

## Brian Popovich

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**From:** Weston Montgomery  
**Sent:** Monday, October 24, 2022 8:46 AM  
**To:** Brian Popovich  
**Subject:** FW: Public Comment for October 25th City Council Meeting

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**From:** ANITA CRAMM <[REDACTED]>  
**Sent:** Sunday, October 23, 2022 7:50 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Public Comment for October 25th City Council Meeting

**From:** [REDACTED]  
**Sent:** Thursday, October 20, 2022 8:41 AM  
**To:** [REDACTED]  
**Subject:** Re: Development Proposal for the City of Ojai

Good morning, Anita,

I have passed your information over to our housing element team for review. Ojai has adopted their housing element but are currently out of compliance so we will make sure to bring this up once we receive an updated draft from Ojai. We will also review your information for any potential violations and reach out as necessary.

Regards,



**John Buettner**

Housing Accountability Manager, Housing Policy Division  
Housing and Community Development

[REDACTED] | Sacramento, CA 95833

Phone: [REDACTED]



***Above email is response to below email:***

Dear Mr. Seeley,

As you can see in the email below, I miss spelled your name. I apologize for my error. Thus, I am forwarding you the email I originally meant to send you.

Sincerely,  
Anita Cramm

From: [ANITA CRAMM](#)

Sent: Sunday, October 16, 2022 7:30 PM

To: [REDACTED]

Subject: Development Proposal for the City of Ojai

Dear Mr. Olmstead and Mr. Seely,

I would respectfully like to bring to your attention a proposed 67 unit housing development for the city of Ojai that will cover four properties across the city. The proposed agreement between the city and developer was negotiated in private by an ad-hoc committee. Specific concerns from the community include (but are not limited to):

1. The agreement is in conflict with the Housing Element of the General Plan for the City of Ojai. Community members in the three low income tiers now live in 33 homes that will be converted to condominiums as a part of the project. The plan only replaces 7 of these homes for a net loss of 25 homes to low income residents. The plan includes a tenant relocation plan, but it does not replace the homes lost in the evictions. Rent subsidies for a year in higher priced project condos will leave tenants with upside down rent after a year, and in all likelihood, will be forced to leave our community.

Some Text from Ojai's Housing Element for 2021- 2029 (currently before the state):

"the proposed housing update is mandated by the state to assure that local governments adequately plan to meet the existing and projected needs of all economic sectors of the community", "state law requires quantification and analysis of existing and projected needs of extremely low income households", "with particular emphasis placed on the needs of persons and families of lower income households and those with special needs"

#### Ojai Housing Element

Progress in achieved objectives 2014-2021 (housing for 4 income levels)

	Objective	Progress	New Development
Extremely Low	44	0	0
Very Low	43	0	1
Low	59	0	6
Moderate	70	70	20

The project will take progress for the 3 low incomes into the negative. There is no quantification of resident income levels or those with special needs that will be

displaced from their homes. Most (possibly all) of current tenants are of low income, and there are many with special needs. The city has met it's goals for moderate income, thus this is not a priority for the city. The community also needs to be shown how this meets the Regional Housing Needs Assessment allocation.

2. This proposed agreement was negotiated by an ad-hoc committee behind closed doors. There has been no transparency or dialogue with the community. A document dump occurs the required 72 hours before the City Council Public Hearing meeting. The Friday the 14<sup>th</sup> document for the hearing on the 18<sup>th</sup> is 366 pages, making a full understanding of the proposal near impossible. Why wasn't the community allowed to be part of a process that, if approved on Tuesday October 18, 2022, will implement sweeping changes across our city? At the July 12<sup>th</sup> hearing an estimated 130 people showed up in opposition to the project.
3. If the proposal is approved the developer will get categorical CEQA exemptions and will not be required to do any EIRs. There is no data to support any claims about environmental quality or impacts. For Cottages Among the Flowers, the proposed agreement between the city and the developer has a document titled " Notice of Exemption to the Sacramento Office of Planning and Research" "For CEQA Historical Resources" it states: " The project applicant intends to keep the exterior of the eight dwelling units to be renovated unchanged for the most part – with the exception of some paint and any necessary minor repairs." The same document's floor plans for the cottages show two walls demolished and an increase in size for all of the cottages. This represents a document falsification to the State of California. Is this really legal?

The Ojai community would appreciate a response from you on this important issue. Thank you.

Sincerely,  
Anita Cramm

Cottages Among the Flowers Resident  
Ojai Community Member Since 2005

Anita Cramm  
Founder

Colibri Vibrational Science  
[www.colibrivibrationalscience.com](http://www.colibrivibrationalscience.com)

## Brian Popovich

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**From:** Weston Montgomery  
**Sent:** Monday, October 24, 2022 5:45 PM  
**To:** Brian Popovich  
**Subject:** FW: Verify the Income of the Tenants at Mallory  
**Attachments:** Tenant Statements - Income.pdf

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**From:** Jules Weissman <[REDACTED]>  
**Sent:** Thursday, October 20, 2022 10:27 AM  
**To:** weston.motogmery@ojai.ca.gov  
**Cc:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>; Gail Davis <gail.davis@ojai.ca.gov>  
**Subject:** Verify the Income of the Tenants at Mallory

Hello ~~Gail~~ Weston,

I would like an accurate, independent income survey of the tenants at the Cottages/Mallory. Meiners Oaks Water District is doing this in our neighborhood currently. This information will help the City understand the impacts of this Development and prepare for them. It may also be helpful to organizations such as Help of Ojai. I know they are very concerned about the effects of this project. It may even help the City receive Grants or Public funds, such as the \$30 million towards affordable housing recently allocated by the Ventura Board of Supervisors. I think the Becker Group should have to pay for this survey.

At the September council meeting, James Vega, in his presentation to the City, said:

"In 2020, as part of all these discussions, the City received information from the owner of the property that indicated that seven of the eight existing units were occupied by a person who would qualify as a person of a moderate-income level of affordable housing, the eighth unit was inhabited by a person that would qualify as a low-income level of affordable housing. None of the units were deed-restricted, but they were occupied by people that would have qualified for affordable housing."

At the July Planning Commission meeting, Vega went further to say that there's only one low-income tenant and absolutely no very low-income tenants at either The Cottages or Mallory Way, this was in response to direct inquiry from Planning Commissioner Lottes.

I have direct evidence that the Becker Group misrepresented its tenants' incomes. I gathered statements from residents at 312 Aliso and 412 Mallory that they make nowhere near the median income and that there was no effort from the City to verify the incorrect income information given to them by the Developer.

Eleven of these I sent on the afternoon of October 18, but one additional statement arrived after I had sent it. I want to ensure it is included in the record, so I have added it to the document and attached it here.

No matter how the City moves forward, there must be complete transparency regarding the tenants' income. Becker misrepresented this information to the City, and the fact that the lie has persisted through this whole process is an injustice to the tenants and makes it impossible to evaluate the Developer's relocation plan and make appropriate amendments/recommendations or to prepare for its impacts.

Thank you.

Julia Weissman

PS: in the auto reply from Gail's e-mail, I think your last name may be misspelled as "Motogmery." cc-ing City Clerk just in case.

From: Fran Gealer <[REDACTED]>

Subject: proof of income

Date: October 18, 2022 at 2:11:55 PM PDT

To: [REDACTED]

Cc: Jules Weissman <[REDACTED]>

I Fran Gealer, live at [REDACTED] and do not make anywhere near \$96,950 a year.

The city has never asked me what my income is.

Thank you so much.

From: Paul Magoulas <[REDACTED]>  
Subject: Income at Mallory Way  
Date: October 18, 2022 at 2:11:49 PM PDT  
To: [REDACTED]  
Cc: [REDACTED]

Joyce Magoulas lives at [REDACTED], and makes nowhere near the median income of \$96,950.  
The city has never asked her what her income is.

(Son, Legal representative of Joyce Magoulas)

Paul Magoulas

US↯† [REDACTED] Ojai, CA

GR↯† [REDACTED], Athens, Greece

WhatsApp↯†+ [REDACTED]  
[REDACTED]

From: Paul Magoulas <[REDACTED]>  
Subject: Income at the cottages  
Date: October 18, 2022 at 2:06:15 PM PDT  
To: [REDACTED]  
Cc: [REDACTED]

I Paul Magoulas & Myrto Karamitsou live at [REDACTED], and we make nowhere near the median income of \$96,950.

The city has never asked me what my income is.

Paul Magoulas

US↯† [REDACTED], Ojai, CA

GR↯†+ [REDACTED], Athens, Greece

WhatsApp↯†+ [REDACTED]  
[REDACTED]

From: ANITA CRAMM <[REDACTED]>

Subject: Income level

Date: October 18, 2022 at 3:26:03 PM PDT

To: "[REDACTED]"

Cc: "[REDACTED]"

I, Anita Cramm, live at [REDACTED], and make no where near the moderate income of \$96,500.  
The city has never asked me what my income is.

✎

Anita Cramm

✎

Anita Cramm

Founder

✎

Colibri Vibrational Science

[www.colibrivibrationalscience.com](http://www.colibrivibrationalscience.com)

[REDACTED]

✎

From: Uta Ritke <[REDACTED]>

Subject: Mallory Way Tenant Income

Date: October 18, 2022 at 2:23:59 PM PDT

To: [REDACTED]

Cc: Jules Weissman <[REDACTED]>

Hello Sabrina,

I Uta Ritke live at [REDACTED], Ojai CA 93023 and I make nowhere near the moderate income of \$96,950.

The city has never asked me what my income is.

Best wishes,

Uta Ritke

From: tatiana zarmati <[REDACTED]>  
Subject: Moderate income at Mallory Way apartments  
Date: October 18, 2022 at 3:08:17 PM PDT  
To: [REDACTED]  
Cc: [REDACTED]

To whom it may concern:

I, Tatiana Moune, [REDACTED] and I make nowhere near the moderate income of \$96,950.  
The city has never asked me what my income is.

Thank you,  
Tatiana

Sent from my iPhone

From: Samantha Sherman <[REDACTED]>  
Subject: Save the cottages  
Date: October 18, 2022 at 3:45:40 PM PDT  
To: [REDACTED]  
Cc: [REDACTED]

Hello,

I, Sammy Sherman, used to live at [REDACTED], Ojai, CA 93023, two years ago, and I made and make nowhere near the moderate income of \$96,950. The city has never asked me what my income was.

Sincerely,  
Sammy Sherman

Hi Sabrina,

I sent an email to you on advice from my neighbor Deborah, not knowing to whom I was writing, in regards to annual incomes claimed by Jeff Becker and his greedy cohorts. Now I have learned that this email was sent out to you—I wanted to thank you. I spoke briefly with you after your address at the August city council meeting that focused on the Cottages. I recall that you are an environmental lawyer and I am grateful for you both going to bat for us here in this piece of wildlife sanctuary and also for all creatures who have no voice in our legal systems.

I live as an artist and also restore homes for an income. I have a lot of time here at home among the trees. I have seen incredible amounts of birds and other wildlife. Despite the public perception of skunks, raccoons, coyotes, bears, mountain lions and other locally-spotted fauna who make their way through at times—I know we are blessed. And to have such a visionary current design (from 1930's) which has allowed this land to remain mostly permeable for both precipitation and transpiration of moisture (for the benefit of all the microbiome and life it permits) threatened with asphalt, concrete, construction by-product toxins and, likely, future pesticide and herbicide inundation along this barranca and wildlife corridor, is damnable in my eyes. Becker should be forced to sell to someone who respects life and the rare example of ecological development that is seen here in The Cottages Among The Flowers. Please feel free to contact me if there is any way that I can help you help us. With Much Gratitude,

Scott M. Willing

[REDACTED]

From: gadsby <[REDACTED]>  
Subject: Fwd: My income  
Date: October 18, 2022 at 4:41:58 PM PDT  
To: [REDACTED]

Sent from my happy place.¬†

Begin forwarded message:

From: gadsby <[REDACTED]>  
Date: October 18, 2022 at 4:28:25 PM PDT  
To: [REDACTED]  
Subject: My income

ØI make nowhere near \$96,000. The city has not asked for my income.  
Mattie Gadsby  
[REDACTED]

From: D M <[REDACTED]>  
Subject: Tenant income at Cottages Among the Flowers  
Date: October 18, 2022 at 3:24:25 PM PDT  
To: Sabrina <[REDACTED]>  
Cc: [REDACTED]

To Whom it May Concern, and Ojai City Council

I, Deborah Murphy, live at [REDACTED], Ojai, CA 93023  
and I make nowhere near the moderate income of \$96,950.  
The city has never asked me what my income is.

I would gladly provide my income discretely, to the appropriate city employee.

Regards,  
Deborah Murphy

Sent from my iPhone

From: Dara Paprock <[REDACTED]>  
Subject: cottages dp f  
Date: October 18, 2022 at 2:40:43 PM PDT  
To: [REDACTED]

I, dara paprock, live at  
[REDACTED] and I make nowhere near the moderate income of \$96,950.  
The city has never asked me what my income is.  
dara paprock

Sent from my iPhone

From: Dara Paprock <[REDACTED]>  
Subject: cottages Eb f  
Date: October 18, 2022 at 2:43:18 PM PDT  
To: [REDACTED]

for joint tenant ( we are both on various forms of disability)

Sent from my iPhone

ÔªØ

Elias Brown lives at  
[REDACTED] and makes nowhere near the moderate income of \$96,950.  
The city has never asked me what his income is.  
dara paprock, conservator for Elias Brown

Sent from my iPhone

From: Nita√±a Rey <[REDACTED]>

Subject: Income Statement

Date: October 18, 2022 at 2:39:27 PM PDT

To: "[REDACTED]"

Cc: [REDACTED]

I Nita√±a Rey (a.k.a Sanchez) live at [REDACTED] in Ojai (Cottages Among the Flowers) and I make nowhere near the moderate income of \$96,950.

The city has never asked me what my income is.

Sent from my etch-a-sketch

## Brian Popovich

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**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 11:33 AM  
**To:** Brian Popovich  
**Subject:** FW: City council 10/25/22 item 4

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**From:** Bill [mailto:wdmiley32@gmail.com]  
**Sent:** Monday, October 24, 2022 11:21 PM  
**To:** Bill <[REDACTED]>  
**Cc:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>; James Vega <james.vega@ojai.ca.gov>; Lucas Seibert <Lucas.seibert@ojai.ca.gov>; Robin Godfrey <Robin.Godfrey@ojai.ca.gov>; [REDACTED]

**Subject:** Re: City council 10/25/22 item 4

Hi. I left out a date in my first sentence... Specific elements are outstanding or important to note. (I have reviewed the YouTube transcript of this meeting (**10/18/22**) for public presentation themes and read the many emails.) □

Sent from my iPad

On Oct 24, 2022, at 9:30 PM, Bill <[REDACTED]> wrote:

10/24/22

To: Ojai City Council

Cc:city manager, planning director, others  
From: Bill Miley  
Subject: council meeting 10/25/22 item 4...Becker Project

Hello. As you know I fully support this 4 part development project.

Specific elements are outstanding or important to note. (I have reviewed the YouTube transcript of this meeting for public presentation themes and read the many emails.)

1. Since none of the Cottages or Mallory are deed restricted now, this Plan will create 27 new or rehabbed 55 year deeded rental affordable living homes. The first in Our City in 44 years.
2. About 14 speakers clearly stated they were in support of this Plan. There were at least 9 speakers who wanted houses to be rehabbed for affordable and new ones to be built. There were 5 speakers who commented on the water situation (On 7/12/22 there were 14).
3. One issue which seems misunderstood is the level of affordability existing at Mallory Way. Several speakers including several emails focused on the issue of replacement affordable units being removed as low income...they are not) with replacement units (as mostly moderate levels).

The 2019 tenant survey of Mallory and Cottages (which missed some tenants) showed the annual income for current tenants. And all rents were Below Market Rate (BMR). Most were in the Moderate category...that was in 2019. **See screen shot of state Income Limits chart for 2019. (With a median income of 97,800 for all of Ventura County).** The columns show number of persons living in the home...left to right starting with 1 person rising to 8 persons. (<https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2019.pdf>)

11 of 12

Area Median Income: <b>\$64,800</b>	Low Income	36300	41500	46700	51850	56000	60150	64300	68450
	<b>Median Income</b>	45350	51850	58300	<b>64800</b>	70000	75150	80350	85550
	Moderate Income	54450	62200	70000	77750	83950	90200	96400	102650

Trinity County  Area Median Income: <b>\$64,800</b>	Extremely Low	13650	16910	21330	25750	30170	34590	39010	42800
	Very Low Income	22700	25950	29200	32400	35000	37600	40200	42800
	Low Income	36300	41500	46700	51850	56000	60150	64300	68450
	<b>Median Income</b>	45350	51850	58300	<b>64800</b>	70000	75150	80350	85550
	Moderate Income	54450	62200	70000	77750	83950	90200	96400	102650

Tulare County  Area Median Income: <b>\$64,800</b>	Extremely Low	13650	16910	21330	25750	30170	34590	39010	42800
	Very Low Income	22700	25950	29200	32400	35000	37600	40200	42800
	Low Income	36300	41500	46700	51850	56000	60150	64300	68450
	<b>Median Income</b>	45350	51850	58300	<b>64800</b>	70000	75150	80350	85550
	Moderate Income	54450	62200	70000	77750	83950	90200	96400	102650

Tuolumne County  Area Median Income: <b>\$66,700</b>	Extremely Low	13950	16910	21330	25750	30170	34590	39010	43400
	Very Low Income	23250	26600	29900	33200	35900	38550	41200	43850
	Low Income	37200	42500	47800	53100	57350	61600	65850	70100
	<b>Median Income</b>	46700	53350	60050	<b>66700</b>	72050	77350	82700	88050
	Moderate Income	56050	64050	72050	80050	86450	92850	99250	105650

Ventura County  Area Median Income: <b>\$97,800</b>	Extremely Low	22000	25150	28300	31400	33950	36450	39010	43430
	Very Low Income	36650	41850	47100	52300	56500	60700	64900	69050
	Low Income	58600	67000	75350	83700	90400	97100	103800	110500
	<b>Median Income</b>	68450	78250	88000	<b>97800</b>	105600	113450	121250	129100
	Moderate Income	82150	93900	105600	117350	126750	136150	145500	154900

4. Several public comments focused on losing affordable numbers in this replacement plan. They stated there would be a net loss. They may have included the Cottages in their thinking. (Which were zoned on separate parcels years ago via a Tract Map.) These are exempt from the replacement ordinance. The loss is 18 of the current Mallory Way 25. Seven of the 25 will be rehabbed and kept as affordable for 55 years. Cottages with 8 units with current rents considered Below Market Rate (BMR) were rented at what in 2019 was considered affordable. Because of the Tract Map single lot zoning they are exempt from the replacement ordinance.

Mallory Way is the only part requiring replacement ordinance enforcement and this is 25 units.

The revised Development Agreement increased the number of new or remodeled units to 27.

5. Public commentary themes have changes significantly from the 7/12/22 hearing. Few on water this time. The degree of required housing for different incomes was emphasized. Concern for more low income units. Concern for good tenant protection and relocation. Newer CEQA. State income levels for affordable housing too high. Concern was expressed about the housing needs in our city.

6. What is missing in this discussion? So far there has been little or no discussion where money comes from to keep affordable housing affordable for 55 years. In

Becker Group proposal it is all private monies. All non-profit developers have to acquire tax credits, state bond funding or federal housing support.

7. This crafted relocation plan provides much more than is legally required by California State Law. **Using AB-1482 Tenant Protection Act of 2019, the section on No-fault Just Cause there is only one month's rent required for tenant relocation.** See screen shots below. (I may be missing some pandemic laws but this is what i found). [https://es.sonicurlprotection-sjl.com/click?PV=2&MSGID=202210250621305123917&URLID=1&ESV=10.0.19.7431&IV=8DFF5FCB6184981D275ED715A20F2374&TT=1666678897077&ESN=iY5n0aoG9mTAgt0%2FUlKvQij2iU3Kr6pdFGVCRH6TwmM%3D&K\\_V=1536961729280&B64\\_ENCODED\\_URL=aHR0cHM6Ly9sZWdpbmZvLmxlZ2lzbGF0dXJlLnNhLmdvdi9mYWNLcy9iaWxsVGV4dENsaWVudC54aHRtbD9iaWxsX2lkPTlwMTkyMDIwMEFCMTQ4MiZuYnNwOw&HK=55E2CD66C57401C2B841C36CBEEE82F57E213D5E7D266673F5FB9D9A8031C23E](https://es.sonicurlprotection-sjl.com/click?PV=2&MSGID=202210250621305123917&URLID=1&ESV=10.0.19.7431&IV=8DFF5FCB6184981D275ED715A20F2374&TT=1666678897077&ESN=iY5n0aoG9mTAgt0%2FUlKvQij2iU3Kr6pdFGVCRH6TwmM%3D&K_V=1536961729280&B64_ENCODED_URL=aHR0cHM6Ly9sZWdpbmZvLmxlZ2lzbGF0dXJlLnNhLmdvdi9mYWNLcy9iaWxsVGV4dENsaWVudC54aHRtbD9iaWxsX2lkPTlwMTkyMDIwMEFCMTQ4MiZuYnNwOw&HK=55E2CD66C57401C2B841C36CBEEE82F57E213D5E7D266673F5FB9D9A8031C23E)

## AB-1482 Tenant Protection

Text	Votes	History	Bill Analysis
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SHARE THIS:



An act to add and repe

[ Approved by Gover

provided in Section 1946 of the tenant's intention to terminate the hiring of the real property, or makes a written offer to surrender that is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice as described in paragraph (5) of Section 1161 of the Code of Civil Procedure.

(2) No-fault just cause, which includes any of the following:

(A) (i) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.

(ii) For leases entered into on or after July 1, 2020, clause (i) shall apply only if the tenant agrees, in writing, to the termination, or if a provision of the lease allows the owner to terminate the lease if the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, unilaterally decides to occupy the residential real property. Addition of a provision allowing the owner to terminate the lease as described in this clause to a new or renewed rental agreement or fixed-term lease constitutes a similar provision for the purposes of subparagraph (E) of paragraph (1).

(B) Withdrawal of the residential real property from the rental market.

(C) (i) The owner complying with any of the following:

(I) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.

(II) An order issued by a government agency or court to vacate the residential real property.

(III) A local ordinance that necessitates vacating the residential real property.

(ii) If it is determined by any government agency or court that the tenant is at fault for the condition or conditions triggering the order or need to vacate under clause (i), the tenant shall not be entitled to relocation assistance as outlined in paragraph (3) of subdivision (d).

(D) (i) Intent to demolish or to substantially remodel the residential real property.

(ii) For purposes of this subparagraph, "substantially remodel" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.

(c) Before an owner of residential property issues a notice of violation, the owner shall first give the tenant a copy of paragraph (3) of Section 1161 and the notice, a three-day notice to

(d) (1) For a tenancy for which the owner issues a notice of violation under (b), the owner shall, regardless of

(A) Assist the tenant to relocate

(B) Waive in writing the payment of

(2) If an owner issues a notice of violation, the tenant's right to relocation assistance shall be waived for the final month of the tenancy as waived and that no rent is due

(3) (A) The amount of relocation assistance shall be the effect when the owner issued the notice, in calendar days of service of the

End. We need to be kind to folks in our city who are and can become rent burdened or home deprived. This is a good start after 44 years of nothing except ADU's which are not guaranteed affordable, available or deeded. I urge your council to strongly support a second Yes.

Sincerely, Bill Miley

Sent from my iPad

## Brian Popovich

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**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 11:33 AM  
**To:** Brian Popovich  
**Subject:** FW: Public Comment #2 for October 25th City Council Meeting

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**From:** ANITA CRAMM <[REDACTED]>  
**Sent:** Monday, October 24, 2022 5:50 PM  
**To:** Weston Montgomery <[Weston.Montgomery@ojai.ca.gov](mailto:Weston.Montgomery@ojai.ca.gov)>  
**Subject:** Public Comment #2 for October 25th City Council Meeting

Here is the 2<sup>nd</sup> comment email I sent – I want to be sure it is included in Public comments for tomorrow.

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**From:** [ANITA CRAMM](#)  
**Sent:** Monday, October 24, 2022 2:10 PM  
**To:** [Weston Montgomery](mailto:Weston.Montgomery@ojai.ca.gov)  
**Subject:** Public Comment #2 for October 25th City Council Meeting

The following excerpts are from:

Phase I Historic  
Resources Report  
Cottages Among The Flowers  
312-314 West Aliso Street  
Ojai CA, 93023

September 26, 2006

Prepared for:  
Whitman Architectural Design  
111 W. Topa Topa  
Ojai, CA 93023

Prepared by:  
San Buenaventura Research Associates  
Santa Paula, CA

“Perhaps due to the scarcity of affordable rental housing, John Burnham was induce to develop the Cottages Among the Flowers, a small group of homes that he envisioned would be rented by teachers, artists and families.”

“On October 11 1929, *The Ojai* newspaper reported:

...Mr. Burnham plans to start construction within a very short time of eight or ten residences which will form a court for rental purposes.”

“Because the subject property may qualify for local landmark designation, the proposed project may represent an adverse impact on historic resources and further analysis of these impacts will be discussed.”

#### *“Conclusion*

Overall, this project conforms to some of the *Secretary of the Interior’s Standards* in terms of the design Of the proposed new construction, but not in terms of the treatment of historic fabric and the removal of important character defining elements of the buildings. The large additions built on the highly visible elevations radically alter the historic form (plans and elevations) and, in some cases, remove character defining features. The roof changes are also significant. The original design of complex and compact roof-lines was intended to produce an architectural informality which is substantially diminished with the proposed new larger and more massive roof forms.

#### **B. Mitigation Measures**

If implemented as proposed, the application of the following additional mitigation measures will reduce the environmental impacts of this project but not to a less than significant and adverse level.”

The following text is from the:

“4-Ojai Bungalows Development Agreement” from the agenda for Ojai City Council October 25<sup>th</sup> Meeting, on page 269:

CEQA: California Environmental Quality Act

R:\Agenda Review Process\2022\10-18-22\Att D docs\NOE for Cottages 10-18-2022 (Counsel Edits)(293411.2).docx

293411.v2

#### NOTICE OF EXEMPTION

To: Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

From: City of Ojai  
401 S. Ventura Street  
Ojai, CA 93023

“The project applicant intends to keep the exterior of the existing dwelling units unchanged (with the exception of some paint and any necessary minor repairs), but may perform interior renovations of the units.”

My comment on above CEQA Exemption:

The above applicant intention is a falsification of the CEQA Exemption document to the State of California. This falsification is clearly demonstrated in the proposed agreement between the city and developer in the floor plans which call for the destruction of 2 walls and size expansion for each of the Cottages Among the Flowers plans, as well as in the San Buenaventura Historic Resources Report. This falsification has also been noted in the previous City Council Public Hearings and written comments for the proposed development agreement between the city and developer.

Anita Cramm  
Founder

Colibri Vibrational Science  
[www.colibrivibrationalscience.com](http://www.colibrivibrationalscience.com)



## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 11:34 AM  
**To:** Brian Popovich  
**Subject:** FW: New submission from Contact Us Via E-mail

---

**From:** Apri Bondurant  
**Sent:** Tuesday, October 25, 2022 8:30 AM  
**To:** [REDACTED]

**Cc:** Robin Godfrey <Robin.Godfrey@ojai.ca.gov>; James Vega <james.vega@ojai.ca.gov>; Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** FW: New submission from Contact Us Via E-mail

Hello Mayor and Council,

Please view email below from Fran Gealer, in regards to, the Becker Group Development. Thank you.

Best,



**Apri Bondurant**  
**Management Analyst**

401 S. Ventura St • Ojai, CA 93023  
Ojai City Hall • City Manager's Office

☎ (805) 646-5581 ext. 105  
✉ [apri.bondurant@ojai.ca.gov](mailto:apri.bondurant@ojai.ca.gov)  
🏠 [ojai.ca.gov/my-ojai](http://ojai.ca.gov/my-ojai)

---

**From:** FranGealer [<mailto:fransp108@gmail.com>]  
**Sent:** Monday, October 24, 2022 9:06 PM  
**To:** Apri Bondurant <[Apri.Bondurant@ojai.ca.gov](mailto:Apri.Bondurant@ojai.ca.gov)>  
**Subject:** New submission from Contact Us Via E-mail

Name
Fran Gealer
Address
[REDACTED] [REDACTED] Ojai, CA 93023 United States <a href="#">Map It</a>
Email

██████████

**Comments:**

Dear Mayor Stix , Council Members, and City Staff:

I have lived in ████████ at Mallory Way for 9 years. My annual income is substantially less than \$70,000. Mine is not a “moderate income” household as claimed in the 2019/2020 Survey of Rents sent by The Becker Group to the city. Neither is my annual income anywhere near what constitutes “moderate income” by the county’s numbers in 2022.

There are other tenants at the Mallory Way property who are also on the Survey of Rents alleged to be of “moderate income” households, whom I know meet the “low income” threshold set by the County.

Because of this, I believe there should be a new 2022 tenant income report conducted to confirm how many households are extremely low, very low, low, and moderate income levels, before any approval of a development agreement.

My rent was \$1050 in 2019 and was just raised to \$1210 in September 2022.

Thank you so much.

Sincerely,  
Fran Gealer

## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 11:34 AM  
**To:** Brian Popovich  
**Subject:** FW: Becker Projects

---

**From:** Larry Wilde [mailto: [REDACTED]]  
**Sent:** Tuesday, October 25, 2022 9:49 AM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Fwd: Becker Projects

— —  
Larry Wilde  
LIV Sotheby's International Realty  
[REDACTED]  
[www.Wilde-Wilde.com](http://www.Wilde-Wilde.com)  
BRE: 00521627



Begin forwarded message:

**From:** Larry Wilde <[REDACTED]>  
**Subject:** Becker Projects  
**Date:** October 25, 2022 at 8:04:35 AM PDT  
**To:** [cityclerk@ojai.ca.gov](mailto:cityclerk@ojai.ca.gov)

When is enough enough?

Please enforce architectural guidelines provided to applicants at the counter, and please hold to the zoning restrictions set forth on all projects, but if the zoning is "X" and the applicant submits "X", please have the bureaucrats and powers at be help the applicant through the process. Tax dollars have been paid, and governments need to acknowledge the applicants rights.

The "Becker" project will not only enhance the architectural elements for the City of Ojai, but will minimize water use and environmental upgrades that currently do not exist on the old-existing structures. Sure we can find some fault in all of us, and the proposed new construction, but the applicant is simply replacing old units with new. Get out of the way and approve these projects! Remember, you work for us, the tax payer. I have no financial gain in any of this...

Thank you,  
Larry Wilde  
— —

Larry Wilde  
LIV Sotheby's International Realty



[www.Wilde-Wilde.com](http://www.Wilde-Wilde.com)

BRE: 00521627



## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 11:34 AM  
**To:** Brian Popovich  
**Subject:** FW: Tony Thacher Local Downtown Historic District Endorsement ITEM 5  
**Attachments:** Ojai Historic Overlay - Tony Thacher - Oct. 7, 2022.pdf

**From:** Brian Aikens [mailto: [REDACTED]]  
**Sent:** Tuesday, October 25, 2022 10:39 AM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Tony Thacher Local Downtown Historic District Endorsement

Weston, I was told by Maura that you are the one who comments and letters for tonight's Council meeting should be submitted. This is for Discussion Item #5.

I have permission from Tony Thacher to share this publicly. In fact, there is the possibility, he may also share it himself.

Thank you Weston.

Brian

Re: Ojai Historic Preservation Committee regular meeting,  
Thursday, October 13, 2022  
Item Number:

My name is Anson B. (Tony) Thacher and I live outside the city boundaries at [REDACTED]  
[REDACTED], Ojai, CA 93023.

Anne and I own the easternmost proposed 'contributing' property on the Downtown Historic District map issued by the Historic Preservation Commission. It's situated on the corner of Ojai Avenue and Fox Street and is currently occupied by Ojai Roti. My father-in-law built the structures there as a gas station in the '30's; and after considerable underground remediation work, it was remodeled and repurposed in the late '80's with guidance from renown Ojai architect Zelma Wilson. Anne spent the first 12 years of her life in the small house at the back of the property.

We have voted 'YES,' in favor of the proposed district.

When, more than 110 years ago, Edward Drummond Libbey promulgated and succeeded in convincing the citizens of the Ojai Valley that their somewhat ramshackle downtown area could be made over into an architecturally and artful city beautiful project he did a great service to those of us who followed and are fortunate to live and enjoy our iconic city center. Five years ago, in April, 2017, the Ojai Valley Museum along with the help of the City, the Ojai Civic Association and the citizenry of the valley enacted an event from 100 years earlier: the symbolic act of Mr. Libbey handing over the deed to the post office and what we now call Libbey Park, to my grandfather, Sherman Thacher, and to the newly formed Ojai Civic Association. As you know there was no city at that juncture since we just celebrated that 100<sup>th</sup> anniversary last June. But may I remind you of your ownership of the Ojai Valley Museum that it was also largely built and financed by Mr. Libbey and the townspeople to replace the previous Catholic chapel which had burned in the devastating fire in the fall of that same year, 1917. This nationally registered historic building, built in the same Spanish revival architectural style anchors the proposed district on the west. I could go on about folks such as architect Rodney Walker's and local builder, Jerry Peterson's '80's remodel of the El Roblar Hotel in keeping with the downtown image as we would expect, in spite of Walker's preeminence as a glass and open space modernist.

There seems to be quite a bit of deliberate misinformation being spread around about the proposed Downtown Historic District. My understanding is that it protects what the external visible portions of the downtown buildings will look like and also provides access to state funds for remodeling on a competitive basis. Yes, there are many details to any conceptual building permitting in the city, but this proposal simply makes the process more transparent while protecting our precious architecturally iconic downtown area.

I will not be around to envision what the southwest corner of Ojai Avenue and Fox Street will look like in 50 years, but I feel hopeful that it will still be in keeping with our forefather vision of what a city beautiful should be. Thus, my vote of 'yes' on this proposal.

## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 11:41 AM  
**To:** Brian Popovich  
**Subject:** FW: City Council Agenda Item, The Cottages and Mallary Way Bungalows

-----Original Message-----

From: Joe Kreutz [mailto: ]  
Sent: Tuesday, October 25, 2022 11:38 AM  
To: Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
Subject: City Council Agenda Item, The Cottages and Mallary Way Bungalows

> Dear Ojai City Council,

>

> I am writing this letter as a property owner in the City of Ojai urging you support for Jonker and Becker projects know as The Cottages and Malloy Way Bungalows.

>

> These projects would allow for 27 units out of 67 units to be permanently affordable for 55 years. In a city that is seriously lacking affordable residential rental units. I believe your delays are causing great civic harm by continually putting up obstacles to Mr. Jonker and Mr. Becker that are unnecessary.

>

> Also, to be kept in mind, the millions of dollars from these construction projects that would flow into the the local economy as well as the increased property tax dollars that would benefit City Hall.

> The would be a huge benefit for the entire community.

>

> Mr. Jonker and Mr. Becker have been working diligently and in good faith with The City Staff and the City Council on these projects since 2007. They have had approvals since 2013, but still have not been issued permits to proceed.

>

> City Council members I urge you to do your job that should be for the

> best interest of the community and approve the projects so the can proceed as expeditiously as possible fill the void of a lack of affordable and regular rental housing for our community.

>

> Sincerely,

>

> Joseph Kreutz

>

> [REDACTED]

>

## Brian Popovich

---

**From:** James Vega  
**Sent:** Tuesday, October 25, 2022 1:27 PM  
**To:** Brian Popovich; Weston Montgomery  
**Subject:** FW: Please Read

**From:** Craig Walker <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 9:38 AM  
**To:** [REDACTED]  
James Vega <james.vega@ojai.ca.gov>  
**Subject:** Please Read

Hello,

I am asking that you require a proper CEQA review of the Becker Development Agreement. I have previously given several reasons for this, but today I'm just going to focus on the inadequacies of the Notice of Exemption for the Cottages Among the Flowers.

### New Information Regarding CEQA Analysis

The CEQA law requires a new CEQA review when new information is discovered that could impact the factual basis of a previous analysis.

What has been newly discovered is that the CEQA exemptions granted to the Cottages Among the Flowers project are based on information that is provably false or unsubstantiated.

The Notice of Exemption falsely claims there will be **no significant impact to the historic significance and integrity of the Cottages Among the Flowers**. This false information is on Page 276 in packet; Page 31 of 74 in Attachment D, relating to the Cottages Among the Flowers:

"The project applicant intends to **rehab the exterior of the eight dwelling units (including paint and necessary repairs)** and proposes to perform interior modification, renovations, rehab to the existing structures. **The exterior rehab would not change the integrity of the buildings; in fact, they would enhance their integrity and ensure their continued survival.**"

NOTE: In the context of historic resources like the Cottages, "integrity" refers to the historic design, materials, and workmanship of a building, which determine its ability to convey its historical significance.

First, the exterior modifications are NOT just paint and necessary repairs! The exteriors will be substantially altered, resulting in substantial changes to the integrity of the buildings. According to the historical consultant in his report:

"The new additions will remove at least two entire exterior walls and roofing material on each of the cottages, thereby removing a **significant** amount of historic materials. The new construction proposed to be added to the existing residences has been designed to be compatible with the historic portions of the existing building

in terms of materials. However, the massing, scale and size of the original buildings will be **substantially altered.**"

"This project conforms to some of the Secretary of the Interior's Standards in terms of the design of the proposed new construction, **but not in terms of the treatment of historic fabric and the removal of important character-defining elements of the buildings.** (This directly affects the integrity of the buildings.) The large additions built on the highly visible elevations radically alter the historic form (plans and elevations) and, in some cases, remove character defining features. The roof changes are also significant. The original design of complex and compact roof-lines was intended to produce an architectural informality which is substantially diminished with the proposed new larger and more massive roof forms."

Second, the mitigations are not sufficient to reduce the adverse impacts below the level of significance. Again, according to the historic report:

"If implemented as proposed, the application of the...mitigation measures will reduce the environmental impacts of this project **but not to a less than significant and adverse level.**"

Therefore, the conclusion in the Notice of Exemption, that the project only involves paint and minor repairs and will not change the historic integrity of the buildings, is false. The buildings will lose a "substantial" amount of both their physical and historical integrity. As stated above in the historic report, the mitigations will NOT reduce the impacts below the level of significance, as falsely asserted many times in the Notice of Exemption. There has been no factual evidence presented that supports the assertion; it is simply an opinion. It contradicts the findings of the qualified historical consultant who you should rely upon for these determinations. He says there will be some mitigation, "but not to a less than significant and adverse level."

Please require a new CEQA evaluation. Thank you!

Craig Walker

## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 1:37 PM  
**To:** Brian Popovich  
**Subject:** FW: Mallory Way and The Cottages

**From:** WV Real Estate Family <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 12:48 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Re: Mallory Way and The Cottages

I understand that this is being brought up at the city meeting this evening which I am unable to attend. I am in full support of all of the projects that the Beckers and Jonkers have brought before you - in fact I stood up and supported them many years ago on the Mallory way project and here we are many years later - wasting a lot of time and MONEY which was unnecessary when they were previously approved.

There is a low income housing shortage but Jonker and Becker have offered to work with you on many different levels to satisfy the requirements.

Both Jonker and Becker have been long term residents in Ojai and they want to help beautify and improve a number of areas that make it a win/win for the city. They always do high level of construction and frankly we are in need of housing such as Mallory way for other residents that want to downsize and move into town from their larger properties that are just too much to maintain but there is no where to move to.

I urge you to move forward with these projects and to stop wasting any more time or money on further delays.

--

Sincerely,

**Anne and Cassandra | Realtor®**  
LIV Sotheby's International Realty  
DRE # 01448441 | DRE # 01929366

[REDACTED]  
Anne: [REDACTED]  
Cassandra: [REDACTED]

[REDACTED] | Ojai, CA 93023  
[YouTube](#) | [Testimonials](#) | [wvojai.com](#)  
[www.livsothebysrealtyca.com](http://www.livsothebysrealtyca.com)



LIV | S

Anne Williamson

Realtor<sup>®</sup> DRE 0144844

## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 1:38 PM  
**To:** Brian Popovich  
**Subject:** FW: Mallory Way and The Cottages

---

**From:** Cassandra VanKeulen <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 1:18 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Mallory Way and The Cottages

To whom this may concern,

I understand that this is being brought up at the city meeting this evening which I am unable to attend. I am in full support of all of the projects that the Beckers and Jonkers have brought before you.

There is a low income housing shortage but Jonker and Becker have offered to work with you on many different levels to satisfy the requirements.

Both Jonker and Becker have been long term residents in Ojai and they want to help beautify and improve a number of areas that make it a win/win for the city. They always do high level of construction and frankly we are in need of housing such as Mallory way for other residents that want to downsize and move into town from their larger properties that are just too much to maintain but there is no where to move to.

I urge you to move forward with these projects and to stop wasting any more time or money on further delays.

Sincerely,

**Cassandra VanKeulen | Realtor®**  
LIV Sotheby's International Realty  
Cal DRE # 01929366

[REDACTED]  
[REDACTED]

[REDACTED] | Ojai, CA 93023  
[wvojai.com](http://wvojai.com) | [livsothebysrealtyca.com](http://livsothebysrealtyca.com)

## Brian Popovich

---

**From:** Shari Herbruck  
**Sent:** Tuesday, October 25, 2022 2:02 PM  
**To:** Brian Popovich  
**Subject:** FW: Letter for tonight's City Council Meeting  
**Attachments:** Proposed Development Item 4 - Multi-Family Housing and Affordable Housing.pdf

fyi

---

**From:** Jamie Fleming [mailto: ]  
**Sent:** Tuesday, October 25, 2022 1:58 PM  
**To:** Shari Herbruck <shari.herbruck@ojai.ca.gov>  
**Subject:** Letter for tonight's City Council Meeting

Hi Shari,

Attached please find a letter for submission to tonight's City Council Meeting regarding item 4 - Proposed Development Agreement for Multi-Family Housing and Affordable Housing.

Jamie

Jamie Fleming  
CEO, Ojai Valley Chamber of Commerce



TO: OJAI CITY COUNCIL

RE: Item 4 on October 25 meeting agenda – Proposed Development Agreement for Multi-Family Housing and Affordable Housing

After listening carefully to last week's presentations by City Council Ad-Hoc Committee Members Bill Weirick and Ryan Blatz and by the developer (Becker Group), it became very obvious that a lot of time and research has been invested in this proposal for many years and that the "best" proposal was now being considered as a second reading after being approved last week by the City Council 4-1.

This proposal seems very generous as a "privately" funded development that will actually increase affordable housing units based on a recent report from Bill Miley which gets the City moving in a positive direction after decades of zero movement regarding affordable housing. As Randy Haney said during the last City Council meeting, this is a good baby step in the right direction..... The City needs to continue this momentum with other parcels and projects.

Our workforce required to staff our restaurants, hotels and stores located in Ojai needs to have the opportunity to live closer to their work. Local affordable housing will also decrease the commuter traffic and emissions as has been stated in the presentations.

It doesn't make sense to delay any further. Please vote "yes" to approve this positive development for Ojai.

Jamie

Jamie Fleming  
CEO, OJAI VALLEY CHAMBER OF COMMERCE



## Brian Popovich

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**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 3:02 PM  
**To:** Brian Popovich  
**Subject:** FW: New submission from E-Mail all City Council Members & Mayor

---

**From:** Apri Bondurant <Apri.Bondurant@ojai.ca.gov>

**Sent:** Tuesday, October 25, 2022 2:27 PM

**To:** [REDACTED]

**Cc:** Robin Godfrey <Robin.Godfrey@ojai.ca.gov>; James Vega <james.vega@ojai.ca.gov>; Weston Montgomery <Weston.Montgomery@ojai.ca.gov>

**Subject:** FW: New submission from E-Mail all City Council Members & Mayor

Hello Mayor and Council,

Please view email below from Ray Powers, in regards to, Ojai International City of Peace. Thank you.

Best,



**Apri Bondurant**  
**Management Analyst**

401 S. Ventura St • Ojai, CA 93023  
Ojai City Hall • City Manager's Office

(805) 646-5581 ext. 105  
[apri.bondurant@ojai.ca.gov](mailto:apri.bondurant@ojai.ca.gov)  
[ojai.ca.gov/my-ojai](http://ojai.ca.gov/my-ojai)

---

**From:** RayPowers [[mailto:\[REDACTED\]](mailto:[REDACTED])]

**Sent:** Tuesday, October 25, 2022 1:56 PM

**To:** Apri Bondurant <[Apri.Bondurant@ojai.ca.gov](mailto:Apri.Bondurant@ojai.ca.gov)>

**Subject:** New submission from E-Mail all City Council Members & Mayor

Name
Ray Powers
Email
[REDACTED]
Subject
Public Comment - Ojai Int'l City Of Peace
Message

Hello Council,

Ray Powers

Public Comment

City Council Meeting 10.25.2022

I arrived in Ojai 23 years ago making a home in Matilija Canyon. In service to the community I was appointed a city planning commissioner and have been on the board of the Ojai Valley Green Coalition. For the last 8 years I have worked alongside Brian & Lisa Berman and the other core group members to establish Ojai as an International City of Peace. As you know, we were the 99th in the world to declare this and there are now close to 400. In 2015 Mayor Johnny Johnston and the city council issued a proclamation and since then we have posted three road signs at each of the directions that enter into the city that expresses our commitment as a city of peace. In 2018 the city also declared itself a Nuclear Weapons Free Zone. What this means is that the city divested itself of institutions and companies that are involved in the financing, manufacture, development, stockpiling and testing of nuclear weapons.

As well, myself and our team have produced the Int'l Day of Peace each Sept. to help remind ourselves what that initial proclamation means and the daily steps we need to be taking to not only be a symbolic representation, but primarily a proactive living culture that continually asks the important questions, What does peace look like?, How can we emulate and embody peaceful communication and interaction? How can peace, as a verb, be integrated into all of our environmental and social justice policies and community collaborations? One of the most challenging questions that came up in a conversation I had with a friend is, "What are we pretending not to know?" Think about that for a moment. What are we pretending not to know? This question directly effects our personal and communal peace and undermines our commitment to create respectful and trustworthy arenas for us to generate imaginative and positive solutions. It's important that we assess our own personal skill sets rather than assume we or another has the background or training to effectively collaborate in a manner that is peaceful, non-violent and emphasizes our commonalities more so than our differences. What I feel we forget is that proactive peace is about having the measures, methods, practices and skills already in place when conflict arises and cultivating them ongoingly.

With the Berman's moving to Poland and a new core team being formed, I'm now taking on the mantle of the liaison to the city and to the global organization of International Cities of Peace. This includes a monthly call with the founder and other cities throughout the world to report on what we have been achieving in the name of peace. I'm enthusiastic to share with them how we have navigated our challenges and what the results might be. With that I ask you and all of our community to join with me and call on myself and others to open peaceful lines of communication, learn new models of effective leadership and collaboration and draw on the expertise of those of us who have spent our adult years as mediators, organizational consultants, counselors, social engineers, community designers and environmental champions. I see positive years ahead of us when we are able to pivot wholeheartedly into the shared values of kindness, compassion, generosity and above all peace within and without.

## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 3:28 PM  
**To:** Brian Popovich  
**Subject:** Fwd: Comment for Agenda Item #4

---

**From:** Grace Bueti Malloy <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 3:27 PM  
**To:** cityclerk@ojai.ca.gov <cityclerk@ojai.ca.gov>  
**Subject:** Comment for Agenda Item #4

Greetings Councilmembers,

As you inevitably choose to pass this complicated development agreement tonight and take one more step in the gentrification race here in Ojai, please consider these two thoughts:

1. Something that has continually affected my sleep in the last few weeks is this assumption that Jeff Becker would evict the residents of the cottages should this agreement not go through. Perhaps your understanding of his character is better than mine, and you know this to be true. I want you to know, however, that there are many landlords- maybe hundreds- in this valley who are intentionally NOT raising rents to market value, and who are renting to longtime residents of Ojai who are low income to try to combat this pattern, because, like Mr Becker, they don't need this money to be healthy and happy.

There are many other possible ways to work on this affordable housing crisis: A few ideas that I would love to participate in: create a registry of low and very low affordable housing that landlords have committed to keeping that way- possibly even deed-restrict them. I believe that if Mayor Stix could have her way, the only new multi-family housing permitted in Ojai would be 100% affordable units at low and very low rates, which yes would mean a nonprofit housing trust to fund those projects. Perhaps Councilmembers Weirick and Blatz could help form it with all their extra time once they step down from the council, or did I hear that's part of Councilmember Haney's re-election platform? You've all said you like that idea, so let's do it! I would love to commit to annual or semi-annual "self-taxing", of either my property value or income, to give to this nonprofit so we never end up in this situation again of choosing the best (cruddy) offer that a for-profit wealthy developer will provide.

2. I Implore you to include in the record for this agreement some sort of significant acknowledgement of the displacement of these residents. I think there are two ways that the city could do this, or could require this of the Becker group:

a) Fund the independent income survey that should have been done six months ago, to accurately understand how many of the residents who **won't** get one of the seven low or very low income units can actually afford a moderate income unit (my semi-educated guess is 22 or 23 will be without housing).

b) Donate the money you would have used on this essential study to HELP of Ojai, the employees of which will do everything they can to find housing for the likely about 20 evicted residents who can't afford the moderate units after their year of paid rent. The HELPers can't find local affordable housing for many of the folks who

need it today, so I don't know how they will for all these additional people, but at least pay everyone the respect of recognizing the true human impacts of this messy deal.

The people who live in these cottages are some of Ojai's most incredible creatives- if, or rather WHEN our valley loses them, I hope there is some recognition of that tragedy. To give a couple examples of how special their contributions are to Ojai, and what they've meant to me: my husband and I fell in love over Fran Gealer's delectable baked goods at Farmer and the Cook, and Anita Cramm's magical lotion was the very first thing to touch my baby's skin other than the hands of our family. These women and the other people in these cottages are sacred members of this community, and their eviction from their homes needs to be properly recognized. **Councilmembers, please include in your motions tonight some tangible recognition of their eviction, instead of continuing to posture like 20 of them will be able to afford the moderate rate units.**

Thank you,

Grace Malloy

[REDACTED]

Ojai, CA 93023

[REDACTED]

--

Grace Bueti Malloy

Program Director, Poco Farm

[www.pocofarm.com](http://www.pocofarm.com)

## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 4:32 PM  
**To:** Brian Popovich  
**Subject:** FW: Letter re Ojai Housing Development Agreement  
**Attachments:** 2022.10.25 Letter re Ojai Housing Development Agreement.pdf

---

**From:** Malone, Caitlin K. <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 4:26 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Cc:** [REDACTED]  
**Subject:** Letter re Ojai Housing Development Agreement

To Whom It May Concern,

Please see the attached letter for tonight's Ojai City Council Hearing from Beth Collins' office.

Best regards,

***Caitlin K. Malone***

Legal Practice Assistant

**Brownstein Hyatt Farber Schreck, LLP**

[REDACTED]

Santa Barbara, CA 93101

[REDACTED]

***Brownstein - we're all in.***

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October 25, 2022

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Mayor Stix and Councilmembers  
Ojai City Hall  
401 S. Ventura Street  
Ojai, CA 93023

**RE: Affordable Housing Development Agreement, October 25, 2022 Council Hearing**

Dear Mayor Stix and Councilmembers,

As you know, we represent Ojai Bungalows LP and Greenhawk LLC (collectively, "Ojai Bungalows"), the owners of the properties at 312 W. Aliso Street ("Cottages Project"), 304 S. Montgomery ("Montgomery Project"), 412 Mallory Way ("Mallory Project"), and 107 N. Ventura Street ("World University Project") in the Development Agreement being considered on October 18, 2022 ("Development Agreement" or "Project").

We would like to thank this Council for your vote last week in support of the Ojai Bungalows Project and ask for your vote again this week at the second reading. Why? In short, the Development Agreement is the right thing for the City of Ojai ("Ojai" or "City"). It is right for the existing tenants at Cottages and Mallory, it is right for all tenants and residents of Ojai, and it is even right for the planet.

**I. Redevelopment of Housing Provides Critical Environmental and Safety Benefits to the Residents and the Community**

It may seem counterintuitive, but redevelopment of the City's antiquated housing stock is the best way for the City to meet its climate goals. Infill redevelopment on unused and underutilized land within existing areas is critical to accommodate growth and to redesign cities to be more sustainable.<sup>1</sup> Plus, it will help ensure Ojai provides sufficient humane, affordable housing for its residents. That is because the City's old housing stock was constructed under old building codes, but the proposed new and refurbished units must comply with updated building codes. This will result in enormous water

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<sup>1</sup> California Governor's Office of Planning and Research, Infill Development <https://opr.ca.gov/planning/land-use/infill-development/> (accessed on Oct. 24, 2022);

savings per unit and increased energy efficiency for every unit, and it will significantly decrease fire, flood, and earthquake risk for the residents. This has been analyzed by numerous experts, such as:

- Sierra Club, Guidance For Smart Growth And the Urban Infill Policy (Aug. 2021) available at <https://drive.google.com/file/d/11R80kTpPMYZ9XWbQrGdh4KuhNORKf8LG/view> ["If we begin to rebuild our existing neighborhoods and regional infrastructure around properly tailored Smart Growth design, instead of continuing to build new sprawling development, we can save vast amounts of land. We can also dramatically cut our climate emissions while creating more convenient and equitable neighborhoods and regions. In addition to better environmental and social outcomes this strategy can also better serve the economic needs of our society."]
- Turner Center for Housing Innovation, University of California, Berkeley, Right Type, Right Place: Assessing the Environmental and Economic Impacts of Residential Development Through 2030 (Apr. 10, 2017) available at <https://turnercenter.berkeley.edu/research-and-policy/right-type-right-place/> ["Residents in the largest coastal cities in California encounter some of the most unaffordable homes in the nation, caused in large part by a thriving economy and a multi-decade-long undersupply of housing relative to population and job growth. In addition to the income squeeze of unaffordable homes and long commutes, the housing shortage creates environmental challenges. Most prominently, building more auto-dependent housing far from job centers generates more traffic and air pollution while destroying open space and agricultural lands. . . . Of the three housing production scenarios analyzed, the Centers found that the *infill-focused housing growth scenario provides the best outcomes for meeting the state's climate goals while also producing economic benefits. This scenario could help avert at least 1.79 million metric tons of greenhouse gases annually compared to the business-as-usual scenario, based on reduced driving miles and household energy usage alone.*"(Emphasis added).]
- Smith Group, DC, Low-Impact Infill Housing, Combat the Climate Challenge, the Housing Crisis & Disrupt Development (Sept. 2021) available at <https://www.smithgroup.com/sites/default/files/2021-09/2021%20LIH%20DIY%20Guide%20%281%29.pdf> ["Cool Climate Network found that urban infill held the greatest opportunity to reduce GHG (greenhouse gases), making low-impact, infill housing the lowest hanging fruit with the highest return that is accessible to a wide range of stakeholders."]
- Tyler Adams, Encourage Infill Development, Sustainable Development Code, available at <https://sustainablecitycode.org/brief/encourage-infill-development-5/> ["[I]nfill development helps combat sprawl, which is often comprised of low density development and the separation of uses, thus increasing a community's reliance on automobiles. " (Citations omitted).] (accessed on Oct. 24, 2022).

- State of California, Urban Strategy For California (April 18, 1979) available at [https://opr.ca.gov/docs/20190325-urban\\_strategy-ocr.pdf](https://opr.ca.gov/docs/20190325-urban_strategy-ocr.pdf) [The report establishes a goal to “improve existing housing and encourage new urban development” and acknowledges that to accomplish the states goal of a society in harmony with the land “California must commit itself to more compact urban areas, to the revitalization of its existing cities and suburbs, to the continued protection of its best agricultural lands.” ]

Thus, this Project will result in a safer, more resilient, and climate friendly Ojai.

## II. California Housing Crisis and State Housing Laws

California faces an acute housing crisis making any new units critical to ensure residents retain the fundamental right to access shelter. Estimates indicate that **California had an unmet housing need of approximately 2.3 million units as of 2017.**<sup>2</sup> To address the crisis, state officials estimate that about 310,000 new housing units must be built over the next eight years, more than 2.5 times the number normally built in the state.<sup>3</sup> Given this unmet demand, even the construction of market-rate units “reduces housing costs for low-income households and, consequently, helps to mitigate displacement in many cases.”<sup>4</sup>

The California Legislature also has responded to the crisis by enacting significant new housing legislation each year that restrict local regulations that create barriers for new housing development. In 2022, the Legislature passed and the Governor signed 41 new housing bills to streamline housing development so families can live and work throughout the state.<sup>5</sup>

The Development Agreement allows the City to partner with a developer to help address the California Housing Crisis while dictating the terms of development on four properties. By improving and constructing 67 residential units in the City, the Development Agreement would meet over half of

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<sup>2</sup> PPIC, California’s Future – Housing, p. 2 (January 2020) available at <https://www.ppic.org/wp-content/uploads/californias-future-housing-january-2020.pdf>

<sup>3</sup> See, e.g., KSBY, California Governor Signs Laws to Boost Housing Production (Sept. 28, 2022) <https://www.ksby.com/news/california-news/california-governor-signs-laws-to-boost-housing-production>

<sup>4</sup> California Legislative Analyst’s Office, Perspectives on Helping Low-Income Californians Afford Housing (Feb. 9, 2016) available at <https://lao.ca.gov/Reports/2016/3345/Low-income-Housing-020816.pdf>; see also California Legislative Analyst’s Office, California’s High Housing Costs – Causes and Consequences, p. 10 (Mar. 17, 2005) available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>; Vicki Been, Ingrid Gould Ellen and Katherin O’Reagan, NYU Furman Center, Supply Skepticism: Housing Supply and Affordability, p 4, 7. (Aug. 20, 2018) available at [https://furmancenter.org/files/Supply\\_Skepticism\\_-\\_Final.pdf](https://furmancenter.org/files/Supply_Skepticism_-_Final.pdf) [“New construction is crucial for keeping housing affordable, even in markets where much of the new construction is itself high-end housing that most people can’t afford. A lack of supply to meet demand at the high end affects prices across submarkets and makes housing less affordable to residents in lower-cost submarkets.”].

<sup>5</sup> Office of Governor Gavin Newsom, California to Build More Housing, Faster (Sept. 28, 2022) <https://www.gov.ca.gov/2022/09/28/california-to-build-more-housing-faster/>

the City's unit obligations in its 2021-2029 Housing Element and providing much needed housing for Ojai residents.

Although commenters have raised that the City can meet its Housing Element obligations through the construction of Accessory Dwelling Units (ADUs), this strategy fails to acknowledge the need for the City to address a wide variety of housing needs that cannot be satisfied by ADUs alone. The City Council acknowledged its need for a mix of housing units when it adopted its Housing Element stating "[t]he City plans to fulfill its share of regional housing needs *using a combination of vacant residential sites, underutilized residentially zoned and mixed-use zoned sites*, and accessory dwelling units."<sup>6</sup> This is consistent with recent state guidance to the City of Santa Monica that its proposal to meet its regional housing needs through ADUs was insufficient "to overcome patterns of segregation and foster inclusive communities" and thus failed to affirmatively further fair housing."<sup>7</sup> The Development Agreement critically supports the City achieving its Housing Element objective by revitalizing its aging housing stock and creating new housing in underutilized residential and mixed-use zones. Relying on ADUs alone to supply housing is inconsistent with the Housing Element and fails to acknowledge the diverse mix of residential unit types needed in the community to affirmatively further fair housing.

Importantly, the Development Agreement also locks in the development at these four sites for the next 10 years. As the Legislature continues to wrest control from cities over housing projects — by requiring cities to increase density, limiting local design review standards, and streamlining permitting — the City has increased certainty that these four sites will be developed consistent with the Development Agreement. Without the Development Agreement, these sites could be developed under future state housing laws that are likely to further restrict the City's ability to control the size, bulk and scale of the development. The Development Agreement includes the added benefit of providing increased local control regarding the development of these sites.

### **III. The 27 New 55-year Deed-Restricted Residential Units Plus the Phasing Plan and Tenant Protections Provide Additional, Unprecedented Benefits to Ojai.**

As mention by numerous commenters, **Ojai has not constructed any affordable housing since the 1970s. Ojai also has zero deed-restricted units** that are owned and/or operated by a private developer.<sup>8</sup> The Development Agreement thus provides the first opportunity for the City to demonstrate it can work with private developers to construct deed-restricted affordable units.

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<sup>6</sup> Ojai City Council, Resolution 21-48, Sec. 1.d.

<sup>7</sup> See Department of Housing and Community Development, City of Santa Monica's 6<sup>th</sup> Cycle (2021-2029) Adopted Housing Element (Feb. 8, 2022) available at <https://drive.google.com/file/d/1P5C5dCa0NY7lxKD9MMssnAQwrUzhxqaZ/view>.

<sup>8</sup> See Housing Trust Fund, Affordable Housing by City in Ventura County, (Apr. 6, 2020) available at <https://www.housingtrustfundvc.org/uploads/1/2/9/0/129057661/affordablehousing-resourcelist.pdf>; City of Ojai, 2021-2019 Housing Element, p. 29 (Oct. 2021) available at <https://www.hcd.ca.gov/housing-elements/docs/ojai-6th-adopted101321.pdf>.

Although the Cottages and Mallory Projects currently host 31 units with tenants, as the City's staff and attorney have repeatedly confirmed, the units themselves have no deed-restricted protections. The rent could be raised (following existing law), or the units at the Cottages Project could be sold separately, at any time, and the units could become market units – forever. The families that own the Cottages and Mallory Projects do not want that to happen. That is why they have worked for years with the City toward an alternate solution, and the result is this groundbreaking Development Agreement.

This Development Agreement will deliver **27 affordable units** that are **deed-restricted for 55-years**. Plus, the **phasing plan** will require the construction of **all the affordable units in the project before any existing tenants will need to relocate from the Cottages Project or the Mallory Project**. Furthermore, this Project offers generous additional tenant relocation benefits.

The City needs new deed-restricted affordable housing. The City's Housing Element details various factors that demonstrate Ojai's housing crisis: Ojai has many rent burdened residents (those spending more than 30% of their income toward rent), Ojai has a high percentage of substandard rental units that lack adequate kitchen and/or bathroom facilities, and Ojai has various other contributors to dislocation of current tenants, including lack of new units and serious upward pressure on rental rates. The County's Housing Authority (AHACV) manages all but two of the City's deed-restricted affordable housing developments.<sup>9</sup> Per their publications, the developments are failing to meet the current need "vacancies in our public housing facilities are infrequent. We are currently able to serve between 35-40 new applicants each year, while the waiting list continues to grow. The ESTIMATED waiting time ranges from 2 to 5 years."<sup>10</sup> In sum, Ojai has a housing crisis, and this Project is a critical step forward for the community which will help start ameliorating the crisis.

#### **IV. The Development Agreement Protects Current Tenants Well Beyond the City's General Plan and Zoning Code Replacement Housing Requirements**

As explained in our prior letters, the City's 2013 Replacement Housing Policy and Replacement Housing Ordinance—adopted after the Cottages and Mallory Projects were approved by the City on November 27, 2007 and June 26, 2012, respectively—do not apply to these Projects. As such, the Development Agreement offers additional protections for the current tenants that cannot be legally applied. Public commenters, however, have raised that the City should apply these 2013 Replacement Housing Policies and Ordinances to these Projects based on the fact that these units are rented at affordable rates and may be currently rented to qualifying persons or households. Not so. The

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<sup>9</sup> The two non-AHACV managed developments are managed by the Cabrillo Economic Development Corporation (CEDC).

<sup>10</sup> AHACV: Public Housing Waiting List available as of 10/25/2022 at <https://www.ahacv.org/housing-programs/public-housing/waiting-list/>

Replacement Housing Ordinance does not require the current tenants to receive new affordable units in the Projects, nor are the facts relevant to the Projects.

Ojai Municipal Code section 10-2.904 states “the conversion or demolition of existing residential dwelling units inhabited by persons and families of very low, lower or moderate income shall not be authorized unless provisions have been made for the replacement of those dwelling units with affordable units...” (Emphasis added.) For the purposes of the Ordinance, “inhabited” means “[a] dwelling unit that serves as a place of permanent or customary and usual abode of a person or household who, at the time application is filed with the City for a land use permit subject to the provisions of this article, lawfully occupied the premises.”<sup>11</sup>

The language in this section – which limits application of the Ordinance to tenants at the time the application was filed – further supports the interpretation that the 2013 Replacement Housing Ordinance was only intended to be applied prospectively to new housing development applications, not extension such as Cottage and Mallory. Under the Ordinance’s language, the Replacement Housing Ordinance would only apply to units on the Cottages and Mallory Way sites that were occupied by qualifying tenants as of the date of the applications in 2007 and 2012, respectively, under then-current income thresholds.

Even if one was to accept the City’s position that the 2013 Replacement Housing Ordinance may apply to Ojai Bungalow’s extension applications, Ojai Bungalows filed the time extension application for the Cottages Project on March 15, 2019 and the time extension application for the Mallory Way Project on May 15, 2017. Accordingly, even if the City is correct, the Replacement Housing Ordinance would only require the replacement of qualifying affordable units under then-applicable income thresholds. Therefore, the purported data provided by public commenters about the present gross incomes of current tenants is irrelevant to the potential application of the City’s Replacement Housing Ordinance to these Projects.

Furthermore, even if the City’s 2013 Replacement Housing Ordinance applies, it does not provide relocation assistance or offer rights of first refusal to qualified existing tenants (as the Development Agreement does). A developer can simply offer to replace the units through on-site construction, pay and in-lieu fee or take “equivalent action subject” to City Council approval.<sup>12</sup> Thus, the Development Agreement offers stronger protections for current tenants at the Cottages and Mallory Way Projects than those available under the City’s Municipal Code.

Numerous public commenters have raise thoughtful ideas about the City amending its General Plan and Zoning Code to provide better tenant protections. Ojai Bungalows does not oppose these efforts. The City Council may amend the General Plan and Zoning Code to provide tenants with the protections Ojai Bungalows offers in the Development Agreement and/or consistent with public

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<sup>11</sup> Ojai Municipal Code, Sec. 10-2.902.

<sup>12</sup> Ojai Municipal Code, Sec. 10-2.904(a)

comments. These amendments would provide certainty to tenants and developers about their rights and obligations at the outset of the permit application process and avoid the risks that City Council arbitrarily applies affordable housing requirements to controversial projects, but not others. Ojai Bungalows hopes that the Development Agreement will further a dialogue about how the City can amend its General Plan and Zoning Ordinance to better protect tenants and continue the development of much needed affordable infill housing.

#### **V. Many Current Residents of Cottages and Mallory Moved In After The Appeal Was Filed**

Additionally, it is notable that many of the 31 current tenants at Cottages and Mallory moved in knowing that the Project was proposed and that redevelopment of the sites was in process. Tenants knew that was one of the reasons that the owners of Cottages and Mallory maintained the rent at lower levels, not raising it significantly since they purchased the property around 2016, and maintaining that stance, especially during the pandemic.

In fact, 17 of the residents at Cottages (4) and Mallory (13) have provisions in their leases making clear that the property is being refurbished and that they will be displaced from their unit at the time that it will be refurbished. The language reads as follows:

*The property and premises will be remodeled in 2021-2023<sup>13</sup>. The Lessee(s) acknowledge that they have been advised of the work, possible noise and miscellaneous disturbances. Lessee will be provided a minimum 60 day termination notice, if/when their unit is being remodeled.<sup>14</sup>*

Further, we note that 13 of the tenants (8 at Mallory and 4 at Cottages) moved in after the Council filed their appeal in Spring 2019, and all tenants are on a month to month lease.

Therefore, the tenants at Cottages and Mallory have been benefiting from depressed rents at these properties for many years, and more than half of the tenants moved into their units knowing that they would be displaced when the site was ultimately developed. The Development Agreement being considered by this Council provides significant additional benefits – phasing and tenant relocation protections – that go far above and beyond the existing lease agreements or other protections that these tenants enjoy from the Tenant Protection Act or the City Code.

#### **VI. The City Has Fully Complied with California Environmental Quality Act**

This letter further explains why the City has fully complied with the California Environmental Quality Act (“CEQA”) on this Project. The City correctly concluded that various CEQA exemptions apply to the Project. Additionally, the City has correctly concluded that there are no new significant impacts and no changes in circumstance that trigger the need for a subsequent or supplemental EIR for the

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<sup>13</sup> There are multiple versions of the Addendum and timing varies e.g. some state 2020-2022, some state 2021-2023

<sup>14</sup> Alternate version says Lessee will be provided a minimum 60 day termination notice prior to their unit being remodeled.

Cottages or Mallory Projects. The City's CEQA analysis and application is appropriate for all sites and for the Project as a whole.

**A. The City's Reliance on Categorical Exemptions Is Appropriate**

1. Stacking CEQA Exemptions, Relying on Alternate CEQA Exemptions, and Relying on Prior CEQA Documents Is Appropriate

An agency may combine several exemptions to find an entire project exempt, and it may rely on alternate exemptions.

In appropriate circumstances, different exemptions may be found to apply to separate or sequential approvals for a single project. (See *CREED-21 v City of San Diego* (2015) 234 Cal.App.4th 488, 504 [upholding use of categorical exemption for revegetation project after completion of storm drain repairs approved under emergency exemption]; *Madrigal v City of Huntington Beach* (2007) 147 Cal.App.4th 1375 [upholding use of ministerial exemption for grading permit following prior application of different exemption for use permit for same overall project].)

Additionally, agencies may rely on alternate exemptions. In *Surfrider Found. v California Coastal Commission* (1994) 26 Cal.App.4th 151, the Coastal Commission issued permits authorizing the Department of Parks and Recreation to install devices to collect parking fees at state park beaches. The court found the collection of fees exempt under the statutory exemption provided by Public Resources Code Section 21080(b)(8) for the establishment of rates or tolls by a public agency to meet operating expenses. The court also held that installation of the fee collection structures was categorically exempt under Section 15303 of Title 14 of the California Code of Regulations ("CEQA Guidelines"), which exempts construction of small structures. Accordingly, it is appropriate for the City to rely on alternate CEQA exemptions for this Project. If any one of these exemptions is found not to apply, the City's actions can still be upheld on the basis of the remaining exemptions.<sup>15</sup>

One commenter argues that the City's reliance on exemptions for the Cottages and Mallory Projects is inconsistent with the City's previous preparation of an Mitigated Negative Declaration (MND) and Environmental Impact Report (EIR) for these projects; the entirety of both documents are available on the City's website<sup>16</sup> and are incorporated here by reference. However, the City is permitted to rely on exemptions from CEQA in tandem with previously completed environmental review. For example, the use of an addendum to evaluate an activity under CEQA's subsequent review provisions does not prevent the lead agency from also relying on any number of statutory or categorical exemptions.<sup>17</sup>

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<sup>15</sup> See *North Coast Rivers Alliance v Westlands Water Dist.* (2014) 227 Cal.App.4th 832 [upholding CEQA exemption determination on basis of some, but not all, cited exemptions].

<sup>16</sup> <https://ojai.ca.gov/ceqa-environmental-review/>

<sup>17</sup> See *Santa Barbara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 873; *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 700-701 [county not barred from arguing in court that (i) subdivision project's negative declaration satisfied CEQA, and (ii) project was exempt from CEQA]; *Bloom v. McGurk*

**B. City Is Not Required to Prepare a Subsequent or Supplemental EIR/MND**

Portions of the Projects Ojai covered by the proposed Development Agreement were previously analyzed in a certified environmental impact report and an adopted mitigated negative declaration. Specifically, the potential environmental impacts of the Mallory Way Project were analyzed in a certified environmental impact report (SCH Number 2008071083) (the “Mallory EIR”) and the potential impacts of the Cottages Project were evaluated in an adopted mitigated negative declaration (SCH Number 2007081154) (the “Cottages MND”).

The Mallory EIR analyzed the renovation of the existing seven residential units, demolition and replacement of 18 residential units, and construction of five new units. Upon project completion, the Mallory site would contain a total of 30 dwelling units with seven of them being deed-restricted affordable (one at low-income level and six at moderate income level) for 55 years. The Development Agreement does not modify, except to add relocation assistance, the original Mallory Project as analyzed under the Mallory EIR, it merely extends the permit to construct those units.

Similarly, the Development Agreement extends the permits for the Cottages Project. The Cottages Project, which proposes to renovate eight existing dwelling units and add two new dwelling units, for a total of 10 market rate units, was fully analyzed in the adopted Cottages MND. The Development Agreement also proposes adding two new 400 square foot dwelling units (one low income deed-restricted and one very-low income deed-restricted), for a total of 12 units and adds relocation assistance.

As stated above, the Mallory Project and Cottages Project as proposed in connection with this Development Agreement are nearly identical to the projects analyzed under the Mallory EIR and the Cottages MND. The only material modification is the addition of two new deed-restricted affordable units (approximately 800 square feet total) to the Cottages Project. A new EIR or negative declaration does not need to be prepared to address this minor modification because it will not result in any new significant impacts and therefore no additional mitigation measures would be required as a result of this modification. Furthermore, as detailed here, and in our other letters and presentations to the Council, there is no new significant information relevant to either Project that would trigger the requirement for a new EIR or MND.

To give a degree of finality to the results, CEQA includes a presumption against requiring any further environmental review once an EIR has been prepared for a project. Accordingly, Section 15162 of the

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(1994) 26 Cal.App.4th 1307, 1313 [noting that the court in *Committee for a Progressive Gilroy* relied on findings under both Section 21166 and the Class 1 existing facilities exemption]; *Committee for a Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 864 [EIR not required in connection with changes to waste discharge levels for municipal sewage treatment facility based on coverage from prior EIR and application of the Class 1 existing facilities exemption].

CEQA Guidelines provides that when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR or negative declaration shall be prepared for the project if the lead agency — in this case the City of Ojai — can make certain findings based on substantial evidence. Specifically, if an EIR has been certified or a negative declaration adopted for a project, subsequent CEQA review is only required and the agency determines that (1) substantial changes are proposed to the project require major revisions to the CEQA document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes occur with respect to the circumstances under which the project is undertaken which require major revisions to the CEQA document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) New information of substantial importance, which was not known at the time the original CEQA document was adopted or certified, shows that the project will have a new significant effect, a more severe significant effect, will render a mitigation measure or alternative infeasible, or allows for new mitigation measures or alternatives that will substantially reduce one or more significant effects on the environment.

1. No Substantial Changes to the Project

There have been no substantial changes proposed in the project which would require major revisions to the Mallory EIR or Cottages MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. With regards to the Mallory Project, there are no proposed changes to the previously analyzed project. As for the Cottages Project, the primary modification to the previously analyzed project is the addition of two small, deed-restricted units. These additions are made to existing structures and therefore, for example, there are no new significant biological or historic impacts, and certainly none that could not otherwise be mitigated to a less than significant level through implementation of the previously-identified mitigation measures. Additionally, regarding traffic (Vehicle Miles Travelled (VMT)), because the Cottages Project, even as modified, only includes four new units, the total vehicle trips per day would be approximately 14 — the Office of Planning and Research presumes that small projects (those that generate less than 110 ADT trips per day) have a less than significant impact. Accordingly, the minor change to the previously analyzed projects is not substantial and do not trigger major revisions to the Mallory EIR or Cottages MND.

2. Substantial Changes to the Circumstances

No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions in the Cottages MND or the Mallory EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

By way of a few examples: (1) the existing land uses in the surrounding vicinity and within the two project areas have not undergone any substantial changes since they were described and analyzed in the CEQA documents; (2) the General Plan land use designations for the area have also not been changed; (3) the biological resources surrounding the project have not substantially changed in a manner that triggers new significant impacts. In fact, subsequent arborist reporting concluded that fewer trees would be impacted than previously analyzed and the proposed project would replace impacted trees, thereby enhancing the project site; (4) at the time of the submittal of the Mallory EIR and Cottages MND (2009 and 2007), California was in the midst of a drought (the first drought for which a statewide proclamation of drought emergency was issued) and thus the subsequent drought conditions do not constitute a substantial change to the project circumstances.<sup>18</sup> Therefore, no substantial changes have occurred with respect to the project circumstances that result in new or more severe significant hydrology impacts. Based on the foregoing reasons, the circumstances under which the Cottages and Mallory Projects is being undertaken have not changed substantially, and thus no revisions to the Cottages MND or Mallory EIR are required.

### 3. No New Significant Information

No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Cottages MND was adopted or the Mallory EIR was certified has become available. The modifications to the Mallory Project and Cottages Project anticipated under the Development Agreement do not include any new information of substantial importance regarding significant effects from development of these projects that were not previously discussed, identified, and analyzed in the prior CEQA documents. There has been no new information submitted that demonstrates that significant effects would occur that were not discussed in the previous documents and there has been no new information submitted to demonstrate that previously identified significant effects will be substantially more severe. The existing mitigation measures were found to be effective and feasible at the time of adoption of the Cottages MND and certification of the Mallory EIR, and there have been no substantial changes to the projects or the projects' circumstances that would change the mitigation measures.

Therefore, based on compliance with the City ordinances and the proposed changes to the approved project design, all other environmental effects on the Project will continue to not be significant. Therefore, in accordance with Section 15162 of the CEQA Guidelines, the adopted Cottages MND and certified Mallory EIR still apply to the Cottages Project and Mallory Project, respectively, and there is no substantial evidence that these projects as modified could have a potentially significant effect on the environment beyond what was previously analyzed.

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<sup>18</sup> See additional discussion below.

**C. There are No Significant Water Supply Impacts Associated with the Project**

**1. Drought Is Not New Information, and There Are No Significant Water Supply Impacts Associated with the Development Agreement**

Commenters raised claims that extreme drought has arisen in the City of Ojai and County of Ventura since prior approvals of the Cottages and Mallory Projects. In fact, drought has been with us in California since the beginning of land use planning. Drought has been discussed and considered and analyzed in all of the relevant water planning documents for the Casitas Municipal Water District (CMWD), and in the City's own planning documents.

The City's 2006-2014 Housing Element Environmental Impact Report (EIR) reports that – as of its 2012 publication – the “hydrologic period from 1945 to 1965 represents the longest drought on record for the Ventura River Basin.” Therefore prolonged periods of drought are a part of the City's history. The 2012 EIR for the fifth cycle Housing Element (2014-2022) further found that anticipated water supplies were adequate to serve the projected level of growth in that housing element (i.e., 371 SPL Overlay units) yet the City only constructed 88 units over this planning period.<sup>19</sup> In its adoption of the 2021-2029 Housing Element, the City Council also expressly found that this 2012 EIR adequately analyzed any possible environmental impacts, which necessarily includes water supply impacts.<sup>20</sup> Given that 283 proposed residential units in the fifth cycle were never constructed—and thus had no impact on local water demands—it is spurious to claim that the Development Agreement would create new, significant water supply impacts.

Additionally, as discussed further below, CMWD's previous Urban Water Management Plans (UWMPs) planned for new development, including affordable housing. Specifically, Government Code section 65589.7 requires the City to transmit the Housing Element to CMWD in order for CMWD to plan for the water demand associated with new residential development. As such, the City and CMWD coordinate to ensure that drought conditions are considered as part of the water supply planning process.

Further, the commenter fails to acknowledge that the problem of aridification of the west is a regional issue being resolved by agencies of all levels of government. The California legislature made clear that only certain circumstances should limit the ability of water districts to deny service to affordable housing.<sup>21</sup> None of these circumstances are present here. In fact, as detailed below and in other correspondence, the Project will likely reduce water usage by half in spite of providing more than double the number of much needed units; thus being part of the solution, not the problem.

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<sup>19</sup> City of Ojai, 2021-2029 Housing Element, pp. 43-44, Tab A-2 (Oct. 12, 2021).

<sup>20</sup> Ojai City Council, Resolution 21-48, Sec. 2.

<sup>21</sup> Gov. Code, § 65589.7(b).

2. The Development Agreement Will Not Result in Increased Water Demand Because the New Units Will Be Much More Water Efficient than the Old Units they Replace

As described in our prior letter, the 67 new proposed residential units will replace 33 existing antiquated residential units and existing office space. The 67 new and upgraded units must be constructed with new water-efficient showers, bathroom, and kitchen faucets, washing machines, and toilets, along with leak-proof fittings, resulting in a net decrease in total water use. Any new landscaping will comply with California Department of Water Resources' Model Water Efficient Landscape Ordinance (MWELO) and use drip irrigation. Therefore, these new and refurbished units will use less water than the existing facilities due to massive improvements in water efficiency in modern building codes.

3. CMWD Has Allocated Water For Infill Residential Development Such as This, Especially Affordable Units

CMWD considers both residential development and drought in its water supply assessments and preparation of its Urban Water Management Plans.<sup>22</sup> Accounting for both drought and residential development in CMWD's assessment of water supply availability is not new. In fact, CMWD has evaluated potential residential development and drought in each recent UWMP and has never projected that demand would exceed available supplies even during drought conditions.<sup>23</sup>

As stated in our previous letter, the 2020 UWMP projects that it will have annually 2,761 AF reasonably available to the Ojai Water System over the 2025-2040 planning period.<sup>24</sup> This projection indicates that CMWD will reasonably have an annual buffer of 911 acre-feet (AF) available to supply water to the City over the next 15 years.<sup>25</sup> Based on fiscal year 2013-2014 data, CMWD served 2,700 residential service connections with a water demand of 1,738 AF.<sup>26</sup> These estimates mean that each residential service connection used approximately 0.64 AF in fiscal year 2013-2014. Conservatively assuming that residential demand remains constant, CMWD's annual buffer supply of 911 AF would

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<sup>22</sup> Wat. Code, § 10631(b)(1) & (d)(1).

<sup>23</sup> See CMWD, 2005 UWMP (Oct. 2005) available at

<https://www.casitaswater.org/home/showpublisheddocument/159/636896291070600000>; CMWD, 2010 UWMP (Jun. 2011) available at <https://www.casitaswater.org/home/showpublisheddocument/161/636896291073070000>; CMWD 2015 UWMP and Agricultural Water Management Plan (Jun. 2016) available at <https://www.casitaswater.org/home/showpublisheddocument/163/636896291075730000>; CMWD, 2020 UWMP (Jun. 2021) <https://www.casitaswater.org/home/showpublisheddocument/4108/637607539377570000>.

<sup>24</sup> CMWD, 2020 UWMP, Tab. 6-9 (Jun. 23, 2021).

<sup>25</sup> CMWD, 2020 UWMP, Tab. 7-2 (Jun. 23, 2021). Even in the more conservative estimates presented in the 2020 UWMP based on five year drought conditions, CMWD continues to project that supply would exceed demand by 319 AF in the worst year. (CMWD, 2020 UWMP, Tab. 7-4 (Jun. 23, 2021).)

<sup>26</sup> CMWD, Water Efficiency and Allocation Program, p. 4 (May 12, 2021) available at

<https://www.casitaswater.org/home/showpublisheddocument/4233/637690462660430000>.

permit the construction of 1,423 new residential units.<sup>27</sup> Further, under CWMD's Stage 1 water allocation, multi-family residential customers receive an annual allocation for essential health and sanitation of 84 hundred cubic (HCF), which equals approximately 0.19 AF.<sup>28</sup> Based on this Stage 1 water allocation, the annual buffer supply could support the essential water demands of approximately 4,795 residential units. Given that the Development Agreement proposes only 67 new and upgraded units, which will have efficient appliances and limited exterior landscaping, CMWD has ample water available in its annual supply buffer to support the proposed residential units.

Another recent CMWD study adopted an Ojai Water System demand estimate of 2,350 AF for planning beyond 2040.<sup>29</sup> Based on the long-term water supply analysis, CMWD estimated a potential, future water supply gap of 25 AF per year, which was within the margin of error and could "be met with a small additional delivery from the Casitas System if needed."<sup>30</sup> The study further evaluates a portfolio of projects available for CMWD to improve water supply reliability within the region to address potential demand gaps.<sup>31</sup> In light of the available information, CMWD clearly finds that "[e]ven with our drought and current lake level, Casitas has water resources for the future. The District is actively engaged in managing existing local water resources and planning for water security."<sup>32</sup>

In summary, CMWD has planned for drought and residential development within the City of Ojai. Drought and its potential impacts on water supply are not new and have been evaluated by both the City and CMWD. Public commenters alleging that drought conditions preclude new residential development within the City are unsupportable.

Thus, beware of commenters using unsupported assertions about drought, water supply, and aridification to further thinly veiled NIMBYism. Such arguments have been used too long to stop new residential development in Ojai.

#### **D. The Project Does Not Result In Any Significant Biological Impacts**

Project opponents point to tree impacts or the idea that tree impact information is too old to be relevant and should be redone. In reality, the potential impacts to trees by at all four sites have been

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<sup>27</sup> This estimate is conservative given that the water demand has reduced overtime in response to drought conditions and the residential service connections account for parcels with various home sizes and irrigated acreage.

<sup>28</sup> CMWD, Water Efficiency and Allocation Program, p. 4 (May 12, 2021).

<sup>29</sup> CMWD, Draft Comprehensive Water Resources Plan, p. 22 (Jun. 8, 2020) available at <https://www.casitaswater.org/home/showdocument?id=2553>

<sup>30</sup> CMWD, Draft Comprehensive Water Resources Plan, pp. 31-32 (Jun. 8, 2020) available at <https://www.casitaswater.org/home/showdocument?id=2553>

<sup>31</sup> CMWD, Draft Comprehensive Water Resources Plan, pp. 54-64 (Jun. 8, 2020) available at <https://www.casitaswater.org/home/showdocument?id=2553>

<sup>32</sup> CMWD, Casitas Water Security <https://www.casitaswater.org/your-water/casitas-water-security> (accessed on Oct. 24, 2022).

considered and are addressed via conditions of approval in the Development Agreement currently before you. In addition, the arborist has recently conducted yet another site visit in October 2022 and concluded:

**“The proposed landscape plan will mitigate for any impact or removal of existing trees on these properties.** The sites will benefit from the proposed landscape design and the required maintenance with the use of introducing native plant understory and a water-efficient irrigation system. Rain capture through the use of infiltration swales and permeable paving will help to replenish the groundwater aquifers and improve the health of the site’s environment. The proposed designs for these properties will enhance the charming character of the cottages as well as make them more sustainable, viable, and safe. If the proposed projects were not to move forward, many of the existing trees will continue to deteriorate and ultimately fail in the near future. **The projects as proposed will have minimal impact to the existing trees and ultimately will add to the biodiversity of the site and enhance the urban landscape. This project will also reduce the fire risks associated with the site as it currently exists.”**

With regard to bird and bat nesting, it is obvious on the proposed landscape plans that existing tree canopy will be largely protected, and the Project will result in a higher number of trees than existed before. The proposed replacement trees are of substantial size – not saplings – as suggested by opponents. For example, replacement trees range in size from 24” box being 12 to 16 feet tall at installation, to 72” box trees which are 18-22 feet in height at installation. In addition, the four sites will be developed in a phased manner over a 10 year period, which further avoids potential disturbance to nesting birds and bats in the City.

#### **E. The Project will Not Significantly Impact Historic Resources**

Project opponents make generalized claims that the Development Agreement would significantly impact historical resources. Under the CEQA Guidelines, a project must cause a substantial adverse change in the significance of an historical resource to have a significant effect on the environment.<sup>33</sup> Historical resources are listed in the California Register of Historical Resources, included in a local register of historical resources or deemed significant based on certain criteria.<sup>34</sup> To add a resource to the local register of historical resources, the agency must have “officially designated or recognized [it] as historically significant by a local government pursuant to a local ordinance or resolution.”<sup>35</sup> To otherwise be designated as a historical resource, the City Council must establish, based on substantial evidence in light of the whole record, that the resource is “historically significant based on certain factors, like its (1) association with events that have made a significant contribute to the broad patterns of California’s history and cultural heritage; (2) association with the lives of persons

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<sup>33</sup> Pub. Res. Code, § 21084.1; CEQA Guideline, § 15064.5(a)(1).

<sup>34</sup> Pub. Res. Code, § 21084.1

<sup>35</sup> Pub. Res. Code, § 5020.1(k).

important to our past; (3) embodiment of district characteristic of a type, period region or method of construction or poses high artistic values; or (4) likely to yield information important in prehistory or history.<sup>36</sup>

Here, none of the Project sites are listed in the California Register of Historical Resources, nor have any of the sites been officially designated on a local register of historical resources by a City ordinance or resolution. The City's Historic Preservation Commission further has considered the Cottages and Mallory Projects and decided not to place either project on a local register of historical resources list or encourage the City Council to designate these sites as historically significant based on substantial evidence.

Further, the Mallory EIR and Cottages MND were fully analyzed under CEQA regarding potential historic impacts and those analyses concluded that neither resulted in significant impacts to historical resources. The Mallory portion of the Project has not changed, and therefore the prior analysis still applies and is complete. The Cottages portion of the Project is mostly identical – two approximately 400 square foot affordable units were added on top of an existing garage. As stipulated in the CR-1 from the 2007 MND, severely deteriorated historic features may be repaired or replaced based on the severity of deterioration. Any replacement or repairs must also be undertaken under the guidance of a qualified historic preservation profession. Given the level of deterioration seen in the ancillary buildings, repair and replacement is warranted. In order to comply with CR-1, all proposed renovations to the buildings will be in conformance with the Secretary of the Interior's Standards for Rehabilitation and will be reviewed by a qualified historic preservation professional. The added square footage is proposed to match the design of the approved Cottages portion of the Project. Accordingly, the City has thoroughly considered these project sites and found that the Cottages and Mallory Way portions of the Project as proposed under the Development Agreement would not result in a significant impact to historical resources. Opponents claims to the contrary are unsupportable.

Similarly, the Montgomery Way and World University sites are not designated on the California Register of Historical Resources or the City's local registry. Montgomery Way is an empty lot. The World University building identified as 107 North Ventura was constructed in 1949. The property was not identified as potentially significant or a known historical resource in City of Ojai Landmark List, City of Ojai Historic Context Statement, Historic Downtown Ojai Walking Tour Brochure, Historic Resources Reconnaissance Survey, and the Historic Resources Screening Survey. In addition to the review of local sources, the California Office of Historic Preservation (OHP) Built Environment Resource Directory (BERD) and the National Register of Historic Places (NRHP) Database were also reviewed and the property was not found on either list.

While the property is listed in the Reconnaissance Survey table within the report, importantly it was not assigned an Integrity score or a Visual Evidence of Significance (VES) score like other surveyed

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<sup>36</sup> CEQA Guideline, § 15064.5(a)(3); see also Pub. Res Code, § 5024.1(h)

properties. Furthermore, there were multiple buildings identified in the Reconnaissance Survey document as having potential connections to the City Hall, but this property was not one of them. The identified properties with potential connections to City Hall were 311 South Ventura Street, 415 South Ventura Street, and 401 South Ventura Street. Thus, there is no evidence to support that the World History site is historic or that interior renovations of the site to convert it to housing will result in any impact to any historic resource.

## **VII. Cumulative Impacts**

Project opponents have raised concerns that the Project proposes development on four different sites around the City and that the City's CEQA analysis may violate CEQA's rules against piecemealing. This is incorrect for a number of reasons. First, each development at each site provides independent utility. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223; *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 736 [piecemealing not an issue where each project has independent utility]. Each new and refurbished housing unit in the City furthers the City's goals to build more housing and to increase the efficiency and safety of the City's housing stock. Additionally, the development of one site does not foreclose mitigation or any alternative for another site. (*Save Tara v. City of W. Hollywood* (2008) 45 Cal.4th 116, 139.)

Furthermore, concerns about piecemealing CEQA analysis stems from worries that doing so will minimize the impact of the project as a whole. This too is not the case with this Project because as is discussed here and in our prior communication, and the City's analysis, the Development Agreement as a whole does not result in any cumulative impacts. (See *Golden Door Props., LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 527 [if there are no cumulative impacts, there is no piecemealing issue].)

The project will occur across a ten year period, on four separate sites throughout the City. Furthermore, each project is relatively small. The Development Agreement only approves the construction of four new units at Cottages, and the Cottages development as a whole is phased where four units would be built first, then the remainder of the site will be built out later. No new units are proposed for Mallory and the World University building already exists, it will be converted to residential units. The largest new project is the Montgomery Project, which is entirely affordable units and only exists of 15 total units on less than five acres of urban infill land.

The general plan EIR 1997 contemplated and plans for 3,838 units by 2050. The City is currently at 3,414 units per the 2021 Housing Element. The Development Agreement runs through 2032 and only adds 34 new units.

Water demand has already been planned for in the UWMP for buildout of affordable units. In its transmittal of planning documents to Casitas, they have been alerted to the planned growth for the

City and so have been planning for it. The prior housing element planned for 371 units, the current housing element plans for 53.

In sum, the City has been planning for growth in the City for decades, the redevelopment of 33 units plus the addition of 34 new units (27 of which are affordable) is a notable project for the City of Ojai (which has not managed to construct any affordable housing in decades<sup>37</sup>), but in reality the project is small and dispersed in time and space across the City and therefore will not result in any significant project level or cumulative environmental impacts.

**VIII. Development Agreement Opponents Erroneously Claim Inconsistency with 2021-2029 Housing Element Policies, and General Plan Policies of the Conservation and Circulation Elements.**

The City Council has substantial evidence that the Development Agreement consistent with the 2021-2029 Housing Element and General Plan policies in the Conservation and Circulation elements.

**A. Project Consistent with Housing Element**

The Project is consistent with 2021-2029 Housing Element Policy H-4 which is “The City shall adopt policies, programs and procedures to facilitate attainment of RHNA goals, with particular emphasis placed on the needs of persons and families of lower income households (including extremely low income) and those with special needs (elderly, disabled/developmentally disabled, female-headed households, large households, homeless, and farmworkers).”

The Development Agreement does in fact provide low and very low units toward the City’s goal. In addition, it is consistent with the overarching Goal under which policy H-4 is just one of several policies. The overarching Goal being Goal 2: “Provide a continuing supply of affordable housing to meet the needs of existing and future Ojai residents in all income categories.”

Additionally, the very next policy listed, Policy H-5 under that same “Goal 2” is “H-5 The City shall actively seek and formulate partnerships with for-profit and non-profit developers to produce affordable housing and provide assistance in support of project applications to achieve development objectives.” ...Which is exactly what this project is doing.

Next, opponents assert inconsistency with the 2021-2029 Housing Element Policy H-15 which states, “H-15 The City will promote integration of all economic and population segments in each residential project; however, it is recognized that scales of economy and management efficiencies require that certain projects are made exclusive to target groups.” Again there is no basis to assert inconsistency.

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<sup>37</sup> The City has reported ADU development under a certain level of affordability. An important distinction is that none of these are deed restricted and therefore not truly affordable housing.

In fact, each site within the Project provides housing units at a variety of affordability levels including market rate.

**B. Project Consistent with Conservation Element**

The Conservation Element expresses the community's desire to protect water quality and supply, and biological resources. With regard to water, policies include 1) ensuring adequate water supply, 2) protecting the watershed and water recharge areas and thereby 3) protecting water quality. As previously discussed, the water purveyor to the City is the CMWD, who has, in their UMWPs, reported that plenty of water is available to serve the area. In addition, the projects will be required to conform to modern standards dictating efficient water use both inside (low flow fixtures per CalGreen), and outside. The proposed plant palettes include both native and drought tolerant plants.

With regard to water quality, in addition to drainage improvements proposed, the Projects will also conform to current standards for stormwater protection both during construction and after. Specifically, during construction, stormwater protections are mandated by the state for project sites over an acre (Stormwater Pollution Prevention Plan or SWPPP). North Ventura proposes internal upgrades only however erosion control measures will be implemented as needed, and the South Montgomery project will also be required to conform to local controls for construction sites as well. After construction, project features will ensure continued compatibility with this policy. The Mallory Way portion of the project proposes features such as permeable pavers and an infiltration swale. And, Cottages proposes to improve drainage and provide for water recharge. Curbs will be adjusted at World University site to improve drainage, and Montgomery will include large areas of pervious surfaces, and features such as covered trash enclosures. The Project will therefore be consistent with these policies as it will conserve water over the baseline condition, and make certain stormwater improvements that will enhance the quality of water resources.

In terms of biological resources, the General Plan states that the community strives to protect and enhance biological resources, and allows no net loss of resource value, and requires minimizing the loss of resource value even to resources that are abundant but important or of moderate value. The Project consists of development on four infill sites in the City. None of these sites are identified by the City's General Plan EIR as "Areas of Biological Significance" which maps both moderate and high significance areas.

Even still, the project is consistent with these resource protection policies in that after development of the project, each of the four properties will have more than the current number of trees, both protected oaks and others such as black walnut. In replacing these trees with large specimens (e.g. sizes ranging from 24" box up to 72" box at Mallory which range from 12 feet to 18-22 feet tall at installation) the tree canopy will be enhanced providing higher quality habitat for birds and bats than exist on these sites at this time. The Mallory Way and Cottages portions of the Project each have been previously analyzed for potential impacts to biological resources (with an arborist report update as

recent as October 2022), and they will continue to be required to abide with protections such as pre-construction nesting bird surveys and tree protection measures to protect critical root zones. The World University site is an existing developed site therefore no impacts are anticipated to biological resources in converting the existing building from commercial to residential use. The Montgomery site has been surveyed for biological resources most recently (May 2022) and through implementation of four project design features to protect western mastiff bats, the development will have a less than significant impact on biological resources, and it also will not contribute to cumulative impacts to these resources in the region.

Because 1) none of the sites are mapped as having moderate or high significance in terms of trees or woodlands in the City's General Plan EIR, 2) biological resource investigations have been performed on the sites where resources could potentially be impacted, and 3) the project has included project design features requiring pre-construction surveys, and protection and replacement of resources, the project will be consistent with the Conservation Element policies for protection and enhancement of biological resources.

**C. Project Consistent with Circulation Element**

Last, a public comment letter suggests that the Projects is not consistent with the City's circulation element because it does not limit the intensity of future development to that which can be accommodated on area roadways, or provide for the efficient movement of vehicles by designing, constructing, and maintaining a roadway circulation network which will function at an acceptable level of service (LOS).

These policies (CIR-1 and CIR-2) have existed since 1997 and were in effect during the original approval of Mallory and Cottages. The Mallory and Cottages environmental analyses each considered potential traffic impacts in the EIR and MND respectively, and the City's approvals found the projects not to have any Class 1 traffic impact and the approvals found the projects to be consistent with the Circulation Element, including this policy.

In addition, the Project is an urban infill project, which as described above, is the most efficient way for cities to be developed and reduce overall VMT and traffic.

Public comment letters have also asserted inconsistency with the Circulation element by not preparing a traffic study. Again, the Mallory and Cottages projects were analyzed for traffic impacts. Further, in the discussion of cumulative impacts for the Mallory project, the Cottages project was identified and analyzed. Additionally, our October 18, 2022 attached a traffic analysis which explains that the Project sites will not individually or collectively have a significant impact to traffic. In fact, the various project sites have such minimal potential traffic impact they qualify for being screened out under OPR's guidance. Per OPR's technical advisory, lead agencies may screen out VMT impacts using project size, maps, transit availability, and provision of affordable housing.

Here, the various sites in the Project are screened out from needing further VMT analysis in recognition that they would not result in significant impacts either individually or cumulatively because they are Small Projects<sup>38</sup> and they include Affordable Residential Development.<sup>39</sup>

Additionally, it should be noted that the Cottages and Mallory portions of the project will result in improved walking trails for the community which will further improve circulation.

#### **IX. Approving the Development Agreement Is Right for Ojai**

The Development Agreement presents an unprecedented opportunity for Ojai. This Development Agreement will provide deed-restricted affordable units for 55 years, phasing that will ensure the construction of all the affordable units before the remainder of the market units, and novel tenant protections for the City.

This is not a question of maintaining the status quo versus the new development. Changes at these four properties will occur; the Development Agreement simply allows the City to dictate the process. Without the Development Agreement, the City will have no deed-restricted units, none of the extra tenant protections, and the Ojai Bungalows can pursue development at the four sites in accordance with its legal rights.

The City Council must not be swayed by NIMBYs seeking to scare you into inaction using generalized claims of environmental harm, while they ignore the actual facts which demonstrate a lack of environmental impacts associated with the Development Agreement and the science supporting infill development. Change can be scary, but this change is right for Ojai because it protects some of Ojai's most vulnerable citizens, while improving the City's housing stock and helping to build a solid foundation for the City's future.

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<sup>38</sup> Presumption of Less Than Significant Impact for Small Projects. "Absent substantial evidence indicating that a project would generate a potentially significant level of VMT, or inconsistency with a Sustainable Communities Strategy (SCS) or general plan, projects that generate or attract fewer than 110 trips per day generally may be assumed to cause a less-than-significant transportation impact."

<sup>39</sup> Presumption of Less Than Significant Impact for Affordable Residential Development. The same Technical Advisory goes on to explain that "Adding affordable housing to infill locations generally improves jobs-housing match, in turn shortening commutes and reducing VMT. Further, "low-wage workers in particular would be more likely to choose a residential location close to their workplace, if one is available." In areas where existing jobs housing match is closer to optimal, low income housing nevertheless generates less VMT than market rate housing. Therefore, a project consisting of a high percentage of affordable housing may be a basis for the lead agency to find a less-than-significant impact on VMT. Evidence supports a presumption of less than significant impact for a 100 percent affordable residential development (or the residential component of a mixed-use development) in infill locations. Lead agencies may develop their own presumption of less than significant impact for residential projects (or residential portions of mixed use projects) containing a particular amount of affordable housing, based on local circumstances and evidence. Furthermore, a project which includes any affordable residential units may factor the effect of the affordability on VMT into the assessment of VMT generated by those units."

Mayor Stix and Council  
October 25, 2022  
Page 22

We respectfully request that this Council make the right decision for the City of Ojai and its residents and approve the Development Agreement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Beth Collins", with a long horizontal flourish extending to the right.

Beth A. Collins

Cc: Matthew Summers, City Attorney

24826208.7

## Brian Popovich

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**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 4:49 PM  
**To:** Brian Popovich  
**Subject:** FW: Proposed Development Agreement for affordable housing comment

**From:** Sylvie Lee <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 4:49 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Proposed Development Agreement for affordable housing comment

Hello City Council members- It is my understanding that tonight there will be an opportunity to either move forward with the proposed development plan or consider postponing this development for a number of important reasons that have been shared by both the community and some of the city council members themselves.

I would be the first to say that a need for affordable housing is an understatement and I am one of many community members who desire to see true affordable housing happen in Ojai. This issue is long overdue in terms of actual implementation of needed affordable housing.

That said, I agree with Councilmember Francina and Councilmember Haney that a postponement of the development should happen in order to allow time for the Historic Preservation Commission's request to be considered.

In addition, the City Council needs to reconsider what is truly affordable in the Ojai Valley based on actual wages and incomes of people who live and serve our community. Adding 50 units and only making 5 available to be somewhat affordable is not acceptable considering it's those who earn low incomes that need affordable housing the most and they are the ones that are greatly needed by our community.

People such as teachers, artists, nursing home assistants and service workers to name a few are greatly needed in our valley and yet their wages often do not allow them to afford to live in the Ojai Valley. The current units at Mallory Way and Cottages amongst the Flowers do allow for more residents to afford their current units. That will not be the case once these new developments are completed.

We are, in essence, displacing people for those who earn higher wages and making it impossible for low income earners to afford to live in Ojai. As stated before, people who are greatly needed in our community since they teach our youth, care for our elderly, and bring much needed culture to our community will be pushed out.

And not to mention the fact that 50 more units will have impacts on our water usage, which is already taxed. Plus, it is my understanding that 40 Oak trees will be removed in the process of this development. What measures are being put into place to make certain a majority of these oak trees will be preserved and proper water management practices will be utilized in these new building developments?

It is my recommendation that a postponement of these developments take place so that the aforementioned issues can be properly addressed with additional time. Other cities have managed to build truly affordable housing through partnerships with other organizations that assisted with the costs, which means

that it is possible in Ojai as well.

Thank you in advance for your consideration and I remain grateful for the time and effort the city council have put into this ongoing proposal for affordable housing development.

With gratitude,

Sylvie

## Brian Popovich

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**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 5:00 PM  
**To:** Brian Popovich  
**Subject:** FW: Public Comments for Oct 25 2022 City Council Meeting and Public Record  
**Attachments:** 20221025\_Public Comment for the Ojai City Council Meeting Agenda Item 4 \_DKirkland.pdf

**From:** Debora Kirkland <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 4:56 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>  
**Subject:** Public Comments for Oct 25 2022 City Council Meeting and Public Record

Please add the attached public comments regarding Agenda Item 4 to the public record for the October 25, 2022, Ojai City Council Meeting.

Thank you,

Debora Kirkland

October 25, 2022

**October 25, 2022, Ojai City Council Meeting  
Public Comment submitted for the Public Record**

**RE: Agenda Item 4**

Mayor Stix and Ojai City Council Members:

The project as defined in the Development Agreement is not exempt from California Environmental Quality Act (CEQA) review due applicability of the following exceptions to the exemptions (Cal. Code Regs. tit. 14 § 15300.2 Section 15300.2 – Exceptions):

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

- The project is located in an isolated valley with just four points of ingress and egress. The location of the project will create a significant impact on the surface streets that will create unsafe emergency egress during natural disaster, such as wildfire.
- The project is located in an area served by finite and limited water resources. There has been no analysis of the sustainability of these water resources to accommodate this development if drought conditions continue into the foreseeable future.

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

- Approving this project with no environmental impact analysis will create a precedent for avoiding environmental impact analysis for further development. Adverse environmental impacts from this project will be compounded by future projects.

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

- The project will create significant effects on the environment due to the unusual circumstances of an isolated valley with finite water resources and uncertain water and road capacity sustainability.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

- Not applicable to this project

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

- Not applicable to this project

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

- The project will result in substantial adverse change in the significance of the Cottages and the Mallory project sites due to the modifications proposed to the structures identified as culturally significant and eligible for listing on the State Historic Resource Office and the National Historic Preservation Act registry.

In addition, according to <https://californialanddevelopment.com/>

A project can be exempt from further CEQA review pursuant to California Environmental Quality Act, Public Resources Code section 21000, et seq., for CEQA "Class 32 Categorical Exemption for Infill (or Affordable Housing) Development Projects.

In order to qualify for this exemption, a project must meet five criteria:

1) It must be consistent with a city's General Plan and zoning

- The project proponents are seeking to modify the land use zoning to accommodate the proposed project. Therefore, the project is not eligible for the in-fill exemption from CEQA analysis.

2) It must occur within city limits on a project site of no more than five acres substantially surrounded by urban uses

- Applicable

3) The project site has no endangered, rare or threatened species habitat value

- Applicable

4) Project approval will not result in any significant effects relating to traffic, noise, air quality or water quality

- The project proponent has not demonstrated that the proposed construction, operation, and maintenance of the project will not have significant impacts to traffic, or Ojai's air quality. For the significance of traffic impacts, impacts to the whole valley and emergency ingress and egress need to be examined by an impartial third party.
- For the level of significance to traffic to be fully identified, the study needs to consider the increase in service workers who will need to travel to and from Ojai Valley to serve these affluent new residents. A traffic study of one surface street adjacent to a portion of the project is insufficient to say the least. Failure to adequately assess the potential adverse effects of this project on traffic and water quality could result in disastrous situations emergency vehicle ingress and resident egress was compromised due to the overburdened streets and highways from irresponsible and ill-informed development?

5) The site must be adequately served by all required utilities and public services (CEQA Guidelines, § 15332)

- The project proponent has not demonstrated that the project will not overburden the sustainability of the Ojai Valley water basin and Lake Casitas reserves. A thorough CEQA analysis will determine the level of significance for the impacts to the sustainability of our water supply.

The Ojai City Council's approval of the development agreement will be unlawful because the projects are not exempt from environmental analysis under the CEQA. There has not been any environmental review of the proposed project. The project proponent claims these 4 projects are exempt from environmental analysis required under CEQA. However, the exemptions they are claiming for these projects fall under exceptions, and are therefore ineligible for exemption. The quantity of public outcry alone deems this group of projects as having significant impact on the human environment and therefore required to undergo thorough environmental review under California law. The project proponents are claiming that a mitigated negative declaration for the Cottages project in 2009, and an EIR for the Mallory project in 2012, adequately satisfy environmental review for those projects plus two additional projects in 2022. Lumping all four projects together creates a new project with a broader scope of effects in a different human environment that was not analyzed previously.

By lumping old approved projects and new projects under one development agreement, and claiming outdated environmental compliance documents apply to those and two additional new projects, and claiming that the lumped projects are exempt from any CEQA review, the Ojai City Council and the Becker Group will be avoiding environmental impact analysis (in violation of CEQA). A full CEQA review must be completed assess the impacts of this new 4-project project under the current environmental conditions (such as drought, over-utilized surface streets and encumbered emergency egress, etc.). CEQA analysis will include the description of alternatives to the project which could lessen the impacts, and describe other means to lesson or offset negative environmental impacts. CEQA requires a period of

public review and comment. Public comments must be addressed under the law which could result in needed changes to the project to reduce or avoid significant impacts.

In addition, by lumping these four projects together under old approvals for two of the projects, the Becker Group will be able to avoid the need to follow housing laws such as AB 1174 passed after 2012 (<https://www.hklaw.com/en/insights/publications/2021/10/californias-2022-housing-laws-what-you-need-to-know>). The projects will result in a loss of below market rate housing, a loss the recent laws are designed to prevent. Ojai is not in need of more market rate housing. But below market rate housing is desperately needed. By approving this development agreement, the Ojai City Council and the project proponent will be adding two new projects to the old (2009 and 2012) approved projects. By claiming that approvals for the old projects should be applied to the new projects, the project proponents will be enabled to avoid applying the recent housing laws passed to ensure below market rate housing is maintained at a sustainable level to the new projects *and* the previously approved projects.

This new project is not exempt from CEQA, and it requires environmental review under California law. The Ojai City Council will be unlawful if they approve this development agreement and the development of these projects without following the requirements of CEQA. And ultimately, failure to analyze the environmental impacts of these projects will negatively impact the residents of the entire Ojai Valley, not just within the City limits.

Respectfully,

Debra Kirkland

# Cal. Code Regs. tit. 14 § 15300.2

## Section 15300.2 - Exceptions

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

*Cal. Code Regs. Tit. 14, § 15300.2*

*Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21084.1, Public Resources Code; Wildlife Alive v. Chickering (1977) 18 Cal.3d190; League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland (1997) 52 Cal.App.4th 896; Citizens for Responsible Development in West Hollywood v. City of West Hollywood (1995) 39 Cal.App.4th 925; City of Pasadena v. State of California (1993) 14 Cal.App.4th 810; Association for the Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720; and Baird v. County of Contra Costa (1995) 32 Cal.App.4th 1464.*

1. Amendment of subsection (b), new subsections (d)-(f) and amendment of Note filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
2. Change without regulatory effect amending Note filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

OCTOBER 13, 2021

# California's 2022 Housing Laws: What You Need to Know

In a Legislative Session in which the "End of Single Family Zoning" Received the Most Publicity, Laws Restricting the Enforceability of CC&Rs May Be the Most Impactful

*Holland & Knight Alert*

Chelsea Maclean | Daniel R. Golub | Andrew J. Starrels | Marne S. Sussman | Paloma Perez-McEvoy | Deborah Brundy

PDF



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## Highlights

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- Although California Senate Bill (SB) 9 (by-right duplexes) and SB 10 (upzonings up to 10 units) received the most attention, other important laws promoting increased density were enacted, such as SB 290, which reforms the State Density Bonus Law

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(SDBL), and SB 478, which limits floor area ratio (FAR) and lot coverage standards that limit multifamily housing.

- SB 8 extends important provisions of SB 330, the Housing Crisis Act of 2019 (HCA), but the Legislature otherwise took little action to streamline the housing approval process.
- The newest significant trend is a series of laws that take aim at recorded Covenants, Conditions and Restrictions (CC&Rs), including Assembly Bill (AB) 721, which makes any CC&Rs that limit residential development unenforceable against the developer of a 100 percent Below Market Rate (BMR) development.
- The Legislature also focused particular attention on issues of fair housing and equity, including a new law that requires all BMR homes within a development to be integrated and have the same access to common areas and amenities as non-BMR homes – with apparent retroactive effect.

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As in previous years, the California Legislature passed a large volume of laws related to housing in the 2021 legislative session. (See Holland & Knight's previous annual recaps of California Housing Laws in the final section below.) This Holland & Knight alert takes a closer look at the laws that the Legislature passed and that Gov. Gavin Newsom has signed into law, grouped into following categories:

- Single-Family Homes and Lots Zoned for Single-Family Residences
- Density
- Streamlining Housing Approvals
- Covenants, Conditions and Restrictions (CC&Rs)
- Equity, Fair Housing and Below Market Rate (BMR) Housing

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Except where urgency statutes are specifically noted, the new laws take effect Jan. 1, 2022.

## Single-Family Homes and Lots Zoned for Single-Family Residences

The following laws have fueled the "End of Single Family Zoning" headlines. The physical feasibility of adding duplexes, lot splits and Accessory Dwelling Units (ADUs) on single-family lots will likely determine how frequently these tools will be utilized.

### **SB 9 (Sen. Toni Atkins) – Duplexes and Lot-Splits**

As previously reported, Senate Bill (SB) 9 provides for the ministerial approval of converting existing homes occupied by a homeowner into a duplex if certain eligibility restrictions are satisfied. It also allows a single-family home lot to be split into two lots, and a duplex to be built on each lot, provided that the initial home is occupied by an owner who attests that the owner will continue to live in a unit on the property as their primary residence for at least three years. The most notable exceptions to duplex and lot split by right approvals are 1) the property could not have been used as a rental for the past three years, 2) the property cannot already have an

accessory dwelling unit or junior ADU, 3) the new lot may not be less than 40 percent of the property and must be at least 1,200 square feet, 4) modifications to the existing home may not require the demolition of more than 25 percent of an exterior wall, and 5) neither the new duplex nor the lot split with up to four new units (a duplex on each) may not result in a significant adverse impact to the physical environment. SB 9 does not address covenants, conditions or restrictions that may prohibit multifamily development or lot splits. (For additional analysis, please see Holland & Knight's alert, "[California Gov. Signs Landmark Duplex and Lot-Split Legislation into Law](#)," Sept. 17, 2021.)

In addition, Assembly Bill (AB) 1584 (discussed further below under "Covenants, Conditions and Restrictions (CC&Rs)") builds on previously established laws promoting ADUs by declaring unenforceable any CC&R that prohibits, effectively prohibits or restricts the construction or use of an ADU on a lot zoned for single-family use.

## Density

The Legislature enacted important reforms to spur more density through SB 10 and amendments to the State Density Bonus Law (SDBL) and took aim at restrictive floor area ratio (FAR) and lot coverage standards.

### **SB 10 (Sen. Scott Wiener) – 10-Unit Upzonings**

As previously reported, SB 10 provides that if local agencies choose to adopt an ordinance to allow up to 10 dwelling units on any parcel within a transit-rich area or urban infill site, the rezoning will be exempt from environmental review pursuant to the California Environmental Quality Act (CEQA), but subsequent project approvals are not necessarily exempt, unless the local agency adopts a ministerial approval process or there is another exemption or local law that exempts the project. (See Holland &

Knight's alert, "[SB 10 to Facilitate Upzonings, But Does Not Include CEQA Exemption for Corresponding Projects](#)," Sept. 20, 2021.)

## **SB 290 (Sen. Nancy Skinner) – SDBL Amendments**

The SDBL grants bonuses, concessions, waivers and parking reductions to projects with qualifying affordable housing. The SDBL continues to be the most commonly used tool to increase housing density and production. SB 290 first builds on a 2018 law by Sen. Skinner, SB 1227, providing for density bonuses for projects that included student housing pursuant to the SDBL. SB 290 adds the ability to request one concession or incentive for projects that include at least 20 percent of the total units for lower-income students in a student housing development. It also requires the agency to report on student housing projects receiving density bonuses as part of a housing element annual report.

More broadly, the SDBL amendments do the following:

- Clarify that the SDBL more broadly applies to projects with for-sale housing by replacing prior references to "common interest developments" with references to for-sale housing
- Provide that when determining the required percentage of units that must be affordable in order to qualify for SDBL benefits, the "total units" or "total dwelling units" *excludes* the units added pursuant to the SDBL or a local law granting a greater density bonus and *includes* the units designated to satisfy local inclusionary zoning requirements
- Provide that an impact on the physical environment is no longer an appropriate basis for denying a concession or incentive, aligning the SDBL with the Housing Accountability Act's (HAA) basis for denying or reducing the density of a qualifying housing development project

- Impose a new parking maximum of 0.5 spaces per bedroom for a development that includes 40 percent moderate income, for-sale units and is within a half-mile of a major transit stop to which residents have unobstructed access

In another revision related to the SDBL, AB 1584 (a housing omnibus bill discussed further below under "Covenants, Conditions and Restrictions (CC&Rs)" section) amends the HAA to clarify that any SDBL incentives, concessions, waivers and reductions in development standards – and not just the density bonus itself – are disregarded when considering a project's consistency with objective standards under the HAA. This amendment is intended to broaden the scope of SDBL projects eligible for the HAA's protections.

### **SB 728 (Sen. Robert Hertzberg) – Purchase of Density Bonus Units by Nonprofit Housing Organizations**

In connection with for-sale density bonus units that qualified a developer for an award of a density bonus under the SDBL, SB 728 requires that such unit be either 1) initially occupied by a person or family of the required income, offered at an affordable housing cost and subject to an equity sharing agreement, or 2) purchased by a qualified nonprofit housing organization receiving a property tax welfare exemption. For option 2, a recorded contract must memorialize a) affordability restrictions for at least 45 years, b) an equity sharing agreement and c) a repurchase option that requires a subsequent purchaser desiring to sell or convey the property to first offer the nonprofit corporation the opportunity to repurchase the property. This creates more ownership options for nonprofit housing organizations.

### **SB 478 (Sen. Wiener) – Minimum FAR/Lot Coverage Standards and Prohibition on CC&R Restrictions of FAR for Missing Middle**

## Multifamily Housing

FAR is a common mechanism in local zoning codes that limits the total floor area of a building in relation to the square footage of a lot. SB 478 prohibits agencies from imposing a FAR of less than 1.0 for a housing development project (comprised solely of residential units, a mixed-use development with at least two-thirds of the square footage attributed to residential uses or transitional or supportive housing as defined in the HAA) consisting of three to seven units and a FAR of less than 1.25 for housing development project consisting of eight to 10 units. Additionally, an agency may not deny a housing development project located on an existing legal parcel solely on the basis that the lot area does not meet the agency's requirement for minimum lot size. To qualify, a project must consist of three to 10 units in a multifamily residential zone or mixed-use zone in an urbanized area and cannot be within a single-family zone or within a historic district. SB 478 also makes any private development CC&R void and unenforceable if it effectively prohibits or unreasonably restricts an eligible FAR, as authorized under the new FAR standards and summarized above (and now found in Government Code Section 65913.11).

### **AB 345 (Assembly Member Sharon Quirk-Silva) – ADU Separate Conveyances**

AB 345 further facilitates ADUs by removing the requirement for a local agency to first pass an ordinance allowing the conveyance of an ADU separately from a primary residence (which can be an extended process) before such conveyance occurs and permits an ADU to be sold or conveyed separately from the primary residence to a qualified buyer (low- and moderate-income individuals and families as defined in California Health and Safety Code Section 50093) and if certain conditions are met, including that the primary residence or ADU was built by a qualified nonprofit corporation and that the property is held pursuant to a recorded tenancy in common agreement. In addition to the current requirements, agreements

recorded after Dec. 31, 2021, must also include 1) a delineation of all areas of the property that are for the exclusive use of a cotenant, 2) delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair and improvements associated with the property, and 3) procedures for dispute resolution among cotenants before resorting to legal action.

## Streamlining Housing Approvals

The Legislature took little action to streamline the approval of housing developments other than to extend and revise previously enacted laws.

### **SB 8 (Sen. Skinner) – Extending Provisions in the Housing Crisis Act**

One of the most important recent housing laws is SB 330, also known as the Housing Crisis Act of 2019 (HCA), which 1) limits a locality's ability to prolong the housing approval process, 2) gives housing applicants an opportunity to invoke vesting rights against later-adopted changes to local ordinances, 3) limits cities' ability to impose or enforce housing caps and development moratoria and 4) requires developers who demolish existing housing to provide replacement housing and relocation benefits. Many of these provisions were originally due to sunset in 2025. (See Holland & Knight's previous alert, "[California Legislature Passes Housing Crisis Act of 2019 and Rent Control Bill, Among Others](#)," Sept. 12, 2019.) SB 8 extends until 2034 the HCA provision that prohibits cities from conducting more than five hearings on an application as well as HCA provisions that provide vesting rights for housing projects that submit a qualifying "preliminary application." Applicants who submit qualifying preliminary applications for housing developments prior to Jan. 1, 2030, can now invoke vesting rights until Jan. 1, 2034. SB 8 extends until 2030 provisions that limit localities' authority to impose shifting requirements as part of application

"completeness" review, as well as provisions that require localities to render any decision about whether a site is historic at the time the application for the housing development project is deemed complete. SB 8 also enacts a series of reforms intended to provide that HCA provisions apply to both discretionary and ministerial approvals as well as to the construction of a single dwelling unit and makes a series of revisions to the already complex replacement housing and relocation requirements.

### **AB 1174 (Assembly Member Timothy Grayson) – Reforms to SB 35's Streamlined Ministerial Approval Process for Post-Approval Modifications and Permits**

SB 35 of 2017 provides for streamlined ministerial approval of qualifying infill affordable housing developments. In order to qualify, the housing development must meet or comply with a number of requirements, especially 1) consistency with all of the locality's applicable *objective* zoning, subdivision and design review standards, 2) the housing development will not require the demolition of affordable housing or rent controlled units, units that have been occupied in the preceding 10 years or a historic structure, 3) either 10 percent or 50 percent of the units (depending upon the jurisdiction's performance permitting enough housing to meet its share if its state-assigned regional housing need targets ) are designated at BMR rents or housing costs, 4) prevailing wage and "skilled and trained" workforce requirements for contractors and subcontractors, and 5) other locational requirements generally targeting infill housing locations. (For further information on SB 35's streamlined ministerial approval process, see Holland & Knight's previous alerts on the firm's legal victories using SB 35 to achieve project approvals: "[Holland & Knight First in California to Secure Housing Approval Through Litigation Under Streamlining Law](#)," Sept. 11, 2020, and "[California Court of Appeal Sides with Holland & Knight Clients in Landmark Housing Case](#)," April 26, 2021.)

AB 1174 further reforms the streamlined ministerial approval statute by addressing the process for modifying the project after an SB 35 permit is issued. The law specifies that the three-year time period during which an SB 35 permit remains valid is paused when a project is sued and while modifications are considered. The law also clarifies that subsequent permit applications must only meet the objective standards that were in place when the original development application was submitted. As an urgency statute, the law took effect on Sept. 17, 2021.

### **AB 1398 (Assembly Member Richard Bloom) – Accelerating By-Right Rezoning Requirement for Noncompliant Housing Elements**

One underappreciated provision of Housing Element Law is the requirement that, if a city cannot identify sufficient sites adequate to accommodate its regional housing need, the Housing Element must commit to rezone properties within three years to allow "by right" development of 20 percent BMR projects. AB 1398 requires a locality that fails to adopt a housing element that the California Department of Housing and Community Development (HCD) has found to be in substantial compliance with state law within 120 days of the statutory deadline to complete this required rezoning no later than one year from the deadline for adoption of the housing element – and prohibits the Housing Element from being found in substantial compliance until that rezoning is completed. Previously, an agency had three years to rezone. This accelerated rezoning requirement, combined with other recent laws requiring agencies to make more realistic housing production assumptions and meet ever-increasing housing targets, present an important opportunity for by right processing within jurisdictions that do not meet housing targets.

# Covenants, Conditions and Restrictions (CC&Rs)

One very notable trend in this year's session was new laws that take aim at existing recorded CC&Rs: rules and limitations on the use of property which are usually imposed by a developer or a homeowners association, attached to the title of a property, memorialized in documents recorded by the county recorder and binding as private contracts upon later purchasers of property. In addition to SB 478 (discussed above), which restricts CC&Rs that impose FAR restrictions, laws restricting CC&Rs include the following:

## **AB 721 (Assembly Member Bloom) – Covenants That Limit Residential Development Rendered Unenforceable Against Affordable Housing Developments**

One of the most under-publicized laws of the 2021 session, AB 721 makes recorded covenants that limit residential development unenforceable against qualifying affordable housing developments. The law builds on existing law that allows parties to eliminate unenforceable racially restrictive covenants from recorded documents – but goes dramatically further by making any recorded CC&Rs that restrict the number, size or location of residences that may be built on a property, or that restrict the number of persons or families who may reside on a property, unenforceable against the owner of a 100 percent BMR housing development that is affordable to lower-income households. There are exceptions for certain conservation easements and covenants required to comply with state or federal law, but the law will nonetheless have significant effect on real estate throughout the state. Since the law does not authorize development that is inconsistent with local zoning and general plans, parties who would have standing to enforce CC&Rs may turn to applicable general plan or zoning laws to enforce residential restrictions, while others may turn to

challenging the constitutionality or enforceability of the law, either on a facial basis or as applied to specific development proposals.

### **AB 1584 (Committee on Housing) – Covenants that Limit an ADU on Single-Family Lot Rendered Unenforceable**

AB 1584, a housing omnibus bill, establishes a restriction on contractual development controls that mirrors AB 721 by declaring unenforceable any CC&R contained within a deed, contract, security instrument or other instrument that prohibits, effectively prohibits or restricts the construction or use of an ADU on a lot zoned for single-family use.

### **AB 1466 (Assembly Member Kevin McCarty) – Removal of Unenforceable Discriminatory Covenants from Recorded Documents**

Existing law notifies a buyer of real property that recorded covenants on the property may contain racially restrictive or other unenforceable discriminatory provisions and informs buyers of their right to file an Restrictive Covenant Modification (RCM) form that effectively operates to remove the covenant from any subsequent documents sent to future buyers by the county recorder. AB 1466 aims to hasten the removal of these covenants by requiring all county recorders throughout the state to establish a program to identify and redact unlawfully restrictive covenants (which counties may fund by imposing a \$2 recording fee on all property recordings) and easing restrictions on the ability of other parties to seek to remove such covenants.

## **Equity, Fair Housing and BMR Housing**

Several laws focus on fair housing and equity, including a new law that requires all BMR homes within a development to be integrated with market-rate homes, adding a new "Acutely Low Income" Household

category and adding fair housing criteria to state and local program eligibility.

### **AB 491 (Assembly Member Christopher Ward) – State Law Requirement for Multifamily Developments to Integrate BMR Units and Provide Same Access to Common Areas and Amenities**

AB 491 requires that, for any residential structure with five or more residential dwelling units that include both affordable housing units and market-rate housing units, the BMR units must provide the same access to common entrances, areas and amenities as non-BMR units, and the building "shall not isolate the affordable housing units within that structure to a specific floor or an area on a specific floor." Similar provisions have previously been included in locally adopted inclusionary housing requirements. Although clearly a new requirement, AB 491 states that it is declaratory of existing law (apparently a reference to the fact the authors believe that isolating BMR units may violate current fair housing or anti-discrimination requirements), which means that state and local building officials may apply it retroactively. It will be important to plan for affordable and market-rate unit integration from an entitlement, financing and construction perspective.

### **AB 1043 (Assembly Member Isaac Bryan) – Adding "Acutely Low Income" Households to Affordable Housing Law**

Most affordable housing programs and laws target "lower income" households (which, in most counties, are generally households who earn less than 80 percent of Area Median Income [AMI]). State law recognizes two further subcategories of "lower income" households: "Very Low Income" and "Extremely Low Income" households (whose incomes vary by county but who typically earn less than 50 percent, and 30 percent, of AMI, respectively). AB 1043 adds a new subset of "lower income households": "Acutely Low Income" households, who earn 15 percent of AMI and whose

rents can be no greater than 30 percent of the 15 percent AMI level. This new income band of acutely low-income households is likely to be targeted in future state or local funding programs and inclusionary zoning ordinances.

### **AB 1095 (Assembly Member Ken Cooley) – Equity in State and Local Programs for Affordable Homeownership Opportunities**

Recognizing that "home ownership provides low-income families the opportunity to build inter-generational wealth," AB 1095 revises laws governing the Affordable Housing and Sustainable Communities Program (AHSC) and the Strategic Growth Council (SGC) to specify that both programs aim to promote affordable housing rental units and owner-occupied affordable housing units. The legislation additionally requires the SGC to adopt guidelines or selection criteria for the AHSC program that include both affordable housing rental and owner-occupied affordable housing units.

### **AB 1304 (Assembly Member Miguel Santiago) – Further Reforms to "Affirmatively Further Fair Housing" in Housing Elements**

As previously described, the Legislature in 2018 required public agencies to administer their public programs, and in particular their housing elements, "in a manner to affirmatively further fair housing [AFFH]." AFFH means, among other things, "taking meaningful actions ... that overcome patterns of segregation and foster inclusive communities" and "address significant disparities in housing needs and in access to opportunity." (See Holland & Knight's previous alert, "[California's 2019 Housing Laws: What You Need to Know](https://www.hklaw.com/en/insights/publications/2021/10/californias-2019-housing-laws-what-you-need-to-know)," Oct. 8, 2018.) AB 1304 further reforms these requirements by clarifying that public agencies have a mandatory duty to comply with AFFH requirements by requiring housing element site inventories to identify sites needed to meet the AFFH requirement and analyze the relationship of those sites to the locality's AFFH duty, and providing other further specific

guidance about how housing elements must analyze AFFH policies and goals.

## Planning and Housing Element Law

The Housing Element is a part of a local agency's general plan, which requires them to adequately plan for their "fair share" of housing needs pursuant to the Housing Needs Allocation (RHNA). Local agencies are required to update their Housing Element every eight years (or four years if HCD determines it is noncompliant). Several new laws add transparency to the process for updating the Housing Element and progress on meeting the Housing Element's goals by imposing additional noticing and reporting obligations on local jurisdictions.

### **AB 215 (Assembly Member David Chiu) – Housing Element Revision Publication Requirements and Housing Law Violation Enforcement**

AB 215 requires local agencies to make draft revisions of the housing element available for public comment for 30 days. The agency must consider and incorporate public comments prior to submission to the HCD for review. This bill also expands the attorney general's authority to independently seek action and grants HCD the ability to hire or appoint other counsel if the attorney general does not pursue action against a local agency that has violated certain housing laws, inclusive of the HCA, AFFH policies (AB 686), SB 35 Streamlining, Permanent Supportive Housing streamlining (AB 2162) and Low Barrier Navigation Center streamlining (AB 101). As such, this law strengthens the enforcement tools that may be used against noncompliant jurisdictions.

### **AB 68 (Assembly Member Quirk-Silva) – California Statewide Housing Plan Reporting Requirements**

AB 68 requires the HCD to develop and publish on its website in an annual report regarding land use oversight actions taken against local agencies related to housing for violations of the HCA, AFFH policies (AB 686), SB 35 streamlining, Permanent Supportive Housing streamlining (AB 2162) and Low Barrier Navigation Center streamlining (AB 101).

### **AB 787 (Assembly Member Jesse Gabriel) – Moderate-Income Conversions Counted Towards RHNA**

AB 787 expands existing law that permits jurisdictions to claim credit for up to 25 percent of their RHNA from the conversion of existing housing units for very low- and low-income households by also permitting cities and counties to satisfy up to 25 percent of the local agency's moderate-income regional housing need through RHNA through the conversion of units in an existing multifamily building to be restricted for moderate-income households. In order to qualify, the conversion 1) must occur beginning Jan. 1, 2022, 2) units may not be previously affordable to very low-, low- or moderate-income households, 3) must be subject to a 55-year recorded agreement and 4) the initial post-conversion rent for the unit must be at least 10 percent less than the average monthly rent charged during the 12 months prior to conversion.

### **AB 1029 (Assembly Member Kevin Mullin) – Grants for Pro-Housing Local Policies**

AB 1029 permits HCD to add the preservation of affordable housing units to a list of pro-housing, local policies that allow cities and counties to qualify for extra points or preference when scoring program applications for state programs, including the AHSC grant program, Transformative Climate Communities (TCC) Program and the Infill Incentive Grant (IIG) Program of 2007 for award cycles commenced after July 1, 2021. This is an urgency statute that went into effect Sept. 28, 2021, but requires HCD to adopt these policies as a part of the formal rulemaking process in order to take effect.

# Costs of Housing Production

The following new laws are aimed at curbing the increasing cost of housing production by imposing additional procedures on jurisdictions adopting impact fees and prohibiting affordable housing fees on affordable housing units.

## **AB 602 (Assembly Member Grayson) – Impact Fee Nexus Study Standards and Procedures**

AB 602 imposes additional standards and procedures for agencies adopting impact fees. It requires agencies to identify an existing level of services for public facilities and information supporting the agency's actions in increasing fees and requires agencies to impose fees on a housing development proportionately to the square footage of the development or make findings for a different methodology. Agencies must adopt studies at a public hearing with at least 30 days' notice, notify any member of the public who requests notice of an impact fee nexus study and consider any evidence submitted by any member of the public that the agency's determinations or findings are insufficient. Large jurisdictions are required to adopt a capital improvement plan as part of the nexus study. Agencies must update nexus fee studies at least every eight years from the period beginning on Jan. 1, 2022. Agencies must also post the current impact fee schedule and update at least twice a year. Finally, the law directs HCD to create an impact fee nexus study template. With additional standards and procedures, more engaged oversight and comment on the impact fee process by housing groups and industry organizations may follow.

## **AB 571 (Assembly Member Chad Mayes) – Prohibition of Affordable Housing Fees on Affordable Housing Units**

AB 571 prohibits agencies from imposing affordable housing impact fees, including inclusionary zoning fees and in lieu fees, on affordable units proposed as part of a SDBL project.

## Surplus Lands Act

The Legislature has continued the trend of amending the Surplus Land Act (SLA), enacted in 2019 to activate underutilized publicly owned land to encourage the development of affordable housing. The SLA has been strengthened in recent years (with new penalty provisions) as a result of noncompliance in the past and to increase opportunities for affordable housing and other public purposes on underutilized public land. (For more details regarding the SLA, see Holland & Knight's previous alert, "[California's 2020 Housing Laws: What You Need to Know](#)," Oct. 18, 2019)

### **SB 791 (Sen. Dave Cortese) – Establishment of California Surplus Land Unit**

SB 791 establishes within HCD the California Surplus Land Unit to provide technical assistance to local agencies and developers to "facilitate the development and construction of residential housing on local surplus land." The unit may adopt, amend and repeal regulations and rules; provide advice to agencies seeking to dispose of land; and facilitate agreements, grants and other types of financing for housing developers and local agencies to support the construction of housing on surplus land.

### **AB 1180 (Assembly Member Devon Mathis) – Dispositions to Tribes Exempted from Surplus Land Act Requirements**

AB 1180 amends the definition of the type of land a local agency may declare as "exempt surplus land" to include the transfer of surplus land to a federally recognized California Native American tribe. Such a transfer is exempt from provisions governing disposal of surplus land, which dictate

how a local agency may notice, negotiate and process the disposal of surplus land and is not subject to provisions that allow for private enforcement actions for noncompliance with the law.

## Students, Teachers and Seniors

The Legislature also focused on encouraging student and intergenerational housing planning and production.

### **AB 1377 (Assembly Member McCarty) – University of California and California State University Student Housing Plans**

AB 1377 requires the University of California (UC) and California State University (CSU) to conduct a needs assessment to determine projected student housing needs by campus by July 1, 2022, for the 2022-2023 through 2026-2027 fiscal years and to create a student housing plan, with a focus on affordable student housing, that outlines how they will meet projected student housing needs and to update that plan every three years. The report must take into account projected enrollment growth and the goal of closing the degree gap, defined to mean the gap between the number of highly educated workers that California's future economy will need and the number the state is on pace to produce. The intent of the bill is to provide the financial and technical support necessary for the UC and CSU systems and for community college campuses to build affordable housing to meet the urgent and growing needs of California's students.

### **SB 591 (Sen. Josh Becker) – Intergenerational Housing Developments**

SB 591 authorizes the establishment of intergenerational housing developments that would include senior citizens, caregivers and transition-age youth in order to permit developers who receive local or state funds or tax credits designated for affordable rental housing to prioritize and restrict

occupancy of certain developments to senior citizens, caregivers and transition-age youth. A qualifying intergenerational housing development must have at least 80 percent of the units occupied by at least one senior citizen, defined as a person 55 years of age or older, and up to 20 percent of the units occupied by at least one caregiver or transition-age youth. The development must also be affordable to lower-income households. The bill requires that the CC&Rs for the development set forth the limitations on occupancy, residency and use consistent with the bill.

### **AB 306 (Assembly Member Patrick O'Donnell) – Teacher and School Staff Housing**

Existing law requires school buildings to meet heightened standards for earthquake safety in order to protect children and requires the California Department of General Services (DGS) to approve plans and construction methods for such buildings. AB 306 removes these requirements and requires DGS to approve the plans, specifications and methods of construction of certain factory-built school buildings to exclude from the definition of "school building" any building used or intended to be used by a school district as residential housing, meaning any building used as a personal residence by a teacher or employee of a school district or community college district.

## **CEQA Litigation**

As in most years, the Legislature made only modest CEQA reforms by reenacting streamlined CEQA litigation tools, now available to certain qualifying mixed-use and residential projects, and adding a CEQA exemption for homelessness and COVID hardship housing.

### **SB 7 (Sen. Atkins) – Additional Mixed-Use and Residential Projects Eligible for Streamlined Environmental Leadership**

## Development Project Litigation Process

As previously described, SB 7 revises and expands on the previously enacted Environmental Leadership Development Project (ELDP) litigation process to include qualifying mixed-use and residential projects that were not previously eligible for certification. (See Holland and Knight's previous alert, "[SB 7 Creates Expedited CEQA Litigation Schedule for Qualifying Projects](#)," May 28, 2021.) The law does not streamline project approval, but qualifying projects can benefit from expedited litigation procedures that attempt to reduce CEQA challenge timelines to less than a year if they can achieve the governor's certification. As an urgency statute, this law took effect on May 20, 2021.

## AB 140 (Committee on Budget) – CEQA Exemption for Homelessness and COVID Hardship Housing

Within a wide-sweeping budget bill funding housing programs, AB 140 creates a new CEQA exemption for certain housing projects that are targeted at prospective residents facing homelessness and COVID hardship. As an urgency statute, this law took effect on July 19, 2021.

## Conclusion

Although some critics faulted SB 9, the duplex law, for failing to specifically impose BMR requirements on new housing, the overall thrust of the Legislature's efforts shows significant – and in some cases dramatic – attention to BMR housing developments. The Legislature did not advance any significant new streamlining laws, but it did create opportunities for creative project applicants to use provisions such as the SDBL to create feasible housing opportunities and to invoke the HAA and the HCA to move project approvals forward.

## Previous California Housing Law Alerts

- [A Closer Look at California's New Housing Production Laws](#), Dec. 6, 2017
- [California's 2019 Housing Laws: What You Need to Know](#), Oct. 8, 2018
- [California's 2020 Housing Laws: What You Need to Know](#), Oct. 18, 2019
- [California's 2021 Housing Laws: What You Need to Know](#), Nov. 4, 2020

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Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem, and it should not be substituted for legal advice, which relies on a specific factual analysis. Moreover, the laws of each jurisdiction are different and are constantly changing. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. If you have specific questions regarding a particular fact situation, we urge you to consult the authors of this publication, your Holland & Knight representative or other competent legal counsel.

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## Related Insights

## "Builder's Remedy": Bay Area Will Soon Face a Powerful Housing Tool

OCTOBER 21, 2022  7 Minutes



## California's Environmental State Agencies are Converting CEQA's Anti-Project Howitzer into a Neutron Bomb

AUGUST 25, 2022

## Los Angeles Superior Court Decision May Disrupt Local Governments' Land Use Practices

AUGUST 10, 2022  10 Minutes

## California's 2023 Housing Laws: What You Need to Know

OCTOBER 10, 2022  24 Minutes



## Partner Jennifer Hernandez Authors Report Showing CEQA Lawsuit Impact on California Housing

AUGUST 23, 2022  2 Minutes



## California Legislature Creates Pathways for Residential Development on Commercially Zoned Land

SEPTEMBER 1, 2022  3 Minutes

## Los Angeles Transit Oriented Communities Program Sees Its Wings Clipped ... Somewhat

AUGUST 11, 2022  14 Minutes

## Ninth Circuit Court of Appeals Invalidates Fracking Offshore California

JUNE 8, 2022  3 Minutes

## **SB 9: Two-Unit Developments & Lot Splits (Hot Topics in Small Housing)**

JUNE 17, 2022

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# TECHNICAL ADVISORY

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## CEQA REVIEW OF HOUSING PROJECTS



## CEQA Review of Housing Projects Technical Advisory

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

This technical advisory covers the following statutes and regulations:

Government Code, § 65457

Public Resources Code, § 21081.3

Public Resources Code, § 21094.5

Public Resources Code, § 21099

Public Resources Code, § 21155.1

Public Resources Code, § 21155.2

Public Resources Code, § 21155.4

Public Resources Code, § 21159.22

Public Resources Code, § 21159.23

Public Resources Code, § 21159.24

Public Resources Code, § 21159.25

Public Resources Code, § 21159.28

CEQA Guidelines, § 15183

CEQA Guidelines, § 15303

CEQA Guidelines, § 15332

A chart comparing the various requirements is included as Appendix A. *This document has been updated to reflect statutory changes that took effect on January 1, 2020.*

#### PRC § 21159.25 – Infill Housing in Unincorporated Counties

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

#### PRC § 21159.24 – Infill Housing in Urbanized Areas near Transit

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

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

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

#### **PRC § 21155.1 (SB 375) – Transit Priority Projects**

- The project meets the definition of Transit Priority Project in PRC § 21155.

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

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

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

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

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

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

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

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

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

*See also* **PRC § 21081.3** – Not required to analyze aesthetic impacts for infill housing projects converting abandoned or dilapidated buildings

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

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

- An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

#### Government Code § 65457 – Housing Covered by a Specific Plan

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

## Categorical Exemptions

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

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

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

- The project is consistent with the applicable general plan designation and all general plan policies, as well as with zoning designation and regulations.

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

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

CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

	Infill Housing PRC 21159.24	SB 375 PRC 21155.1	SB 226 PRC 21094.5	SB 743 PRC 21155.4	Specific Plan GC 65457	Tiering Guideline 15183	Class 32 Guideline 15332	AB 1804 PRC 21159.25	Class 3 Guideline 15303
Type of Housing Covered	Residential or mixed-use (up to 25% commercial)	Residential or mixed-use (at least 50 percent residential) <sup>i</sup>	Residential or mixed-use	Residential or mixed-use	Residential	Residential or mixed-use	Residential or mixed-use	Must be multifamily; residential or mixed-use (up to 33% commercial)	Residential; single family and multifamily
Location Requirements	“Urbanized area” as defined by PRC 21071 <sup>ii</sup>	Within an MPO	“Urban area” as defined by PRC 21094.5 <sup>iii</sup>	Within an MPO	N/A	N/A	Within city limits	Unincorporated urbanized area or urban cluster, as designated by the Census Bureau	Different requirements depending on whether urbanized or non-urbanized area  “Urbanized area” as defined by PRC 21071
Transit- Proximity Requirements	Within ½ mile of major transit stop as defined by PRC 21064.3 <sup>iv</sup>	Within 1/2 mile of a rail transit station or a ferry terminal included in a regional transportation plan (RTP)  OR  Within ¼ mile of a high-quality	Within ½ mile of major transit stop or high- quality transit corridor that is existing or planned and funded in the regional transportation improvement program (RTIP);	Transit priority area as defined by PRC 21099 <sup>vii</sup>	N/A	N/A	N/A	N/A	N/A

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		transit corridor, as defined by PRC 21155, <sup>v</sup> included in an RTP	OR  In “low vehicle travel area”; <sup>vi</sup>  OR  100% affordable with 300 or fewer units						
Infill Requirements	“Infill site” as defined by PRC 21061.3 <sup>viii</sup>	N/A	Site either has been previously developed  OR  Adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter	N/A	N/A	N/A	Substantially surrounded by urban uses (not defined)	Substantially surrounded (75%) by qualified urban uses; remaining area must be designated for qualified urban uses;  Qualified urban uses as defined by PRC 21072 <sup>ix</sup>	N/A
Density Requirements	20 du/acre or 10 du/acre depending on surrounding area;	Based on SCS, but must provide at least 20 du/acre;	Based on SCS;  For areas outside of MPO, density of at least 8 units	Based on SCS	N/A	Must be consistent with the development density established by	N/A	At least 6 du/acre but could require more based on	N/A

CEQA Review of Housing Projects Technical Advisory

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	No building can exceed 100,000 square feet	if the project contains between 26 percent and 50 percent nonresidential uses, a FAR of not less than 0.75;  Does not include any single level building that exceeds 75,000 square feet	per acre or a FAR of not less than 0.50			existing zoning, community plan, or general plan policies for which an EIR was certified  Consistency defined by subd. (i)(2) <sup>x</sup>		density of surrounding area	
Plan Consistency Requirements	Local plan and zoning consistency required, see PRC 21159.21(a); must have a community-level environmental review <sup>xi</sup> within the last 5 years	Consistent with SCS	Consistent with SCS	Consistent with SCS;  Must be consistent with a specific plan with an EIR	Must be consistent with a specific plan with an EIR adopted after Jan 1, 1980	Must be consistent with zoning, community plan, <u>OR</u> general plan	Local plan and zoning consistency required	Local plan and zoning consistency required	N/A
Minimum or Maximum	Less than 100	Less than 200	Less than 300 (but only if not	N/A	N/A	N/A	N/A	More than 6	<u>In Urbanized Areas:</u>

CEQA Review of Housing Projects Technical Advisory

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Number of Units			near transit or in low VMT area)						Up to 3 single- family residences  Up to 6 units of apartments, duplexes and similar structures  <u>Outside Urbanized Areas:</u> 1 single-family residence, or a second dwelling unit in a residential zone  Up to 4 units of a duplex or similar multi-family residential structure
Acreage Limitations	Less than 4	Less than 8	N/A	N/A	N/A	N/A	Less than 5	Less than 5	N/A
Affordability Requirements	Yes, inclusionary or in lieu	Inclusionary, in lieu, <u>OR</u> public open space; plus	100% (but only if not near transit or in low VMT area)	N/A	N/A	N/A	N/A	N/A	N/A

CEQA Review of Housing Projects Technical Advisory

Appendix A: Comparison Chart

	Infill Housing PRC 21159.24	SB 375 PRC 21155.1	SB 226 PRC 21094.5	SB 743 PRC 21155.4	Specific Plan GC 65457	Tiering Guideline 15183	Class 32 Guideline 15332	AB 1804 PRC 21159.25	Class 3 Guideline 15303
		no net loss of affordable units							
Environmental Limitations	Wetlands, habitat, species, hazards, historical resources, wildfire or fire hazard, public health, earthquake, landslide, flood plain, open space	Wetlands, habitat, species, hazards, historical resources, wildfire or fire hazard, public health, earthquake, landslide, flood plain, open space  Utilities, 15 percent more efficient than Title 24, 25% less water usage than average household, no conflict with nearby industrial uses	Must do soil and water remediation; must comply with air district requirements if near high-volume roadway	N/A	N/A	Must analyze impacts that are peculiar to the project;  If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on	Habitat, utilities, “traffic”, noise, air quality, water quality	Habitat, utilities, transportation, noise, air quality, GHG, water quality	None

# CEQA Review of Housing Projects Technical Advisory

## Appendix A: Comparison Chart

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						the basis of that impact			
Exceptions	Unusual circumstances, or new information		Environmental impacts must be analyzed in plan-level decision <sup>xii</sup> prior EIR <sup>xiii</sup>	Must be covered by a specific plan with an EIR;  PRC 21166	PRC 21166; if 21166 is triggered, can't use exemption until update to specific plan is prepared	Substantial new information shows that the uniformly applied development policies or standards will not substantially mitigate the environmental effect	All Cat Ex exceptions  See Guideline 15300.2	All Cat Ex exceptions (codified in statute)	All Cat Ex exceptions  See Guideline 15300.2

<sup>i</sup> See PRC § 21155.

<sup>ii</sup> **“Urbanized area”** means either of the following:

(a) An incorporated city that meets either of the following criteria:

(1) Has a population of at least 100,000 persons.

(2) Has a population of less than 100,000 persons if the population of that city and not more than two contiguous incorporated cities combined equals at least 100,000 persons.

(b) An unincorporated area that satisfies the criteria in both paragraph (1) and (2) of the following criteria:

(1) Is either of the following:

(A) Completely surrounded by one or more incorporated cities, and both of the following criteria are met:

(i) The population of the unincorporated area and the population of the surrounding incorporated city or cities equals not less than 100,000 persons.

(ii) The population density of the unincorporated area at least equals the population density of the surrounding city or cities.

(B) Located within an urban growth boundary and has an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an “urban growth boundary” means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(2) The board of supervisors with jurisdiction over the unincorporated area has previously taken both of the following actions:

# CEQA Review of Housing Projects Technical Advisory

## Appendix A: Comparison Chart

(A) Issued a finding that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that does both of the following:

- (i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.
- (ii) Protects the environment, open space, and agricultural areas.

(B) Submitted a draft finding to the Office of Planning and Research at least 30 days prior to issuing a final finding, and allowed the office 30 days to submit comments on the draft findings to the board of supervisors.

iii **“Urban area”** includes either an incorporated city or an unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

- (A) The population of the unincorporated area and the population of the surrounding incorporated cities equal a population of 100,000 or more.
- (B) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

iv **“Major transit stop”** means a site containing any of the following:

- (a) An existing rail or bus rapid transit station.
- (b) A ferry terminal served by either a bus or rail transit service.
- (c) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

**“Bus rapid transit”** means a public mass transit service provided by a public agency or by a public-private partnership that includes all of the following features:

- (1) Full-time dedicated bus lanes or operation in a separate right-of-way dedicated for public transportation with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
- (2) Transit signal priority.
- (3) All-door boarding.
- (4) Fare collection system that promotes efficiency.
- (5) Defined stations.

**“Bus rapid transit station”** means a clearly defined bus station served by a bus rapid transit.

v **“High-quality transit corridor”** means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

vi **“Low vehicle travel area”** means a traffic analysis zone that exhibits a below average existing level of travel as determined using a regional travel demand model. For residential projects, travel refers to either home-based or household vehicle miles traveled per capita.

A **“Traffic Analysis Zone”** is an analytical unit used by a travel demand model to estimate vehicle travel within a region.

vii **“Transit priority area”** means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan.

viii **“Infill site”** means a site in an urbanized area that meets either of the following criteria:

# CEQA Review of Housing Projects Technical Advisory

## Appendix A: Comparison Chart

- 
- (a) The site has not been previously developed for urban uses and both of the following apply:
- (1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.
- (2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.
- (b) The site has been previously developed for qualified urban uses.

<sup>ix</sup> **“Qualified urban use”** means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

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

<sup>xi</sup> **“Community-level environmental review”** means either of the following:

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

<sup>xii</sup> **“Planning level decision”** means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

<sup>xiii</sup> **“Prior environmental impact report”** means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

# The CEQA Checklist—An Introduction for Landowners

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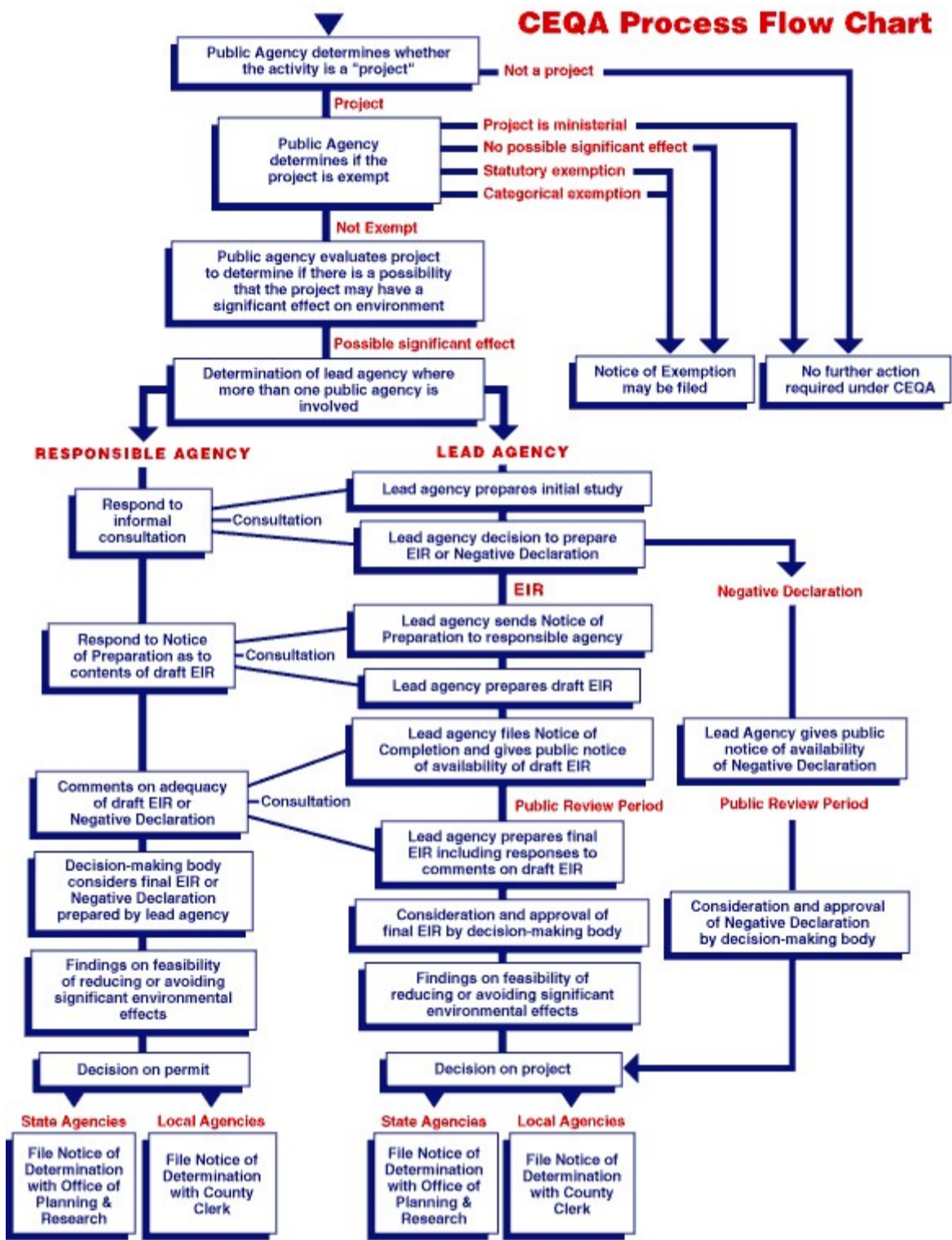
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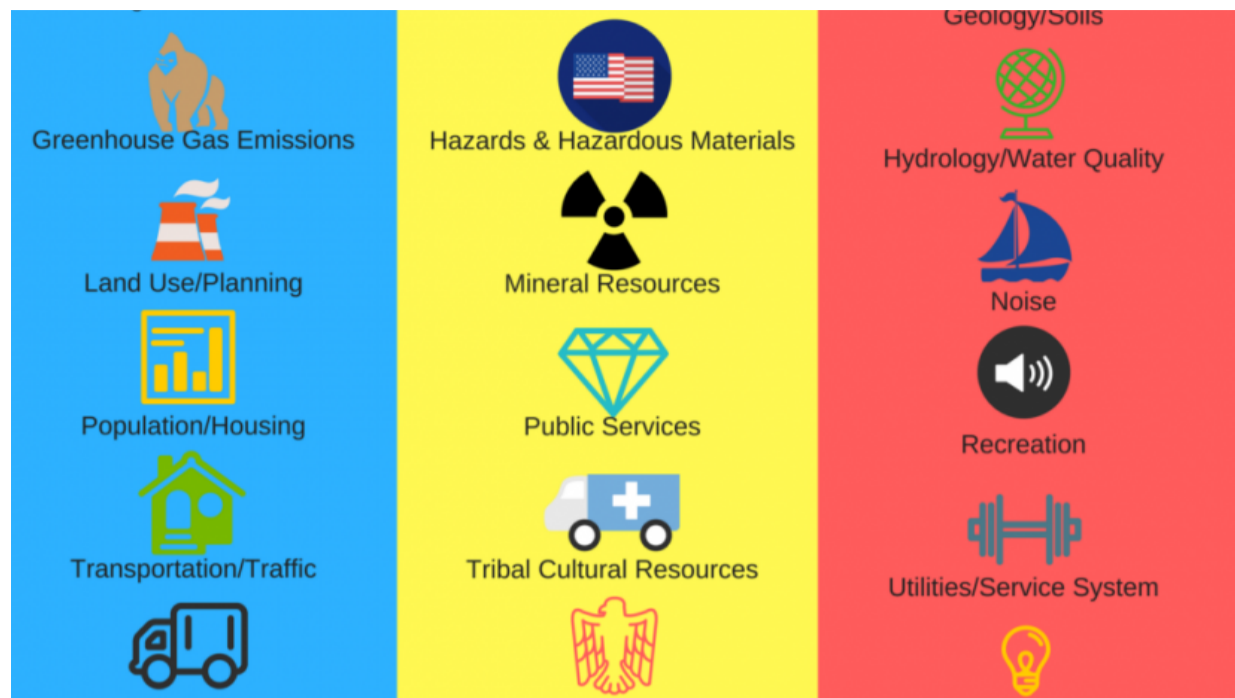


The CEQA checklist lists environmental factors to be evaluated for all projects in California. The list goes by many names—environmental checklist, initial study checklist, Appendix G. But they all mean the same thing.

CEQA doesn't explicitly require cities to use the checklist [in Appendix G](#) of the CEQA guidelines. But it does say that the city's evaluation must address the questions posed in Appendix G. In practice, most cities use Appendix G as their checklist, with some minor changes.

## The 'Checks' of the CEQA Checklist

There are 18 environmental factors identified by the CEQA checklist.



Whoever is completing the initial study must determine the effect a project will have on every one of these factors. The effect falls into one of four categories.

1. No Impact
2. Less Than Significant Impact
3. Less Than Significant with Mitigation Incorporated
4. Potentially Significant Impact

Depending on which category of impact the project falls into for each factor, three different processes may be triggered.

A no impact or less than significant impact triggers a Negative Declaration (ND). A less than significant impact with mitigation incorporated triggers a Mitigated Negative Declaration (MND). And a potentially significant impact triggers an Environmental Impact Report (EIR).

If you're not familiar with an ND, MND or EIR go back to my post on the [CEQA Process for Landowners](#).

## What is 'Significant'?

You may find yourself wondering what the significant in "significant impact" means in the real world. Fortunately, (but also unfortunately) you're not alone. Lawsuits are commonplace in the development world because CEQA is often subjective. Special interest groups file suits alleging the significance of this or that impact on the environment. The lawsuit or just the threat of a lawsuit compels cities and developers to do more studies.

In other words, when the no impact or less than significant impact box is checked, someone can file a suit alleging that the project may have a significant impact. This happens all the time. And CEQA has something called a [fair argument standard](#). The standard states, "a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'"

Christian Marsh of the UC David School of law wrote the publication linked to above. He goes on to say that the fair argument standard is a low legal threshold.



The traffic example is exceedingly simple. But consider how much geology, air quality and hydrology vary in places like Los Angeles compared to Redding or like Orange County compared to Truckee.

All this subjectivity and relativity and we’ve only just scratched the surface of CEQA. And the CEQA checklist is just the catalyst that guides all future environmental study in the CEQA process.

It’s no wonder that Marsh said “(CEQA) has generated hundreds of lawsuits in the state’s trial courts and intermediate appeals courts over the statute’s 40-year history. Perhaps no other California law matches CEQA in this respect.”

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Los Angeles Times

# Thousands of apartments may come to Santa Monica, other wealthy cities under little-known law

Liam Dillon

Mon, October 24, 2022 at 6:00 AM



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Scott Walter, president and chief executive of WS Communities, stands at the site that's slated for the developer's biggest proposed project: a 2,000-unit apartment complex with 400 low-income homes along Nebraska Avenue in Santa Monica. (Genaro Molina / Los Angeles Times)

Earlier this fall, a developer submitted plans for 4,500 apartments in Santa Monica — more new housing than the pricey, beachfront city has built in all of the previous decade.

And because of a little-used provision in state law that kicks in when cities fail to produce [a housing plan to accommodate projected population growth](#), Santa Monica officials may be powerless to stop the construction.

The tactic now could be deployed by developers in more

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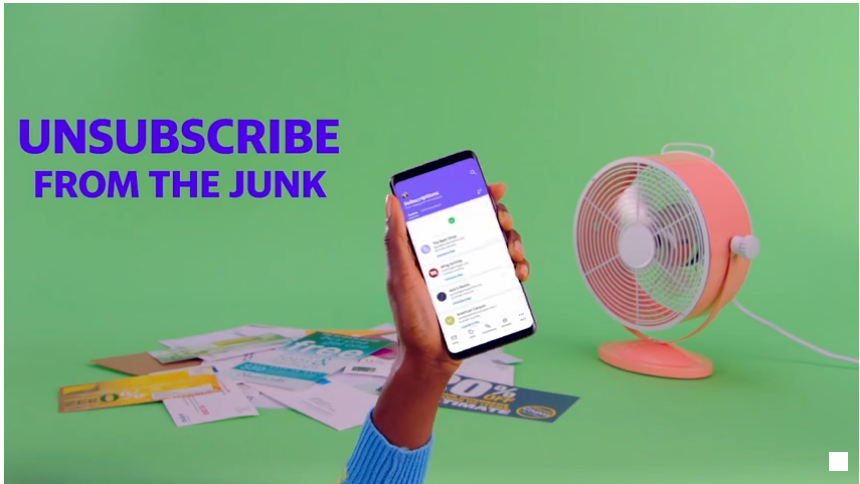
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with little housing production and high potential profits.

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The push for growth comes as Gov. Gavin Newsom and state legislators in recent years have passed laws eroding local controls over home-building, arguing that local resistance is a key reason behind California's unprecedented housing shortage and high cost of living.

In response, developers are becoming increasingly willing to challenge city officials.

In Redondo Beach, a power plant owner has submitted plans for more than 2,200 housing units using the new

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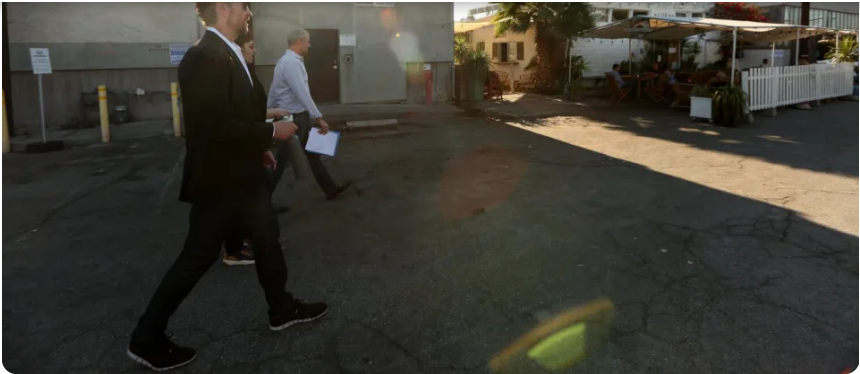




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Walter, left, wants to build 4,500 apartments across 14 buildings, including a 15-story high-rise with 2,000 units that would be Santa Monica's tallest outside its downtown. (Genaro Molina / Los Angeles Times)

Dave Rand, an attorney advising Scott Walter, the developer of the Santa Monica projects, said he has fielded inquiries about the tactic in places like Beverly Hills, West Hollywood and Coronado.

“I've never had so many calls about any single subject in a shorter period of time,” Rand said. “It demonstrates how broken the system is in California, that people are so desperate to find an alternate pathway.”

Walter's 4,500 apartments would be spread across 14 buildings, including a 15-story high-rise with 2,000 units that would be the tallest in Santa Monica outside the



**Leslie Jordan, 'Will & Grace' and 'Call Me Kat' actor, dies in car crash at age 67**

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distinctiveness.

Santa Monica Councilmember Phil Brock called the 15-story high-rise “beyond the pale” and an “unacceptable bar for the rest of the city.”

“Some of this growth will be destructive to the idea that Santa Monica somewhere along the line was supposed to be a beachside town,” Brock said. “As we blend into L.A., we’ll lose that character.”

He expects that he and his colleagues will try to block at least some of the projects.



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At issue is a 30-year-old section of state law colloquially known as “the builder’s remedy.”

If the requirement to produce a housing plan every eight years is violated, developers can essentially propose building whatever they want, provided some of the housing is set aside for low- or middle-income families.

The builder's remedy has long sat unused, said Chris Elmendorf, a law professor at UC Davis who has researched the provision.

In recent years, however, state legislators have beefed up laws to make the builder's remedy more viable by increasing penalties for cities that reject development and blocking attempts to reduce density. State officials, including Newsom and Atty. Gen. Rob Bonta, also have more assertively enforced housing rules, creating a friendlier environment for those hoping to use them.

State Sen. Nancy Skinner (D-Berkeley), who wrote some of the laws related to the builder's remedy, said there

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“We haven’t taken away local control,” Skinner said. “The localities themselves gave up their local control when they chose to ignore state law.”

The state’s more aggressive stance has led to a cultural shift among frustrated developers. They are starting to rely less on fostering the goodwill of local officials and more on what the law allows them to build, Elmendorf said.

“Some developers are like, ‘Well, I no longer need to be friends with the city council. I just need to know my rights,’” he said. “So they can do things that otherwise would have been a death wish for their business.”

Beverly Hills, Huntington Beach, Malibu, Palm Springs, Pasadena and West Hollywood are among the 124 jurisdictions in Los Angeles, Orange, Riverside, San Bernardino and Imperial counties where the builder’s remedy could be in play because their latest housing plan hasn’t been approved, the state Department of Housing and Community Development confirmed.

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Area cities housing plans are due in January.



At its Oct. 11 meeting, the Santa Monica City Council approved a revised housing plan, which was then certified by state housing officials, putting the city in compliance.

But state officials have said that proposals such as the 14 that Walter submitted before then will still fall under the builder's remedy. Two other developers also filed projects in Santa Monica before the deadline.

The 16 developments — Walter's plus the other two — would create 4,562 new apartments, with 941 set aside for low-income residents.

Walter's firm, WS Communities, is one of the biggest developers in Santa Monica, with 20 apartment buildings completed or under construction.

His proposed 15-story high-rise would be built on 3.3 acres that now house a parking lot and low-rise commercial businesses along Olympic Boulevard.

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using interest rates and construction costs, he had to significantly expand the size of the project.



“We’ve have witnessed for a decade as the city has previously gone through zoning updates, how long and arduous the process that can be,” Walter said. “We just didn't want to wait.”



For the last 50 years, housing politics have frequently set the agenda in Santa Monica, a city of 92,000 with an iconic pier and Ferris wheel.

During the 1970s, the city passed what was then one of the nation’s strongest rent control laws. It was also one of the first cities to force developers to provide affordable housing as an additional condition to get their projects approved.

In the decades since, regular disputes have erupted over proposals for large housing and commercial developments. Most recently, debates have centered on [tearing down a downtown parking garage](#) and replacing it with low-income housing, as well as building [a 521-unit](#)

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came along.



Despite the tremendous demand to live in Santa Monica, the population is only slightly larger than it was in 1970 — in large part because it's become so expensive and housing construction has slowed.

Santa Monica's median home value is nearly \$1.9 million, almost \$1 million higher than the average in the L.A. area, according to Zillow.

A newly leased two-bedroom apartment in the city rents for a median of \$2,605 a month, 13% above the regional figure, per data from Apartment List.

The builder's remedy projects are set to become the city's next flashpoint.

A slow-growth group, Santa Monica Coalition for a Livable City, is urging the City Council to consider litigation to stop the projects.

"To say residents and council members are deeply concerned about this developer ambush and have

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Leonora Camner, a Santa Monica resident and executive director of pro-growth organization Abundant Housing LA, said she would have preferred that the city had initially submitted a housing plan that passed state muster.

Failing that, a remedy that allows for housing to be built is preferable to the city retaining control over its land-use policies, she said.

“I don’t want to see a situation where builders can circumvent local planning,” Camner said. “But if cities can’t for political reasons, or whatever, pass housing plans, people suffer. I’m glad there are these consequences.”

One sticking point for the builder's remedy projects could be the California Environmental Quality Act, which, especially for larger-scale efforts, could require a lengthy review of environmental effects and open the door to litigation.

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for low-income families or 100% for middle-income ones, the projects could be infeasible in less expensive areas with lower profit margins, he said.

Because of these uncertainties, Elmendorf doesn't expect the builder's remedy to lead to a massive surge in housing construction across the state.

"The only places where this is a real threat is where development is super expensive," Elmendorf said.

This story originally appeared in [Los Angeles Times](#).



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With a 20% set aside for "affordable" housing, the developers will still walk a real estate industry will continue to slip money under the table to whoever v their industry.

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## Brian Popovich

---

**From:** Weston Montgomery  
**Sent:** Tuesday, October 25, 2022 5:06 PM  
**To:** Brian Popovich  
**Subject:** FW: Public Comment Letter for Agenda Item No. 4 for City Council October 25, 2022 Meeting/Hearing  
**Attachments:** 20221025\_PC Final.pdf; Exhibits for October 25, 2022 Comment Letter.pdf

**From:** Jason Sanders <[REDACTED]>  
**Sent:** Tuesday, October 25, 2022 5:04 PM  
**To:** Weston Montgomery <Weston.Montgomery@ojai.ca.gov>; Kristy Rivera <kristy.rivera@ojai.ca.gov>; Kristy Rivera <kristy.rivera@ojai.ca.gov>; Kristy Rivera <kristy.rivera@ojai.ca.gov>; Kristy Rivera <kristy.rivera@ojai.ca.gov>; Kristy Rivera <kristy.rivera@ojai.ca.gov>; [REDACTED]  
**Cc:** Sabrina Venskus <[REDACTED]>  
**Subject:** Re: Public Comment Letter for Agenda Item No. 4 for City Council October 25, 2022 Meeting/Hearing

Please be advised copies of the exhibits and letter available at the Dropbox link previously sent are also being attached hereto as attachments to this email.

Thank you,

*Jason R. Sanders | Attorney At Law*  
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On Tue, Oct 25, 2022 at 5:00 PM Jason Sanders <[jsanders@lawsv.com](mailto:jsanders@lawsv.com)> wrote:

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**From:** Jason Sanders <[REDACTED]>

**Sent:** Tuesday, October 25, 2022 4:59:26 PM

**To:** [REDACTED]  
[REDACTED]  
[REDACTED]

**Cc:** Sabrina Venskus <[REDACTED]>

**Subject:** Public Comment Letter for Agenda Item No. 4 for City Council October 25, 2022 Meeting/Hearing

Good afternoon,

Please find enclosed a public comment letter and exhibits for the comment letter.

[REDACTED]  
[REDACTED]

*Jason R. Sanders | Attorney At Law*

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October 25, 2022

**SUBMITTED VIA ELECTRONIC MAIL**

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**RE: Ojai City Council Agenda Item No. 4 [Second Reading and Adoption of Ordinance Regarding Proposed Development Agreement for Multi-Family Housing and Affordable Housing Totaling 67 Units, Density Increases, a Zone Change, a General Plan Amendment and CEQA Exemptions]**

We submit this public comment letter on the above-entitled agenda item for the October 25, 2022 Council meeting on behalf of Mr. Gerald Schwanke. Mr. Schwanke is a 40 year resident of Ojai, a homeless advocate, and a retired employee of the City of Ojai Department of Public Works. As an employee of the Department of Public Works, Mr Schwanke was involved in infrastructure projects that made the city of Ojai a more enjoyable and safe place to live. As a member of the Ojai Family Shelter, Mr. Schwanke is acutely aware of the affordable housing crisis plaguing this state and the city of Ojai. For Mr. Schwanke, there is a difference between for-profit housing development projects masquerading as "affordable projects" and truly affordable projects that provide much needed income-based housing. The former represents a money grab, while the latter represents a safety net to those living on the edge of homelessness. Mr. Schwanke does not oppose this project for the sake of opposing development in Ojai. He opposes this project because it simply does not satisfy the spirit of the City's Affordable Housing Replacement Ordinance or the General Plan. In its haste to jam this project through city review, the City has also violated several other laws, including the California Environmental Quality Act.

Nevertheless, the City Council voted on October 18, 2022 to approve the proposed project. This meeting represents the last chance for the city's decision makers to fix their bad decision to give this troubled project the green light. The City Council will continue to abuse its discretion and therefore subject itself to potential legal liability if it acts to adopt the ordinance approving the Proposed Project as-is and exempts it from full CEQA environmental review.

We request that the City Council reverse its decision to approve the project and direct staff to prepare an EIR for the Proposed Project. In the alternative, we request that the City prepare a subsequent EIR for Mallory Way sub-project and an EIR for the Cottages Among the Flowers sub-project, and conduct an initial CEQA study on the remaining two sub-projects to determine the proper level of environmental review that must take place, whether it be a Negative Declaration, a Mitigated Negative Declaration or an Environmental Impact Report. Alternatively, we request that Master EIR be prepared.

This public comment letter incorporates by reference all the points, issues, arguments and evidence presented in the October 18, 2022 public comment letter. In addition to the points made in that letter, we hereby make the additional comments:

#### **IV. THE CITY COUNCIL APPROVED THE PROJECT IN A PROCEEDING THAT WAS UNFAIR, TAINTED BY BIAS AND WHICH DID NOT PROCEED IN MANNER AS REQUIRED BY LAW**

City Council members must be neutral and unbiased, meaning that the decision-maker has no conflict of interest, has not prejudged the specific facts of the case and is free of prejudice against or in favor of any party. Bias can be proved through the existence of actual bias or through the unacceptable probability of actual bias (i.e. a situation in which experience teaches that the probability of actual bias on the part of the decision-maker is too high to be constitutionally tolerable). Allowing a biased decision maker to participate in the decision is enough to invalidate the decision.

On July 12, 2022, the City Council directed an Ad Hoc committee to meet with the developer and discuss adjustments to the development agreement. (October 19, 2022 Administrative Report p. 4-2.) The City Council's Ad Hoc Committee met with Staff and the applicant multiple times. (*Id.* at 4-4.) The Ad Hoc Committee was involved in all aspects of the negotiation including but not limited to the number of deed-restricted affordable housing units that would be agreed to under the project and the nature of relocation assistance. (*Id.* at 4-6.) The negotiations resulted in the second iteration of the development agreement. (*Id.* at 3.) The City Council then voted to approve the second iteration of the development agreement by a vote of 4-1.

The Ad Hoc Committee was composed of two council members, namely Council Member Ryan Blatz and Council Member William Weirick. Council Members Blatz and Weirick admitted at the hearing on this project that they were involved in the negotiations as Ad Hoc Committee Members. These two council members have thus participated in the negotiations that resulted in the second iteration of the development agreement. After they were done negotiating the development agreement, these two council members then donned their decision-making hats and voted to approve the very agreement they had negotiated. This represents actual bias.

Additionally, experience teaches that an individual who is responsible for negotiating the terms of an agreement has: prejudged the specific facts on which the terms of the agreement were based; and prejudice skewed in favor of the validity of the terms of said agreement that he or she negotiated. Experience also teaches that if a negotiator is then called upon to determine the validity of the very agreement he or she negotiated, said negotiator will have a conflict of interest when acting as a decision-maker. That is exactly what happened here. Moreover, experience further teaches that council members who do not participate in Ad Hoc Committees may be easily swayed by their fellow members who did so participate and who have intimate knowledge of the negotiations. Conversely, Council members who did not participate may not be apprised of all the details of the negotiations by biased

council Ad Hoc Committee members who may divulge only the information necessary to get the project approved. Thus, the probability that Council members Blatz and Weirick were biased in favor of approving the development agreement is too high to be constitutionally tolerable. Accordingly, there is also an unacceptable probability of actual bias in this proceeding.

**V. NEITHER THE CITY NOR THE DEVELOPER CAN CONTRACT AROUND THE CONSISTENCY REQUIREMENTS OF THE GENERAL PLAN AND THE CURRENT PROJECT IS INCONSISTENT WITH THE GENERAL PLAN**

Our October 18, 2022 public comment letter raised numerous points explaining how the proposed project is inconsistent with the general plan. Some of those inconsistencies are called out for further discussion here. It is worth noting that the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements. (*Orange Citizens for Parks & Recreation v. Superior Court* (2016), 2 Cal. 5th 141, 153.) An ordinance that conflicts with a general plan is invalid at the time it is passed. (*Ibid.*) Where a consistency determination involves the application of a general plan's established land use designation to a particular development, it is fundamentally adjudicatory. (*Id.* at 155.) While we acknowledge that the development agreement laws subject the owner to the state of the law as it exists at the time the agreement is executed (Gov. Code Sec. 65866(a)<sup>1</sup>, the approval of the agreement depends on several findings, including but not limited to consistency with the general plan. Accordingly, the development agreement cannot contract around inconsistencies with the general plan because a finding of consistency with the general plan is specifically required by the development agreement law.

The Ojai Municipal Code ("OMC") provides that "the conversion or demolition of existing residential dwelling units inhabited by persons and families of very low, lower or moderate income shall not be authorized unless provisions have been made for the replacement of those dwelling units with affordable units..."(OMC Sec. 10-2.904.) This ordinance is a key component of the General Plan. (See City of Ojai Housing Element.)

The OMC also provides definitions of moderate, median, lower and very low income levels that incorporate the figures contained in Sec. 6932 of the California Code of Regulations and which correspond to the income levels utilized by the City in the Administrative Report. (OMC Sec. 10-2.902,) "The developer shall bear the burden of proving the status of occupancy at the time application is filed with the City for a land use permit (as defined in Section 10-2.3602) allowing such conversion or demolition. Data shall be obtained and verified by such methods as may be necessary and reasonable to ensure full, true and complete information from which to base determinations in accordance with the definitions set forth in Section 10-2.902. In the absence of such data, or where occupancy cannot be established at the time of conversion or demolition: (1) all displaced dwellings shall be deemed inhabited by target households; and (2) all replacement affordable units shall be in proportion to the needs identified in the City's Housing Element for very low, lower and moderate income. (OMC Sec. 10-2.904.)

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<sup>1</sup> The development agreement statute also requires that provisions of the agreement shall be modified or suspended as may be necessary to comply with state or federal laws or regulations enacted after execution and whose application would prevent or preclude compliance with a provision of the development agreement. (Gov. Code Sec. 658695.)

Here, there is no evidence in the city file that either developer has provided the tenant income data called for by the ordinance. The city's administrative report only indicates that "The property owner for both sites identified 25 housing units rented at affordable rates to persons with qualifying affordable level income". There is no data to back up this claim and everyone, including the city decision-makers took this representation at face value. However, new data collected from the actual tenants throughout the project sites now shows that the developer has misrepresented the income levels of the tenants.

Not all tenants were available to speak with those canvassing the project sites at the time the canvass was done over the last few days. For the tenants who were present, it is very clear that any data that the City is relying on, which we understand came from the developer, is clearly and unequivocally wrong. Based upon the information presented in the table presented in Exhibit U, supported by declarations of the tenants which are attached collectively as Exhibit V, it is reasonable to assume that none of the data relied upon by the City in the 2019/2020 income survey is correct, and it would be an abuse of discretion to rely upon that data. Based upon the evidence obtained, under the current housing ordinance AT LEAST 4 units of low income, 11 units of very low income and 1 unit of extremely low income would need to be conserved or replaced. It is very likely more would be required, if a proper income survey was conducted yielding additional low income units.

Instead of blindly following the developers' representations, the City should have deemed all of the currently occupied units as being occupied by target households and provided for replacement units in proportion to the needs identified in the city's housing element.

For example, under the initial The Cottages project, the developer was applying for the expansion and renovation of eight existing residential units and construction of two new units in a duplex, along with a subdivision with condominium conversion on all 10 units. As our October 18, 2022 comment letter indicated, the Design Review Permit expired<sup>2</sup> and the applicant has not made the required showing and the city has not made the required analysis to support an extension being granted. Even if an extension was now properly granted with the required findings, The Cottages Project is in conflict with the City's Affordable Housing Replacement Ordinance.

Based on the evidence recently obtained from an independent survey, it is reasonable assume that residents of the Cottages are all low income tenants under the OMC and Ventura County Income Limits. Thus, to perform the initial The Cottages Project, the developer was required by the OMC's Affordable Housing Requirements and Incentives Ordinance to provide for 8 lower income units. Under the instant project, the development agreement only requires the developer to build 2 affordable units at The Cottages. Falling 6 units shy of the Ordinance's requirements. Moreover, while the inclusion of a very low income unit on The Cottages site is notable, it also means that one of the low income tenants currently on site may not be eligible to reside in the very low income unit due to the corresponding income restriction. Thus, the proposed project at The Cottages will result in the displacement of up to 7 low income tenants and the loss of 7 low income units.

Under the initial Mallory Way Project, the developer applied for the removal of 18 residential units, renovation of seven units to airspace condominiums, and construction of 23 new airspace condominium units on a 3.58-acre property. Seven of the resulting 30 units would have been deed-restricted as affordable (6 as moderate income and 1 as low income) for a period of not less than 55

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<sup>2</sup> To be clear, the tract map entitlement previously approved has also expired. (See OMC Sec. 10-2.3202(b).)

years. As our October 18, 2022 comment letter indicated, that permit has also expired<sup>3</sup> and neither the applicant, nor the city has made the required showing or analysis to support an extension being granted. Even if an extension was now properly granted with the required findings, the Mallory Way Project is in conflict with the City's Affordable Housing Replacement Ordinance.

Here, the developer admits that 7 of the 25 units at Mallory Way are currently occupied by low-income tenants. However, there is substantial evidence that calls into question the veracity of the developer's representations with respect to the tenant income levels at the remaining 18 Mallory Way units. (See Exhibits T and U.) This evidence shows that some if not all of said units are actually occupied by low-income level tenants. Thus it is reasonable to assume that all of the tenants at Mallory Way are at least low-income level tenants. Accordingly, under the ordinance, the initial Mallory Way Project would have actually required the developer to provide for 25 low income replacement units. Here, under the instant approved project, the developer is: not providing any new low income units at Mallory Way; destroying 18 units which are most likely occupied by low income tenants; renovating 7 low units and deed restricting those 7 units as 1 low-income unit and 6 moderate-income units; and building 23 new market rate units that could be rented or sold. Thus, the Mallory Way project results in the loss of potentially 24 low-income units.

In summary, based on this newly obtained data directly from the tenants and based on the resulting assumption that all current tenants of the Cottages and Mallory Way are at least low-income tenants, The Cottages Project will result in a loss of 7 low-income units and the Mallory Way Project will result in the loss of 24 low income units. Therefore, the city of Ojai stands to lose 31 low income units under the current agreement. Even with the inclusion of the very low income unit at The Cottages (despite it not being a lower-income unit), that still represents a loss of 30 low-income units between the two project sites. The development at the World University and Montgomery sites does not get the developer to a net zero loss. There will be one low income unit at the World University site and three low income units at the Montgomery site. This reduces the developer's arrears to a loss of 26 low income units. The remaining units to be constructed throughout the project sites are all either moderate income units or market rate units, none of which are sufficient to meet the deficiencies from the loss of 26 low income units.<sup>4</sup> Furthermore, even assuming for sake of argument that The Cottages is exempt from the requirements of the ordinance, there would still be a net loss of 19 low-income units from the Mallory Way project alone (after accounting for the low income units to be placed at the World University (+1 low-income units), Montgomery (+3 low-income units) and The Cottages sites (+1 low-income unit).

**To adequately protect the tenants across all properties, the developer must agree that The Cottages and Mallory Way are subject to the local ordinance, agree that the current tenants in each property are all low-income tenants and agree to produce the full compliment of replacement housing at low-income levels that are all deed restricted for a period of 55 years.**

The developer has agreed that the very low, low and moderate income units will be rented and be deed restricted to maintain these affordability levels for a period of 55-years from the issuance of a certificate of occupancy for each unit. The developer has further agreed that the Project's deed-restricted units cannot be subdivided or converted into for sale condominium units at market rate for a

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<sup>3</sup> To be clear, the tract map entitlement previously approved has also expired. (See OMC Sec. 10-2.3202(b).)

<sup>4</sup> Alternatively, a similar analysis and result occurs under the California Health & Safety Code Sec. 33413.

minimum of 55 years. Nothing stops the developer at the Mallory Way site from removing the market rate units from the housing stock.

**VI. BOTH THE MALLORY WAY AND THE COTTAGES PROJECTS WOULD BE SUBJECT TO THE LOCAL ORDINANCE EVEN WITHOUT A DEVELOPMENT AGREEMENT**

The developer's attorney's commented that the city attorney has acknowledged that units at The Cottages could be refurbished without any requirement to provide replacement housing under the ordinance. (October 19, 2022 Administrative Report p. 4-324.) That statement is patently false. The city attorney has said no such thing. In fact, the city's Affordable Housing ordinance would apply to The Cottages property even absent a development agreement because the tract map has expired. (OMC Sec. 10-2.2302(b)[2 years from approval]; see also Government Code Sec. 66498.1 and 66498.5 [2 years from recording of final map in the context of Vesting Tract Maps].)<sup>5</sup> Furthermore, there is no apparent evidence in the council file that tract maps for either The Cottages or Mallory Way Projects were vesting tract maps. Moreover, the Cottages has always been conveyed as a single property, as has Mallory Way. (See OMC 10-2.904(a)(1) [exempting from the ordinance the conversion or demolition of a single-family home located on a single parcel of record which is not destroyed or removed as part of a redevelopment project].)

**VII. A MASTER ENVIRONMENTAL IMPACT REPORT IS REQUIRED FOR DEVELOPMENT AGREEMENTS**

The City Council has erred by exempting the sub-projects that compose the development agreement project from the California Environmental Quality Act ("CEQA") because CEQA requires that a Master Environmental Impact Report be prepared for development agreement projects.(Public Resource Sec. 21157(a)(4).

**VIII. THE FIRST READING OF THE ORDINANCE OCCURRED AT A SPECIAL MEETING NOT A REGULARLY SCHEDULED MEETING**

The City Council erred and did not proceed in a manner required by law by conducting the first reading of the ordinance for the development agreement at a special meeting not a regularly scheduled meeting.

Respectfully Submitted,



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Sabrina Venskus, Esq.

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<sup>5</sup> (The tract map for Mallory Way has expired as well.)

# **EXHIBIT U**

Table 1

Mallory Way								
Unit #	Bedroom #	Rent in 2019/20	Becker Reported Income Level	# IN HOUSEHOLD	HOUSEHOLD INCOME LEVEL	DATES OF TENANCY	NOTES	
1	Studio	\$1,210.00	<b>moderate</b>	<b>1</b>	<b>EXTREMELY LOW</b>	<b>2002 - PRESENT</b>		
2	Studio	\$1,050.00	moderate					
3	Studio	\$1,000.00	low	1	VERY LOW	2014 - PRESENT		
4	Studio	\$1,050.00	<b>moderate</b>					
5	Studio	\$1,225.00	<b>moderate</b>	<b>1</b>	<b>VERY LOW</b>	<b>2017 - PRESENT</b>		
6	Studio	\$1,050.00	<b>moderate</b>	<b>1</b>	<b>VERY LOW</b>	<b>2013 - PRESENT</b>		
7	Studio	\$1,050.00	moderate					
8	Studio	\$1,000.00	low	1	VERY LOW	1980 - PRESENT		
9	Studio	\$1,200.00	<b>moderate</b>	1	LOW	OCT. 2020 - PRESENT		
10	Studio	\$1,200.00	<b>moderate</b>	<b>1</b>	<b>VERY LOW</b>	<b>2018 - PRESENT</b>		
11	Studio	\$1,050.00	moderate					
12	Studio	\$1,175.00	moderate					
13	Studio	\$1,050.00	moderate					
14	Studio	\$1,275.00	moderate					
15	Studio	\$1,125.00	moderate					
16	Studio	\$1,050.00	moderate					
17	Studio	\$1,250.00	moderate					
18	Studio	\$1,475.00	moderate					
19	1 Bedroom	\$1,275.00	<b>moderate</b>	1	VERY LOW	2022 - PRESENT		
20	1 Bedroom	\$1,150.00	low	1	LOW	2016 - PRESENT		
21	1 Bedroom	\$1,050.00	low					
22	1 Bedroom	\$1,050.00	low					
23	1 Bedroom	\$1,050.00	low					
24	1 Bedroom	\$1,050.00	low					

25	3 Bedroom	\$2,100.00	moderate					
	<b>Becker's Survey</b>				<b>My Survey</b>		<b>Breakdown of Low</b>	
	Low Income Rental		7		Low Income	9	Low Income	2
	Moderate Income Rental		18		Unknown	16	Very Low Income	6
	Total		25		Total	25	Extremely Low Income	1
							Total	9
<b>Cottages</b>								
Unit #	Bedroom #	Rent in 2019/20	Becker Reported Income Level	# IN HOUSEHOLD	HOUSEHOLD INCOME LEVEL	DATES OF TENANCY	NOTES	
312	1 Bedroom	\$1,750.00	moderate	-	-	EMPTY		
312 A	1 Bedroom	\$1,750.00	moderate	-	-	EMPTY		
312 B	1 Bedroom	\$1,400.00	<b>moderate</b>	1	VERY LOW	JULY 2020* - PRESENT		
312 B	1 Bedroom	\$1,400.00	<b>moderate</b>	1	LOW	*TENANT IN 2019		
312 C	2 Bedroom	\$1,400.00	<b>moderate</b>	1	<b>LOW</b>	<b>2015- PRESENT</b>		
312 D	1 Bedroom	\$1,000.00	low	3	VERY LOW	2010 - PRESENT		
312 E	1 Bedroom	\$1,600.00	<b>moderate</b>	1	VERY LOW	2021 - PRESENT		
312 F	1 Bedroom	\$1,750.00	<b>moderate</b>	2	-	JANUARY 2020 - PRESENT		
314 B	2 Bedroom	\$1,750.00	<b>moderate</b>	2	VERY LOW	NOVEMBER 2019 - PRESENT		
	<b>Becker's Survey</b>				<b>My Survey</b>		<b>Breakdown of Low</b>	
	Low Income Rental		1		Low Income	6	Low Income	2
	Moderate Income Rental		7		Moderate	0	Very Low Income	4
	Total		8*		Total	7	Extremely Low Income	0

			*Lists 9 units				Total	6
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# **EXHIBIT V**

My name is Anina Sherrill. I live at [REDACTED]  
(unit # [REDACTED])

I moved into my home 20 years ago [month] [year].

My home has 1 bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$ 26,350.  
[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: Anina Sherrill

DATE: October 25, 2022


My name is Joyce Magoulas. I live at   
(unit #) .

I moved into my home \_\_\_\_\_ [month] 2014 [year].

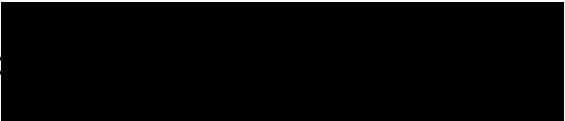
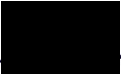
My home has 0 bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$ 43,900.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: Paul Magoulas (son) 

DATE: 10/24/22

My name is JAMES LOGERMAN. I live at   
(unit #) 

I moved into my home 10 10 [month] 1980 [year].

My home has 1 bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$ 32,000.00.  
[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: James Logerman

DATE: 10-25-2022

My name is Michele Brown. I live at [REDACTED]

(unit #) [REDACTED].

I moved into my home 9 [month] 2017 [year].

My home has 0 bedrooms. It is a household of 1 adult(s) and 0.

The household annual income is less than \$ 43,900.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: Michele Brown

DATE: 10/25/22

My name is FRAN GEDER. I live at [REDACTED] (unit #) [REDACTED].

I moved into my home Summer [month] 2013 [year].

My home has studio bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$ 43,900.  
[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: \_\_\_\_\_

Fran Geder

DATE: \_\_\_\_\_

Oct. 24, 2022

My name is RICHARD THEOBALD live at [REDACTED]  
(unit #) [REDACTED].

I moved into my home OCT [month] 2020 [year].

My home has 0 bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$\_\_\_\_\_.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: Richard Theobald

DATE: 10/25/22

My name is Uta Rifke. I live at   
(unit #) .

I moved into my home July [month] 2018 [year].

My home has 0 bedrooms. It is a household of 01 adult(s) and 1 kid(s).

The household annual income is less than \$ 30,000.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: 

DATE: 10/24/2022

My name is Mattie Gadsby. I live at  
(unit #) [REDACTED] [REDACTED]

I moved into my home 4 [month] 2022 [year].

My home has 1 bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$ 43,900.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: Mattie Gadsby

DATE: 10/24/22

My name is Fatih EVANS. I live at [REDACTED]  
(unit #) [REDACTED]

I moved into my home Feb. [month] 2016 [year].

My home has 1 bedrooms. It is a household of 1 adult(s) and        kid(s).

The household annual income is less than \$ 70,250.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

mod

low extreme

[Signature]  
SIGNATURE: \_\_\_\_\_

DATE: 10 26 - 22

My name is Scott Wilkins. I live at \_\_\_\_\_  
(unit #) \_\_\_\_\_

I moved into my home 7 [month] 2020 [year].

My home has 1 bedrooms. It is a household of 1 adult(s) and \_\_\_\_\_ kid(s).

The household annual income is less than \$ 43,900.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

10/24/22

## COTTAGES #312B - TENANT IN 2019

Subject: Save the cottages

Date: October 18, 2022 at 3:45:40 PM PDT

Hello,

I, Sammy Sherman, used to live at [REDACTED] Ojai, CA 93023, two years ago, and I made and make nowhere near the moderate income of \$96,950. The city has never asked me what my income was.

Sincerely,

Sammy Sherman

Note :

This tenant has left since the income survey.

Becker had listed this tenant as Moderate Income.

My name is Deborah Murphy. I live at \_\_\_\_\_  
(unit #) \_\_\_\_\_

I moved into my home May [month] 2015 [year].

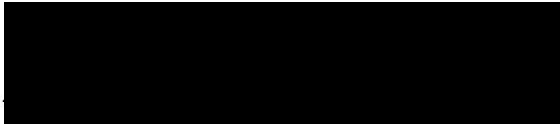
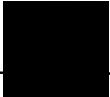
My home has 2 bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$ 70,250.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: \_\_\_\_\_

DATE: Oct 24, 2022

My name is Paul Maguila live at   
(unit #) .

I moved into my home \_\_\_\_\_ [month] 2010 [year].

My home has 1 bedrooms. It is a household of 2 adult(s) and 1 kid(s).

The household annual income is less than \$ 43,900.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: 

DATE: 10/24/2022

My name is Anita Cramm I live at [REDACTED]  
(unit # [REDACTED]).

I moved into my home August [month] 2021 [year].

My home has 1 bedrooms. It is a household of 1 adult(s) and 0 kid(s).

The household annual income is less than \$ 43,900.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: Anita Cramm

DATE: 10-25-22

My name is Nitana Sanchez I live at [REDACTED]  
(unit # [REDACTED]).

I moved into my home NOV [month] 2019 [year].

My home has 2 bedrooms. It is a household of 1 adult(s) and 1 kid(s).

The household annual income is less than \$ \_\_\_\_\_.

[ \$96,950 / \$80,800 / \$70,250 / \$43,900 / \$26,350 ].

SIGNATURE: ~~Maria Sanchez~~ Nitana Sanchez

DATE: 10/24/22

October 25, 2022

Beth A. Collins  
Attorney at Law  
805.882.1419 direct  
bcollins@bhfs.com

**VIA EMAIL**

[CITYCLERK@OJAICITY.ORG](mailto:CITYCLERK@OJAICITY.ORG)

Mayor Stix and Councilmembers  
Ojai City Hall  
401 S. Ventura Street  
Ojai, CA 93023

**RE: Transmittal of Ojai Valley News October 21, 2022 Edition**

Dear Mayor Stix and Councilmembers,

We represent Ojai Bungalows LP and Greenhawk LLC (collectively, "Ojai Bungalows"), the owners of the properties at 312 W. Aliso Street ("Cottages Project"), 304 S. Montgomery ("Montgomery Project"), 412 Mallory Way ("Mallory Project"), and 107 N. Ventura Street ("World University Project") in the Development Agreement being considered on October 25, 2022 ("Development Agreement" or "Project").

We are by this cover letter submitting the October 21, 2022 Edition of the Ojai Valley News. Various articles, advertisements, and editorials provide important context to the proposed Development Agreement. They capture key issues surrounding this project, and demonstrate just how contentious housing and development projects can be in the community of Ojai.

Due to file size, we are unable to email the newspaper. Please access the publication on our sharefile site <https://bhfs.sharefile.com/d-sb7d5c42d32e74fa7bceaf6aa4203a623>

We continue to respectfully request that this Council make the right decision for the City of Ojai and its residents and approve the Development Agreement.

Sincerely,



Beth A. Collins

Mayor Stix and Council  
October 18, 2022  
Page 2

Cc: Matthew Summers, City Attorney

Enclosures: Ojai Valley News October 21, 2022 Edition, Full Publication. Access the publication:  
<https://bhfs.sharefile.com/d-sb7d5c42d32e74fa7bceaf6aa4203a623>

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