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Via E-mail (kmacnab@Townofwindsor.com)

June 7, 2019

Town Council
Town of Windsor
9291 Old Redwood Highway
Windsor, California 95492

Re: June 26th Town Council Hearing re Appeal of Planning Commission denial of Mill Creek Development Project (the "Mill Creek Project" or the "Project")

Honorable Members of the Town Council:

We are writing on behalf of our client, Windsor Mill Community, LLC ("Windsor Mill"), to supplement our submission of March 12, 2019 by bringing to the Council's attention the early advice provided by public agency law firms, such as Meyers Nave, regarding the legislation enacted in 2017 to address California's housing crisis. Specifically, we submit for inclusion in the record, the February 8, 2018 Meyers Nave Continuing Legal Education Webinar: Tightening State Requirements for Local Housing (the "Meyers Webinar"), which may be viewed on the internet at https://www.meyersnave.com/event/californias-new-affordable-housing-laws-part-three/.1

As discussed in our March 12th submission, the Housing Accountability Act ("HAA") strictly limits the basis upon which a local agency may disapprove or lower the density of a "housing development project." The California Court of Appeal has held that the HAA takes "away an agency's ability to use what might be called a 'subjective' development 'policy' (for example 'suitability') to exempt a proposed housing development project from the reach of [the HAA]." Honchariw v. County of Stanislaus, 200 Cal. App. 4th 1066, 1076-1077 (2011).

The HAA's protections apply to projects that comply with "applicable, objective general plan, zoning and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete." As noted in our March 12th submission, the legislature amended the HAA in 2017 to require that, within 60 days of an application for a housing development project containing more than 150 units being deemed complete, a local agency advise the applicant in writing (a) if it "considers [the project] to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision…"; (b) "written documentation identifying the provision or provisions"; and (c) "an explanation of the reasons or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity…" If the local agency fails to provide the required documentation, "the housing

[1] A digital copy of the webinar which may be viewed on a computer, as well as a transcript of the webinar is attached hereto for inclusion in the administrative record.

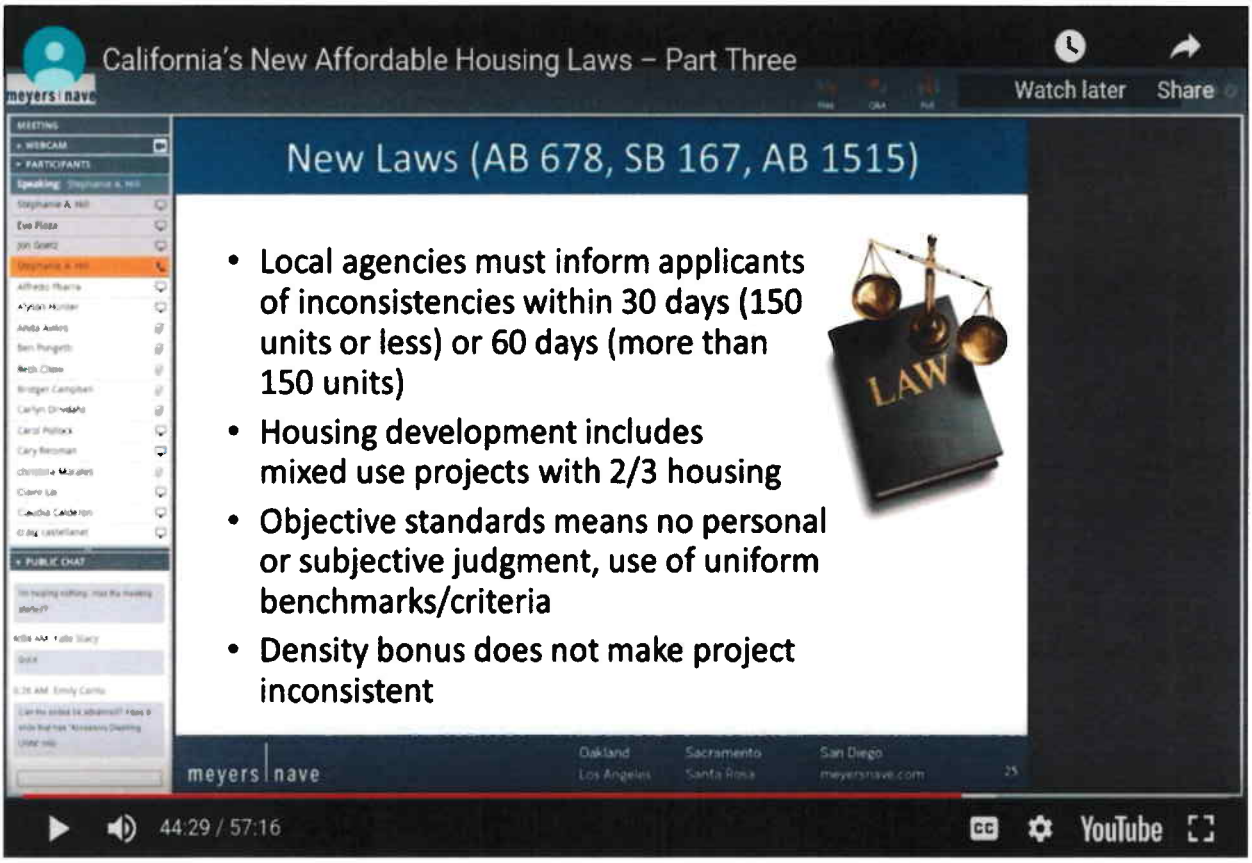
development project shall be deemed consistent, compliant, and in conformity…" Government Code Section 65589.5(j)(2)(B).

In the Meyers Webinar, Jon Goetz, a principal with Meyers Nave, advises that:

> *"One of the most important changes of the new legislation is that there is a very short time clock for jurisdictions to inform applicants that they are intending to disapprove a project based on the findings that have to be made under the Housing Accountability Act. And that short time clock is 30 days for projects of 150 units or less and 60 days for bigger projects. And, as you all know, that time can pass very fast so it is necessary for cities and counties to be ready to move very quickly after those applications are accepted as complete. The penalty for failure to meet those deadlines is that the project is deemed approved. So, for jurisdictions that's a very serious matter if you've either approved a project without taking any action because you failed to provide this notice to the applicant." See* Meyers Webinar at 41:58.5 (emphasis added).

As discussed earlier, Windsor Mill's applications were deemed complete on August 23, 2018. No written documentation was provided to Windsor Mill within 60 days after such date (that is, on or before October 22, 2018) indicating that the Town considered the Mill Creek Project not in compliance with any of the Town's objective general plan, zoning and subdivision standards and criteria. Therefore, the Mill Creek Project became deemed consistent with the Town's objective standards for the purpose of the HAA's protections.

As illustrated by the following slide from the Meyers Webinar:



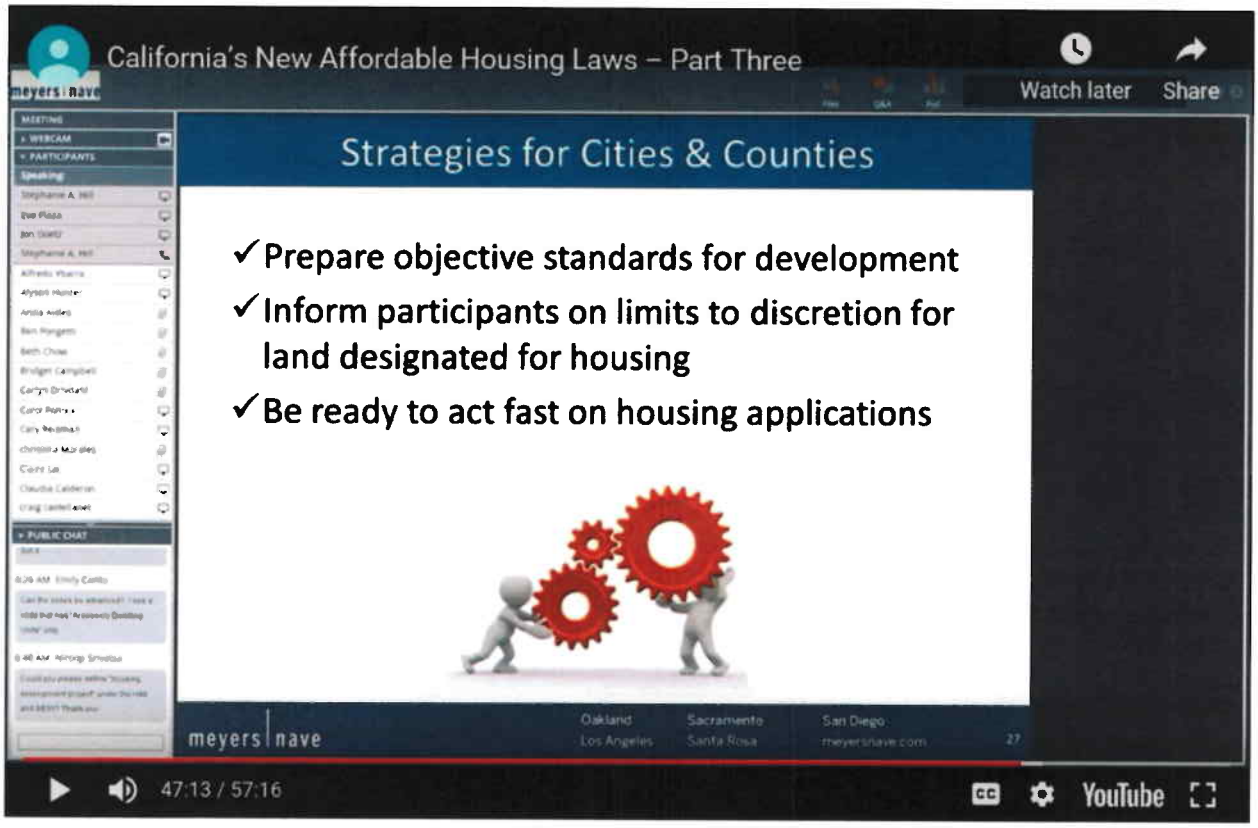
In the Meyers Webinar, Mr. Goetz further advises that:

> *Informing participants on the limits of discretion for land designated for housing is very important. In this Housing Accountability Act, I think it's not a well-known, well-understood law, and often your city councils, county boards of supervisors, planning commissions, they need to be told that there are limits to discretion for particular projects that fall within this act, and as we said earlier, be ready to act fast on housing applications because this 30 and 60 day time limits will creep up on you. See* Meyers Webinar at 47:11.7 (emphasis added).

Mr. Goetz continues:

> *I have been involved in several projects where behind closed doors we have had these discussions whether it's with city council, city attorneys, county council to make sure everybody understands what the restrictions are and make sure everybody analyzes the projects in a way that's consistent with the Housing Accountability Act. See* Meyers Webinar at 47:11.7 (emphasis added)

As illustrated by the following slide from the Meyers Webinar:



Finally, Mr. Goetz acknowledges the substantial litigation risks, the availability of attorneys' fees to plaintiffs who challenge the improper disapproval of a housing project, and potential penalties of up to $50,000 per unit. Mr. Goetz cautions:

> *[T]he fact that they can now get legal fees for successfully suing on a Housing Accountability Act challenge, should be scary to cities and counties, and should be enough to, for*

everyone to make sure that they really are adhering to these laws and that they will not get themselves into litigation on these areas. See Meyers Webinar at 45:20.3.

In summary, Meyers Nave's advice regarding the Housing Accountability Act is consistent with that set forth in our March 12th submission. Here, the record demonstrates, that the Planning Commission not only ignored the Project's merits, but also that it did not understand the limits of the Commission's discretion under the HAA, and that it disapproved the Project Entitlements in plain violation of the HAA. Therefore the Commission's disapproval must be reversed and the Council's review of the Project must be guided by the limited discretion provided by the Housing Accountability Act.

More importantly, however, the Project should be approved on its merits, as originally recommended by Staff. As Staff reported to the Planning Commission, the Mill Creek Project will provide 360 units of needed housing. It is consistent with the Council's Resolution 3081-14 which designated the Mill Creek Project as a Priority Development and the Council's approval of the 2014 Priority Development Area Waiver Agreement (the "Waiver Agreement"); and the Project will provide significant public amenities (including a 2 ½ acre linear park/open space along the creek corridor; a creek-side pedestrian and bicycle trail; a rail-side pedestrian and bicycle trail; a vehicle bridge to the south; and a pedestrian bridge across Windsor Creek). In addition, in accordance with the Waiver Agreement and Resolution No. 3081-14, the Project would pay approximately $1,080,000 in in-lieu fees.

For all of the foregoing reasons, including those set forth in our submission of March 12th, we respectfully request that the Town Council overturn the Planning Commission's denial of the Project Entitlements and approve the Project. We look forward to addressing any questions or concerns the Council may have at its June 26th hearing on Windsor Mills' appeal.

Respectfully submitted,

Allan J. Abshez
Partner

cc: Bob Bisno
Peter Stanley

Transcription of
February 8, 2018 Meyers Nave Continuing Legal Education Webinar: *Tightening State Requirements for Local Housing*
https://www.meyersnave.com/event/californias-new-affordable-housing-laws-part-three/
Jon Goetz, Principal
Eva Plaza, Of Counsel

BigHand Time Marker	Speaker	Description
00:00.0	Webinar Host	Good afternoon everyone. Thank you for attending our final webinar, a three-part complimentary webinar series respecting California's new affordable housing laws. What are the legal and business implications? A few things to get us started. All of your telephone lines are muted. On the top of your screen are the Q&A button. Starting the webinar, if you like to ask the presenter the question, please submit your questions using the Q&A function. Jon and Eva will do their best to answer all questions during or at the conclusion of the webinar. We have quite a few attendees registered today so if your question isn't answered, we will follow up with you after the webinar via email. We are offering CLE credit for this webinar. CLE Certificates and a copy of the PowerPoint Play Zac will be emailed to all attendees next week. And now for our webinar.
00:52.1		Governor Brown signed 15 bills into law on September 29, 2017 that are designed to help project California's affordable housing crisis. The approved bills take different approaches to the housing shortage in California, including providing more funding for affordable housing development, streamlining local government approval of housing projects. Restarting local government's authority to impose inclusionary housing apartments on private housing developers and strengthening the state's anti-lending laws.
01:21.9		The new laws have brought implications and obligations to local municipalities, helping related public agencies and the private developer community. To further the discussion on the new affordable housing regulatory landscape, we will conclude our series today with a topic of Tightening State Requirements for Local Housing presented by Jon Goetz and Eva Plaza.
01:44:0		Jon Goetz is a Principal at Meyers Nave. He has 30 years of experience in real estate, land use, environmental, redevelopment, affordable housing and municipal law. Jon represents a broad spectrum of private-sector landowners and real estate developers, cities, housing authorities, universities and other public entities and complex real estate transactions, land use planning, public private development, infrastructure financing and affordable housing transactions. He also has advised on more than 150 housing developments and programs involving thousands of affordable and market rate housing units. His housing projects include a variety of housing types including

BigHand Time Marker	Speaker	Description
		affordable rental developments, mixed income for-sale housing communities, master planned communities and mixed use and transit oriented developments.
02:36:03		Eva Plaza is of counsel in Meyers Nave's Trial and Litigation Practice Group and Municipal and Special District Law Practice Group. She represents private businesses and public entities in a wide range of litigation, transactions and regulatory matters. Eva has served as lead counsel in all aspects of municipal law with particular emphasis on the land use, contracts, redevelopment and economic development, including affordable housing and construction litigation. She has represented cities and redevelopment housing agencies in connection with the assembly of land for redevelopment to support commercial, industrial or residential development. She has served as city attorney for California cities, chief city attorney for a major city in Pennsylvania and was appointed by President Bill Clinton to a senate-confirmed position as assistant secretary at the U.S. Department of Housing Urban Development in Washington, D.C.
03:36.1		Jon and Eva, I'll pass it to you.
03:38.3	Jon Goetz	Thank you Stephanie. This is Jon Goetz. Before we start on the specific bills, I just wanted to make a couple comments about the grouping of legislation we are going to talk about today. And, ah, you know the state has consistently declared that we need more housing as a state and has come up with a variety of programs and laws to enlist local government in those efforts to obtain that housing, and the programs and laws include the housing element law, the density bonus law, formerly the low and modern income housing obligations of redevelopment agencies, the accessory dwelling unit law, the housing accountability act, and uh, some of the bills will be, uh, that were contained in the 15 Bill Housing Package that was enacted in 2017 addressed some of those areas and represent the state's effort tighten screws on local government. While not abandoning the general framework of those laws, it is requiring more of local government and reducing at least the subjective discretion of local government with respect housing projects. The bills have some common features, including requiring more objective standards, understandable standards that landowners, developers can find out about before they make their applications for approval housing. So we're going to discuss a number of those individual bills today and see that these objectives do get addressed in a variety of ways, but again, clearly a movement in the direction of reducing local government ability to disapprove housing or to reduce density of projects and also provide more opportunities for private developers to build housing. If a state in this legislation is trying to get local government out of the way of private developments, and will often, this legislation will often be unpopular with neighborhood groups who often oppose housing in their communities.
06:20.6		So let's go to the first bill, the first set of bills. That first bill is AB-1397 which addresses housing element sites. And just as a background on housing element sites, the state determines every so often how much housing needs to be produced by the regions of the state, and then regional council government organizations like SKAGG in the south and ABAG in the bay area allocate the housing needs, the regional housing need assessments to individual cities and counties, [and] cities and counties then adopt their own housing element analyzing the availability of sites for housing that's necessary for achieving that regional housing needs assessment number. And, those numbers are put together in an inventory of sites that look at land and other

BigHand Time Marker	Speaker	Description
		property that's available for housing at different income levels. And if there is not enough sites available within the jurisdiction, the jurisdiction, the city or county is required to rezone additional land for the housing necessary to meet those regional housing needs assessment arena goals. Now I think from the legislation that was adopted this year, you see a legislature skeptical of these inventories of sites skeptical that they are put together in way that would really be suitable for the development of sufficient housing to meet those arena goals. Though the idea of this bill, AB-1397, is to establish more realistic expectations about whether housing can really be built on those sites and how much housing can be built on those sites. So this bill changes the standards for inclusion of the sites on the housing element inventory. One of the most important changes is a requirement that the parcels really be ready for development. They have sufficient utilities: water, sewer, dry utilities, and if there is not sufficient [utilities], those sites can also be put on the housing inventory list so long as they are part of program to establish those utilities. The changes do restrict the use of non-vacant sites and a number of cities and counties do heavily use currently developed sites as part of their housing element inventory, which makes sense because, particularly today, many lower developed sites, less dense sites, particularly old commercial or retail are being recycled, redeveloped into housing. So it does make sense to have those types of sites in there. The legislature in this bill though I think was saying if those non-vacant sites are being included in these housing element inventories and no actions really happened that that current uses are just remaining in place for too long, the legislature does not want those sites to be continued to be used as housing element sites, they want new sites to be included in their place. Same thing with vacant sites that have been on the housing elements inventory list for a couple of cycles. Again, the legislature is saying, hey, if those sites really aren't being used for development, then we want you to identify some other sites in their place. Now it is possible to include those sites on the list. To do that, it would require that they land be rezoned to accommodate lower income densities and the housing applications must be as of right approvals. The AB-1397 has also restricted the use of smaller and larger sites from low income housing, smaller than half an acre and larger than ten acres. I think this was an attempt to fit in with the low income housing tax credit, another common financing of low income housing, wherein very small and very large projects aren't generally financeable. However, there are exceptions. Again, if the jurisdiction can provide evidence to the contrary to state housing community development that these are financeable, that maybe there really are projects that are underway, that those sites can be included.
12:05.4		Other restrictions include restrictions on inclusion of sites that are air-space above publicly owned or lease sites. Limits on including too many non-vacant sites. If a jurisdiction is going to have more than 50% non-vacant or developed sites, the legislation is going to require that the jurisdiction basically do more explaining to Housing Community Development Department as to why those sites should be included and why there is real development potential for those sites and they could be approved if appropriate.

BigHand Time Marker	Speaker	Description
		Sites with current residential units on there or units that had recently been demolished are going to require replacement housing provisions that go along with that so that jurisdictions are not encouraging the demolition of housing units to get more housing units unless those people are being taken care of. There are other restrictions in there. I think the general theme of the restrictions is to come up with a more realistic list of sites that really available and at the appropriate densities for new housing projects.
13:47.1		Before I go onto the next bill, I just wanted to make a note. While these changes were adopted into law and became effective on January 1 of this year, we don't believe there is any need to update current housing element inventories at this time. It should be okay to wait until the next housing element is due, which is a different time and different regions of the state. There is no indication we found in the legislative materials that the legislature intended these changes to apply to currently approved housing elements in inventories. So really, we think this is a set of changes that is going to applicable the next time around so no need to catch up with this immediately.
14:41.2		The next bill I want to talk about is Senate Bill 166. It deals with the No Net Loss Law. And this is another law that is maybe not that well known, but No Net Loss is about once the housing element inventory of sites has been established and it's been established that it's sufficient to accommodate the RHNA needs of this jurisdiction, the jurisdiction needs to make sure that over the time of the housing element it maintains enough land in inventory to accommodate those RHNA needs. And as we all know, things change, development applications come in, there are different policies that are put in place and during for the for the most part 8-year term of housing elements many changes could occur that change the ability of that inventory to meet those needs. So as owners and developers propose housing projects, with lower densities then projected or proposed to change residential land into non-residential zoned lands or perhaps the city or county itself wants to rezone and re-designate the land, the No Net Loss Law requires the jurisdiction to make sure that it keeps up the inventory. So this law is in existence and under the existing law, if one of these events occurs that results in less housing being available or in the rezoning a reduction of density, the existing law requires the city or county to make certain findings if there is still sufficient land in the housing element inventory to accommodate the RHNA needs. And these are the two finding that you need to make: That the reduction is consistent with the general plan and the remaining sites are adequate to meet the RHNA. It is not something that prevents cities and counties from lowering densities or rezoning, you just must keep up the inventory to do that.
17:12.5		The new legislation Senate Bill 166 would make some changes to that law to clarify that cities and counties are always required to ensure that there are sufficient sites to meet RHNA, not just at the beginning of the housing element period, but as the housing element term winds down.
17:44.6		The findings that are required to be made when one of those events occurs, reducing density or changing zoning away from housing, are now required to be based on a quantification of the remaining unmet RHNA need at each income level and in quantification of the remaining capacity of sites at each income level. Legislature here

BigHand Time Marker	Speaker	Description
		seems to want to make sure that cities and counties are actually doing the math when they make these findings, they are not just making the findings based on a surface look at the existence of these sites. Now if the approval of the city or the county results in insufficient units, in any income category, that still doesn't prevent the city or county from approving that, but it does require that the jurisdiction make available a substitute site within 180 days. And fortunately, there is language in the legislation that says no CEQA approval is necessary to add those sites to the inventory even though they arguably may be changing the land use potential for that site, there is an explicit exemption there.
1:11.8		So a third bill - - I want to just briefly talk about it. It's Assembly Bill 879. And what this bill does is changes some of the housing element requirements. And again, we don't think that it's necessary for jurisdictions to make these changes today, but would make these changes in the next housing element go around. The changes are - - many of them are very technical. A housing element has to discuss and remove nongovernmental constraints to housing. Where existing law focuses on things like financing availability, land prices, construction costs, the legislation is asking to go deeper into that and look into why developers make requests for lower density, how long it takes to actually get projects underway and some other constraints that are not imposed by government, but are basically market-related constraints and why that is happening.
20:28.1		The first bullet point though is something that an interesting study that the HCE is required to do as part of this legislation. They are now required to study the reasonableness of local fees charged to redevelopments and come up with the reports, I believe in next year. It will be interesting to see what they come up with and what kind of recommendations and that will probably result future legislative proposals.
21:01.0		The other changes that are required by AB-879 are that housing element look at the jurisdictions own local ordinances that may have some impact on development, which could be things like inclusion or housing ordinances. They could be other standards that have some impact on development and it does and for the first time require that charter cities submit annual reports on housing element and general plan compliance and so that will change the reporting requirements for the state.
21:43.4		So with those few bills, what we'd like to do at this point is turn it over to Eva Plaza. We'll talk about some changes in the accessory dwelling units requirements.
21:55.3	Eva Plaza	Thank you Jon. Good afternoon. First of all the accessory dwelling units bills are AB-494 and SB-229, and they generally make their number of clarifying edits to the Government Code to Section 65852.2, which was significantly overhauled last year to reduce regulatory restrictions on the construction of second units or accessory dwelling units. I'm going to call them ADUs.
22:37.4		AB-494 reduces the maximum parking that may be required to one space per unit regardless of the number of bedrooms that the ADU has, and it also eliminates the jurisdiction's ability to prohibit tandem parking or parking in setback areas.

BigHand Time Marker	Speaker	Description
22:57.7		SB-229 requires certain ADUs to be permitted on all lots, all lots zoned for single family or multifamily uses that include an existing or a proposed single family dwelling. Most importantly, SB-229 restricts the ability of special districts and water corporations who impose utility connection fees and capacity charges on new ADUs. So here you have existing law and the bill and comparison side by side and the first part you have the existing lobbying that requires ordinance to designate areas where ADUs may be permitted and it requires them to impose standard conditions and density. And now, under this [these] new bills, cities must have a national ordinance for the creation of ADUs in areas zoned for parking and multiparking use. And then it has to allow, it has to actually prohibit a separate sale of ADUs. So you can have an ADU behind your house, but it can't be separately sold. It also extends maximum standards for proposed ADUs on lots for residential use and include proposed single family dwellings. The current law also authorizes location of required replacement parking spaces when the parking structure is demolished. And then the new bill actually extends that authorization to where the parking is converted into an ADU. And it also, as I said before, defines tandem parking to be more liberal. The ADUs, under existing law, are not new residential uses for purposes of connection fees or capacity charges for utilities, and there is no requirement to install new or separate connections. That's the law now. But, this bill extends this law to special districts, as well as, water corporations and not just cities and counties. So under existing law, cities and counties also have to submit a copy of their ordinance to the state within 60 days of passage, and now under new law, the state gets to review and comment on the ordinance.
26:18.4		So going to what specifically is required under the Amended Section 65852.2, an agency may allow ADUs and single family or multifamily zones. Cities, counties must designate the areas where the ADUs are permitted, and fees designated areas are based on the sufficiency of water and sewer services and the impact that these ADUs might have on traffic flow and public safety. Agencies have to impose standards to reduce or even eliminate parking requirements for the new ADUs. They must provide not to exceed allowable density. They must accept ADUs as being a residential use that is consistent with an existing general plan and zoning, and they have to require the ADUs to comply with all of these requirements that I just mentioned.
27:31.2		Going forward to the next slide, it is accepted that ADUs do not limit residence growth and the law makes that very clear. What the new law requires is that ADU applications for permit be considered ministerially without full, discretionary review and that there be a hearing on the applications for a permit within 120 days. Now the city and county may charge a fee to reimburse it for its costs that it incurred, but it has to based on a rational basis and it can't be excessive. The law provides that there is no other ordinance, and there shall be no other ordinance, policy or regulation that shall be the basis for denial building or use permit. So it makes it very clear. You can't use some other law to undermine this law. So the ADU law establishes maximum standards to evaluate the proposed ADU in residential areas, but cities can still have some requirement that ADUs be owner-occupied or they can limit ADU usage to rentals that are more than 30 days.

BigHand Time Marker	Speaker	Description
29:27.3		Going on to the next slide, when an agency that has not adopted an ADU ordinance receiving the first application, it has to accept the application and ministerially review it within 120 days. In other words, cities and counties can't say, well we don't have an ordinance, therefore we can't review this application. The agency may establish minimum and maximum unit sites requirements for a patched and detached ADU. But, the agency cannot impose parking standards for an ADU in any of the following situations (and I list them there so you can see them): If the ADU is limited within one-half mile of public transit. If the ADU is in an architecturally or an historically significant district. If the ADU is part of a proposed or existing primary residence or an accessory structure. If the location requires on street parking permit, but those permits are not offered to the occupant of the ADU; and, When there is car share vehicle located within one block of the ADU so those are the limitations for cities and counties with respect to parking requirements.
31:07.9		So going on to what is required, agencies have to ministerially approve an application for a building permit to create an ADU and especially if it is contained within the existing space and the ADU have an independent exterior access. Again, I think I said this before, ADUs are not to be considered residential uses for purposes of connection fees or capacity charges for utilities and they shall not be required to install new or separate utility connections between the ADU and the utility, and charges must be proportionate to the burden that ADU imposes and they have to be reasonable. And, cities, counties may also adopt [less or certain of] requirements for ADUs. And again, I think I'm repeating myself, but cities, counties have to submit the ordinance to the state department within the 60 days after adoption or they're reviewed. And now I'll turn it back to Jon.
32:31.8	Jon Goetz	Thanks Eva. The last law we want to talk about is the Housing Accountability Act that is often known as the anti-NIMBY law, and it's a law that has actually been on the books since 1982, but I find it a law that is little known and maybe not extensively used until recently we've been seeing more activity in this area. It's best understood, I think, as an enforcement mechanism for the Housing Element Law and, of course, as we talked about the Housing Element requires that cities and counties zone and designate sufficiently and for the RHNA needs. The Housing Accountability Act ensures that cities and counties really approve housing projects on those sites at the densities needed to achieve RHNA compliance. So cities and counties need to understand that the Housing Accountability Act is a significant limitation on their ability to disapprove and reduce units in housing proposals. I think developers are starting to understand that too that this is a powerful tool they have to obtain approvals for housing projects on land that has those housing designations.

BigHand Time Marker	Speaker	Description
34:03.6		So let's first do a little background on the Housing Accountability Act before we get into the new legislation. And the basic requirements here is that for housing projects that contain very low, low, moderate or middle income, we'll talk about that in a minute, that city or county can't disapprove those projects or conditionally approve it in a way that makes it infeasible without making statutory findings. And when we talk about projects for very low and low income, those are projects with at least 20% of that kind of affordable housing. For the moderate and middle, moderate is defined as to 120% of median income, and middle income is defined as 150% of median income. For those projects to fall into this requirement, the projects must contain 100% in those areas. So what are the findings that need to be made? One of these findings has to be made, not all of them. First, the city or county could disapprove on the basis that they've already their RHNA needs for the income level in that type of project, and that does happen. Second, the finding is that the project has a specific adverse impact on public health or safety and there is no mitigation possible. This is actually a very strict requirement here. It requires quantifiable evidence. This finding can't be made in a casual way. It requires serious evidence in the record to be able to use this finding. The third one is that there is some federal or state law that requires that the project be disapproved. Fourth is that the project is farmland, it's agricultural land and it's surrounded by agricultural uses as well. The fifth finding is to me the kind of the gist of this whole law, which is that the project is inconsistent with both zoning and general plan use. So what this means essentially is that if the project is consistent with the zoning and general plan in use that the jurisdiction can't use this finding and has to make one of the other findings. If the land is not currently zoned and/or designated for housing in the general plan, then the jurisdiction can use this finding to disapprove the project. This also prevents the jurisdiction from disapproving or overconditioning sites that are on that housing element inventory of sites that are available for the RHNA needs. Also, if the jurisdiction just hasn't adopted its housing elements or it has a shelter project that's come up for approval and hasn't designated shelter zoning in the city, then this finding can't be used. I think what that really means is this requirement makes it difficult to disapprove projects on land designated for housing if you say the land is suitable for housing in your element inventory, you really have to mean it. And I have heard other cities and counties in the past say that they've put sites into housing element inventory to get their housing element approved, but that they really don't want or expect housing in those areas on the designated sites, and that doesn't work under the Housing Accountability Act.

BigHand Time Marker	Speaker	Description
38:25.3		So other requirements are that cities and counties can apply objective, quantifiable, written development standards and conditions and policies. That's okay. But, again, this means that subjective standards cannot be used to disapprove these kinds of projects. The switch from more subjective development standards to more objective development standards is something you see in a lot of the legislation, particularly Senate Bill 35, the Streamlining Bill that we talked about a few weeks ago. And, listening to the Housing Community Development Department rollout of their SB-35 standards, they are pushing cities and counties to begin the process of switching over their development standards to that more objective from the subjective standards that probably have been more prevalent. So the standards and conditions that are adopted do have to facilitate that permitted density in some way. And, there is also a caveat here that exactions to your normal development fees and exactions that you require in your housing projects, those are still okay to approve even in any of these types of projects. Now this standard also applies not just to affordable housing, but to market rate housing or really any kind of housing as well. And, until the last few years, it was unclear whether the Housing Accountability Act did apply beyond affordable housing and it was normally thought to apply to affordable housing only. We did have a case in 2011 in Stanislaus County where the court said no that these standards do apply to market rate housing. This was actually a 100% market rate project that was found to require these findings to be made. The findings for this are somewhat easier to make that essentially the project has a specific adverse impact on public health and safety and there is no way feasibly mitigate it. Those are the findings that be made before a jurisdiction can disapprove a housing proposal for market rate housing.
41:22.5		There are penalties involved in the law too, and this has had an impact on compliance, attorney's fees are payable to the prevailing party for the affordable projects not, at least under the existing law for the market rate projects, and again that case from Stanislaus County addressed that issue. There are also the ability for courts to fine local agencies that do not comply with court orders for compliance.
41:58.5		Now the new bills in this area do ramp up the requirements of the Housing Accountability Act and you'll see a pattern, some of the changes, and we'll talk about that in a moment here. But, one of the most important changes of the new legislation is that there is a very short time clock for jurisdictions to inform applicants that they are intending to disapprove a project based on the findings that have to be made under the Housing Accountability Act. And that short time clock is 30 days for projects of 150 units or less and 60 days for bigger projects. And, as you all know, that time can pass very fast so it is necessary for cities and counties to be ready to move very quickly after those applications are accepted as complete. The penalty for failure to meet those deadlines is that the project is deemed approved. So, for jurisdictions that's a very serious matter if you've either approved a project without taking any action because you failed to provide this notice to the applicant.
43.32.4		So another change that was made by the new laws is that housing development is now defined to include mixed-use projects with two-thirds of the area of the project devoted to housing. Under the prior law, mixed-use projects that were subject to the law, I believe were restricted to basically buildings where there was ground floor, retail or commercial use and residential use above that ground floor use. Now, with

BigHand Time Marker	Speaker	Description
		this two-thirds, one-third's test, this could include all kinds of projects, perhaps even large subdivision projects where there is a mix of housing and other retail or commercial uses.
44:25.8		The new laws define what objective standards mean that have to be applied. I don't think that's a major change, but it was an attempt to just clarify that objective means no personal or subjective judgments, and use of uniformed benchmarks and criteria. The law also makes a clarifying statement that the project making an application for a density bonus, does not make the project inconsistent with the local zoning or general plan. Often the asking for a density bonus and obtaining additional units would be accompanying these types of applications and this just clarifies that's not a reason for turning it down.
45:20.3		One of the bills, AB-1515, specifically tells courts to give less deference to a city's or county's findings if the project is inconsistent. It makes other changes that you would think of as basically legalistic type of changes: evidence, standard changes from substantial evidence in the record to preponderance of evidence. It allows housing organizations, which are defined as either organizations to provide housing or basically public interest type organizations that are involved in housing issues, they can obtain legal fees if they are successful in litigation, and it also ramps up the fines. It makes fines mandatory at $10,000 per unit to be quite substantial or non-compliance of court orders and for bad faith non-compliance, courts can go up to $50,000 per unit. You know, these changes together, again, while they look kind of legalistic and technical, whenever you see changes like this in legislation, I think it indicates that there are probably groups out there in the world that want to start suing cities and counties over this. There are many that have been doing so already, but the fact that they can now get legal fees for successfully suing on a Housing Accountability Act challenge, should be scary to cities and counties, and should be enough to, for everyone to make sure that they really are adhering to these laws and that they will not get themselves into litigation on these areas.
47:11.7		So strategies, as we said, objective standards for development, there are many laws now that are pushing cities and counties in that direction. Informing participants on the limits of discretion for land designated for housing is very important. In this Housing Accountability Act, I think it's not a well-known, well-understood law, and often your city councils, county boards of supervisors, planning commissions, they need to be told that there are limits to discretion for particular projects that fall within this act, and as we said earlier, be ready to act fast on housing applications because this 30 and 60 day time limits will creep up on you. Land owners, developers and other public interest groups are going to be targeting land that is zoned and designated for housing or on the housing element inventory list because they will be able to take advantage of the Housing Accountability Act and use that as a wedge to get approvals on projects that might have otherwise faced a lot of neighborhood opposition or the public body opposition. And, again, just as with the cities and counties, it is necessary to inform participants what the discretion limits are. I have been involved in several projects where behind closed doors we have had these discussions whether it's with city council, city attorneys, county council to make sure everybody understands what the restrictions are and make sure everybody analyzes the projects in a way that's consistent with the Housing Accountability Act.

BigHand Time Marker	Speaker	Description
49:20.6		So with that we have covered the bills that we wanted to cover today and now we're going to look at some of the questions and answers, questions that you have posed. So the first one, the first question is: "How are local governments supposed to remove nongovernmental constraints? We have no control over those." Excellent point. The new bill, I believe that was the 8678, doesn't specifically require that those constraints be (I'm sorry - - AB-879 actually) doesn't require that those nongovernmental constraints be removed, but it does require an analysis of that and I think it says to the extent feasible or some words to those affect that the city or county would take steps to try to improve that. It's very difficult to know whether there's ability to fix that so I agree that is a tough question. The second question, another good question: "If 200 market rate units are approved on the site that could have been used for affordable housing, then the city must identify another site for 200 units at the same density. Is this correct?" I think that is partially correct. If one of the sites that's in your housing element that's identified as available for affordable house (perhaps at the low, or very low level) has a project approved for market rate housing that housing now could meet the city or county's RHNA needs for above moderate housing, but it would no longer be available for the affordable housing levels, the low or very low. At that point, the city or county would be required to take a new look at the housing element inventory and the existing need to see if there are sufficient sites available to accommodate the remaining need. It's possible that the city or county has included a surplus of sites available to meet those needs in its housing element inventory. If the city or county has that surplus, then losing the 200 units will count against the low or very low income site total. But, perhaps there is enough in the remaining sites to meet that need, and if there's not, then there may be a need at that point to adopt further sites necessary to meet the RHNA need. So it's a sophisticated analysis but yes that is basically right.
52:42.3	Jon Goetz	Now I have a question on ADUs.
52:48.2	Eva Plaza	So the question we is: "If the city hasn't amended their ADU law, does the state law apply in all residential zones?" And the question is, and the answer is: Yes. You know, it falls back to what the state requires and irrespective of whether the city has adopted an ADU law, now state law applies so if you want anything different from what the ADU law requires, then I would urge those cities and counties to start looking at their ADU law and taking a very close look.
53:39.6	Jon Goetz	Do you want to address the other question here?
53:41.7	Eva Plaza	Yeah. There's another ADU question here. "Public Transit. Does it have to be a public transit corridor or just public transit bus stop."

BigHand Time Marker	Speaker	Description
		The Amendment to the law doesn't actually speak to the type of transit corridor, but I would venture to say that any transit bus stop would be sufficient. But again, I'm not 100% sure. It doesn't address that particular question.
54:31.1	Jon Goetz	Okay. The question is: "Is new single residence with an ADU considered multi-family housing under the Housing Accountability Act?" Do you have an opinion? I don't know the answer to that as to the Housing Accountability Act.
54:54.8	Eva Plaza	Ah, I don't believe that it would be considered multi-family if you just have an ADU, Attached or detached from the single family residence. That wouldn't be sufficient for a multi-family.
55:15.9	Jon Goetz	Interested in the answer. (whispering)
55:17.9	Eva Plaza	Ah. Okay. The next one is: "Is the city required to allow ADUs in a single family residential zoning district?" Provided that that ADU conforms to all of the requirements of the law and is not prohibited by any of the legal requirements, yes. The city is required to allow an ADU in a single family residential zone district.
56:02.2	Jon Goetz	It's similar to [ ]. (whispering)
56:08.7	Eva Plaza	Ah. We do have another question, again, regarding ADUs. It says: "We do not review the use of ADU, but we do review the structure for consistency with the code. This architectural review is not ministerial. Is this legal?" I think that under the new law, unless the architectural review is in connection with an historical district, you need to probably not be doing the architectural review anymore. That would be my guess because of how the new law so strict about ministerial reviews of any ADUs.
56:57.9	Stephanie	Okay. Thank you all for joining us on your lunch hour. As we mentioned earlier, we will be circulating PowerPoint Play Zacs and MCLE Certificates early next week, and for those questions we didn't get to, we will follow-up with you guys individually via email. Thank you very much for joining us today. We hope you have a good rest of the day.