means any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean.

(4) "Unincorporated legacy community" means a geographically isolated community that is inhabited and has existed for at least 50 years.

(b) Upon the next revision of its general plan, *and thereafter upon* each revision of its housing element made pursuant to Section 65588, the legislative body of a city or county shall review and update one or more elements of its general plan as necessary to include data and analysis, goals, *policies, and objectives, and feasible* implementation measures~~, policies, and objectives~~ to address the presence of unincorporated island, fringe, or legacy communities inside or near its boundaries. The updated general plan shall include all of the following:

(1) In the case of a city, an identification of each unincorporated island or fringe community, in or adjacent to the city's sphere of influence. In the case of a county, an identification of each legacy community within the boundaries of the county. This identification shall include a description of the community and a map designating its location.

(2) For each identified community, an analysis of all of the following:

(A) The extent to which households in the community lack access to sanitary sewer service.

(B) The extent to which households in the community lack access to safe drinking water.

(C) The extent to which the community lacks one or more of the following:

(i) Paved roads.

(ii) Storm drainage.

(iii) Sidewalks.

(iv) Street lighting.

(D) The number of households within one-quarter of a mile of public transit.

(E) The number of housing units that are in substandard condition.

(F) The number of households paying more than 30 percent of their income toward housing.

(G) The number of households in overcrowded housing.

(3) An analysis of the city's or county's current programs and activities to address the conditions or deficiencies described in paragraph (2), and an identification of any constraints to addressing those conditions or deficiencies. The analysis shall evaluate the annexation of any identified island or fringe communities.

(4) A statement setting forth the city's or county's specific, quantified goals for eliminating or reducing the conditions or deficiencies described in paragraph (2) and found to be present in an unincorporated island, fringe, or legacy community within or proximate to the boundaries of the city or county.

(5) A set of ~~flexible~~ *feasible* implementation measures designed to carry out the goals described in paragraph (4), including an identification of resources and a timeline of actions.

(c) After the initial revision of its general plan pursuant to this section, on or before the due date for the next revision of its housing element, the planning agency shall review, and if necessary amend, its general plan to update the analysis, goals, and actions required by this section.

SEC. 6. No reimbursement shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

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Attachment Eight

AB 147 (Dickinson): Traffic Impact Mitigation Fees

AMENDED IN ASSEMBLY MAY 2, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 147

Introduced by Assembly Member Dickinson

January 14, 2011

An act to add Section 66484.7 to the Government Code, relating to subdivisions.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as amended, Dickinson. Subdivisions.

The Subdivision Map Act authorizes a local agency to require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges or major thoroughfares if specified conditions are met. The Mitigation Fee Act authorizes a local agency to charge a variety of fees, dedications, reservations, or other exactions in connection with the approval of a development project, as defined.

This bill would authorize a local ordinance to require payment of a fee subject to the Mitigation Fee Act, as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing transportation facilities, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 66484.7 is added to the Government Code, to read:

66484.7. (a) A local ordinance may require the payment of a fee, subject to the Mitigation Fee Act (Chapter 5~~ commencing~~ *(commencing* with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1), as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing transportation facilities. For purposes of this section, transportation facilities mean pedestrian, bicycle, transit, and traffic-calming facilities. The ordinance may require payment of fees pursuant to this section if all of the following requirements are satisfied:

(1) The ordinance refers to the circulation element of the general plan and to the provisions of the circulation element that identify those transportation facilities that are required to minimize the use of automobiles and minimize the traffic impacts of new development on existing roads, if the circulation element provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65091 and shall include preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements that are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. A description of the boundaries of the area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body

conducting the hearing with the recorder of the county in which the area of benefit is located. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing agency shall make provision for payment of the share of improvement costs apportioned to those lands from other sources.

(4) The ordinance provides that if, within the time when protests may be filed under the provisions of the ordinance, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under the provisions of this section.

(b) Any protest may be withdrawn by the owner protesting, in writing, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

(c) If any majority protest is directed against only a portion of the improvement, then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body may commence new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section prohibits a legislative body, within that one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(d) Nothing in this section precludes the processing and recordation of maps in accordance with other provisions of this division if the proceedings are abandoned.

(e) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned transportation facility fund. A fund shall be established for each planned transportation facility project. If the benefit area is one in which more than one other transportation facility is required to be constructed, a fund may be established covering all of the other transportation facility projects in the benefit area. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement or improvements serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of constructing the improvement or improvements.

(f) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(g) A local agency imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund for any advances from other transportation facility funds established to finance the construction of those improvements.

(h) A local agency imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of other transportation facilities. However, the sole security for repayment of that indebtedness shall be moneys in planned transportation facility funds.

(i) As used in this section, "construction" includes design, acquisition of rights-of-way, administration of construction contracts, and actual construction.

~~(i)~~

(j) Nothing in this section precludes a county or city from providing funds for the construction of other transportation facilities to defray costs not allocated to the area of benefit.

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Attachment Nine

AB 931 (Dickinson): CEQA Exemption for Affordable Infill Housing

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 931

Introduced by Assembly Member Dickinson

February 18, 2011

An act to amend Section 21159.24 of the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 931, as amended, Dickinson. Environment: CEQA exemption: housing projects.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA exempts infill housing projects meeting ~~certain~~ specified criteria, including, among other things, *that* a community-level environmental review ~~that~~ was adopted or certified within 5 years of the date that the application for the project is deemed complete and ~~that~~ the project promotes higher density infill housing. CEQA conclusively presumes that a project with a density of at least 20 units per acre promotes higher density infill housing. *For the purposes of this*

exemption, CEQA defines "residential projects" to mean, among other things, a use consisting of residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project.

~~This bill would extend the above time period to 20 years. The bill would lower the density to at least 15 units per acre for the above presumption to apply.~~

~~(2) For the purposes of the above exemption, CEQA defines "residential projects" to mean, among other things, a use consisting of residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project~~

This bill would increase the total floor area of the project *that may be* used for neighborhood-serving goods, services, or retail uses *to a level* that does not exceed ~~35%~~ *25%* of the project.

~~(3)~~

(2) Because this bill would require a lead agency to determine whether a housing project meets the above criteria to qualify for an exemption from CEQA, the bill would impose a state-mandated local program.

~~(4)~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 21159.24 of the Public Resources Code is amended to read:

21159.24. (a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

(1) The project is a residential project on an infill site.

(2) The project is located within an urbanized area.

(3) The project satisfies the criteria of Section 21159.21.

(4) Within ~~20~~ *five* years of the date that the application for the project is deemed complete pursuant to Section 65943 of the

Government Code, community-level environmental review was certified or adopted.

(5) The site of the project is not more than four acres in total area.

(6) The project does not contain more than 100 residential units.

(7) Either of the following criteria are met:

(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop.

(9) The project does not include any single level building that exceeds 100,000 square feet.

(10) The project promotes higher density infill housing. A project with a density of at least ~~15~~ *20* units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as a result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed ~~35~~ *25* percent of the total floor area of the project.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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