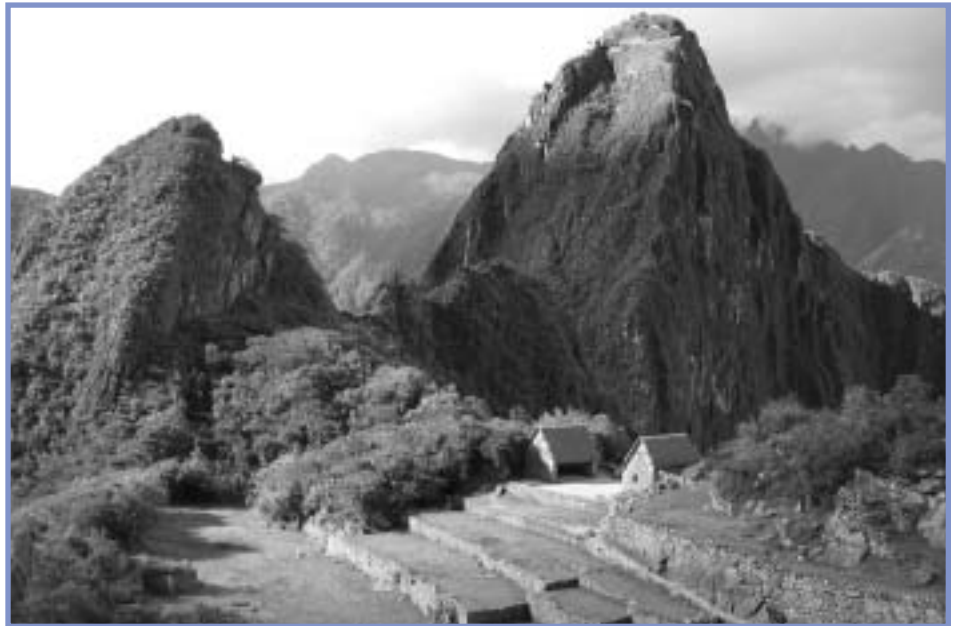




# Cal Planner

MARCH - APRIL 2005



Machu Picchu is what most travelers know of Peru. But it is in the major cities where current history is made. Courtesy of Stephen H. Silverman, CCAPA Vice President, Public Information.

## Lessons From the Distant Field

### A Planner's Perception of Peru

by Stephen H. Silverman, AICP

Of course travel is broadening. But especially for planners, travel helps us understand just how universal some city-building concepts are.

A year ago as I entered Lima for the first time, the impoverished nature of the outer ring of Peru's pulsing, traffic-clogged capital city bore a striking resemblance to urban forms I'd seen in Hanoi and Nairobi and other capitols of developing nations.

Though I'd never been there before, Lima's built environment was so familiar that it was clear some universal forces

were fully at work as developing countries mature.

In Lima, as in other capital cities, there is a central urban core that looks sufficiently modern and recognizably patterned. Beyond this familiar core is a sharp and sudden shift where the developed nature of the place recedes dramatically. There is

no transition, no gradual progression of "have" to "have-not"; the contrast is as striking as extremes of wealth and poverty always are. In Lima as in other cities, the change happens in a single block.

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# Letter from the PRESIDENT

by Jeri Ram, AICP, CCAPA President



I just got back from the CCAPA retreat in beautiful Napa County. Although we have Board Meetings quarterly, and accomplish the business of the organization – the Retreat is where the Board members spend time articulating our vision and what we are going to do as an organization to strive towards that vision. This year, we spent the majority of our time updating the Strategic Plan of the organization.

Did you know that we have a Strategic Plan? This plan sets forth what we want to accomplish as an organization in the next few years. Visit our website in the next few months; the updated version will be up for everyone to see.

In short, we want to accomplish far more than there is time to do – but we are a strong and determined bunch of planners and will likely – just as we do in our professional lives – accomplish far more than we ever thought we could!

The Strategic Plan is guided by our Mission Statement: Making Great Communities Happen Through Good Planning.

A continuing message throughout the Strategic Plan is how we can influence the Legislature, Media and Local Governments to accomplish this Mission. This includes providing continuing education, working on policy

and legislative issues, and providing a strong interface with the media.

We also approved our Legislative Platform, a draft of which has been on the website for comment for several months. This Platform guides CCAPA

*The Strategic Plan is guided by our Mission Statement: Making Great Communities Happen Through Good Planning.*

on its stance on legislation. Speaking of legislation, Friday, February 11, 2005, was our annual Press Conference in Sacramento. At the press conference, Sande George, Vince Bertonni and I

spoke to the TV, Radio, and print media regarding this year's Legislative Agenda. TV and Radio Stations picked up the press conference all over California.

This Spring is busy and exciting for California. San Francisco is the host of the National Conference – and it should be quite an event. Hing Wong, the Northern Section Director and Co-Chair of the Conference reported at the CCAPA Retreat that the Conference Committee is expecting a large turn out and that the Mobile Workshops truly reflect the diversity of planning in California and the Bay Area. I am excited that California is going to be the host for the National Conference while I am CCAPA President – I am sure that we will see a record turn out for the State. Don't miss it. See you there!



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AMERICAN PLANNING  
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## California Planner

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Rates for job announcements, display and calling card advertisements can be obtained by contacting CCAPA c/o Stefan/George Associates, 1333 36th Street, Sacramento, CA 95816, 916.736.2434.

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# SDSU Trolley Station Receives State Honor

by Troy Anderson

The underground trolley station at San Diego State University (SDSU), a critical component of the new Mission Valley East extension (MVE), has been garnering local attention for several months as anticipation for its summer 2005 opening heightens. It has also captured the interest of the Consulting Engineers and Land Surveyors of California (CELSOC) which selected the station's mined tunnel as an Honor Award recipient in the 2005 Engineering Excellence Award competition. In addition, the project was a part of a display at the State Capitol during national Engineer's Week in February. It was also featured on the CELSOC Web site at [www.celsoc.org](http://www.celsoc.org).

Hatch Mott McDonald, the tunnel designer, was recognized for his innovations in using the New Austrian Tunneling Methods in conglomerate geology as well as his design methods. McDonald provided a designer's representative on-site during the tunnel excavation and installation of the primary lining – the highest risk elements of the tunnel construction.

The San Diego Trolley's MVE extension closes a critical 5.9-mile gap in the existing system. First envisioned more than 25 years ago and planned in conjunction with the cities of San Diego and La Mesa, the \$496 million project is the final link between the Blue and Orange trolley lines.

San Diegans now have an increased mobility and easier access to popular destinations, commercial areas, and employment centers. The MVE extension also provides an important connection in the region's public transit system for those commuting to work, school, and events at Qualcomm Stadium and PETCO Park.

The SDSU trolley station holds the distinction of featuring the first subterranean station and tunnel in San

Diego. Projections indicate that 4,300 students, faculty, staff, and visitors to the SDSU campus will use the station each day. Higher numbers are expected during campus special events.

To make accessing the trolley even easier at SDSU, a new transit loop enables buses to pick-up and drop-off passengers directly above the underground station.

Logistically, the SDSU trolley platforms are located 25-feet below the facility's mezzanine level and 40 to 60-feet below street level. The tunnel was built using both the cut and cover method for 3,000 feet and the New Austrian Tunneling Method for 1,000 feet.

In the New Austrian Tunneling Method, arched portions of the tunnel are excavated in short segments using conventional equipment, and the tunnel walls are immediately shot-creted for support. The facility was recognized by CELSOC for this latter tunnel.

Projections for the MVE extension and the trolleys are expected to generate more than 11,000 new trolley trips a day, and enhance transportation capacity and mobility within the busy Interstate 8 corridor. The project is also estimated to attract over 2.5 million new annual transit riders as a result of improved transit connectivity.

On a national level, the MVE project was also selected as one of CELSOC's nominees in the American Council of Engineering Companies (ACEC)'s Engineering Excellence Awards competition.

For more information about this project, visit [www.sdcommute.com/Major Projects/Mission Valley East/index.asp](http://www.sdcommute.com/Major%20Projects/Mission%20Valley%20East/index.asp).

*Troy Anderson is with the San Diego Association of Governments and can be reached at [tan@sandag.org](mailto:tan@sandag.org).*

## Lessons Learned from Lima, Peru

continued from page 1

The power of cities to attract is remarkable and so is the essential need for sustaining self and family. It leads to familiar choices that add to the similarities found in developing nations.

In many parts of Peru, the dearth of a work and the grinding nature of a subsistence existence makes the allure of the country's largest cities irresistible. Consequently, Lima has a far greater population than the formal economy can support. The result is that many of Lima's people create a secondary economy as they constantly seek ways to create jobs.

As it is everywhere, commerce is the engine that fuels civic life, and competition is as fierce as the need to survive. That means cherubic-faced children know about persistence and the art of the deal as surely as Bill Gates.

While some people on the street beg money, it's not terribly common. Far more ordinary are adolescents selling candy or trinkets, and men wandering between jagged lines of vehicles stopped at an intersection; these men are washing car windows and hawking food or household items. At the airport, porters with carts compete for your luggage.

On the outskirts of towns and in tiny villages you find some unlikely entrepreneurs. More than once, I saw ancient, leather-faced grandmothers standing at the edge of dirt roadways next to cauldrons of boiling water. In the pots were ears of the huge-kernelled corn, a staple of the country, being sold to passers-by.

Still, the goods in most tourist shops and those hawked by street vendors are familiar stuff. Much of it is manufactured inexpensively in factories in the industrial parts of major Peruvian cities.

In Peru, basic industry exists in the form of copper and basalt mining, and there are fruit and oil exports from the verdant Amazon. But the most highly visible economic burst comes from tourism.

More than one merchant and business operator mourned the absence of Alberto Fujimori, the virtually exiled former Premier now living somewhat ignominiously in Japan. It was Fujimori, they say, who bought off the military,

started schools, and instituted a dual monetary standard.

Both the U.S. dollar and the Peruvian *solis* are legal tender throughout the country. Practically speaking, however, it's a mandate that applies primarily in Lima and in major cities. Once in the countryside, few people have change for a U.S. dollar bill.

Politically, Peru seems to suffer from the common problems of a country besieged with too many urgent and competing needs. Leaders who begin with noble intentions grow overwhelmed with the difficulty of succeeding at change; they become frustrated at the excruciatingly slow process of democracy. One result, and not an uncommon one, is that leaders learn to cut corners and traverse slippery slopes. That works until things start falling apart, which they inevitably seem to do.

Evident in the city of Lima is a history of political and economic uncertainty that results from a natural consequence of violence, terrorism, poverty, and wealth. What's normal in the city are bars on windows and doors, razor wire strung about, homes built behind high protective walls, residences that look like bunkers, and small houses fronted with massively-fortified wooden doors. A police presence is everywhere: federal police, municipal police, transit police, tourist police, and private guards. Every bank and substantial business has security forces.

Notwithstanding the fortress-like quality of building or the constant signs of security, the streets absolutely reverberate with life. Sidewalks in commercial areas are packed with people carrying purchases, and side streets in residential areas are lushly landscaped and undeniably serene. Life goes on vividly, virtually oblivious to the armed presence.

*Stephen H. Silverman, AICP, is the CCAPA Vice President for Public Information and the Vice President of Urban Counsel in San Diego, [ssilverman@urbancounsel.com](mailto:ssilverman@urbancounsel.com).*

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# Dates for 2005 AICP Examination

## *New One-Step Exam Process*

Beginning with the 2005 exam cycle, AICP is combining a new application that combines the application and registration steps into one form and one fee. This eliminates the previous two forms and fee payments.

## *Application Submission Deadline*

AICP moved to a computer-based exam in 2004. The exam will be offered in two newly scheduled 12-day testing windows (May 9-21 and November 7-19) at more than 300 testing centers in the United States and Canada. *March 15, 2005* is the application submission deadline for the May 2005 exam window.

## *Application Review and Notification*

Your completed application (including all education and employment verification) will be reviewed, and AICP will inform you of your status for the 2005 AICP exam. You will be notified of eligibility for the May 2005 exam in about six weeks.

## *Apply OnLine and Save Money*

The single fee for the online application (combines the previous separate application and registration steps) is \$385. APA has developed an online, interactive application web program that is user friendly and provides a cost benefit to APA and exam applicants (go to [www.planning.org](http://www.planning.org)). Due to processing costs for paper applications, a higher fee of \$415 will be applied to those who do not use the online form to apply.

## **IMPORTANT!!**

Your application filing fee had to arrive at the AICP Washington, D.C. office by *March 15, 2005* for the May 2005 exam window.

## *2005 Exam Windows*

In 2005, AICP will administer the exam in a computer-based format over two testing windows:

- May 9-21, 2005
- November 7-19, 2005

*Be sure to visit the APA Website ([www.calapa.org](http://www.calapa.org)) periodically to confirm this information*

## **Planners on the MOVE**

K.L. (Dan) Wong, AICP, Senior Transportation Planner with the San Francisco Airport Commission and Chair of the APA-Transportation Planning Division's Airports Committee has been appointed to the Federal Aviation Administration's new Airport Compatibility Planning Committee.

Brian R. Smith, AICP, Planning Manager with URS Corporation, has returned to Southern California. He has transferred to URS' Orange County office, and continues his role as Chair of the 2005 CCAPA Conference in Yosemite. Brian can be reached at 714.648.2835, or [brian\\_r\\_smith@urscorp.com](mailto:brian_r_smith@urscorp.com).

## *Hold that Date!*

*May 20, 2005 • Sacramento*

On May 20, 2005, the California Planning Foundation will sponsor an all-day workshop in Sacramento. The workshop will examine the critical link between land use and water resources planning. Experts on topics ranging from climate change to California's water "budget" and legal requirements to plan for water at the local level will provide examples of successful water conservation programs. For updated details, visit:

<http://www.californiapanningfoundation.org/workshops.html>

## For the Record

Ms. Terrie Zwilling was the author of the article "Recycled Water Management at the Presidio" that appeared in the November/December issue of *CalPlanner*.

# Job OPPORTUNITIES

## Planning Director, City of Carlsbad, CA

The California coastal community of Carlsbad (pop. 95,400) is seeking an innovative and progressive planning professional to serve as Director. Spanning 42 square miles, the City is located 35 miles north of San Diego. Carlsbad is widely recognized for its high standards and exceptional quality of life. The City anticipates build out in 2030 with approximately 128,700 residents.

The ideal candidate will be a team-oriented, innovative leader who is well versed in contemporary planning practices and a gifted manager of people. He/she will also be a superior communicator who enjoys interacting with a wide variety of stakeholders and is capable of leading the organization through an exciting and critical period in its history. The Planning Department is comprised of 25 full-time staff and is supported by an annual operating budget of approximately \$3.1 million. The Planning Director reports to the Director of Community Development.

The salary range is \$107,500 to \$134,200 and is supplemented by an attractive benefits package, including annual management incentive pay for performance. As of January 1, 2005, the City provides 3% at 60 PERS retirement benefit. To be considered, submit resume, cover letter with current salary and six professional references by Monday, April 18, 2005.

For more information, contact: Teri Black Brann, CPS Executive Search, 241 Lathrop Way, Sacramento, CA 95815; 310.377.2612, Los Angeles; 916.263.1401, Sacramento; 916.561.7205, Fax; E-mail: [resumes@cps.ca.gov](mailto:resumes@cps.ca.gov); [www.cps.ca.gov/search](http://www.cps.ca.gov/search).

## DD&A, Inc.

Denise Duffy & Associates, Inc. has immediate openings for the following positions:

**Associate Planner** for our office in Monterey, CA. Responsibilities include preparation of environmental impact reports that meet CEQA and NEPA requirements, initial studies, staff reports, resolutions, ordinances, and related materials for private developers and public agencies. Qualified candidates **must have demonstrated experience in CEQA** and managing complex environmental review projects. Requirements include:

- Bachelor's degree (Master's preferred) in planning, environmental studies, or a related discipline
- 3-5 years professional planning or environmental experience in CA.
- Ability to manage large, complex projects
- Ability to produce high quality environmental documents for challenging projects
- Ability to work directly with clients and to manage consultant teams and budgets
- Presentation and public speaking skills
- Independent, self-motivated, and organized
- Understanding of the RFP process and ability to prepare proposals and budgets

- Excellent writing/editing/word processing and quantitative/ spreadsheet skills

**Environmental Planner/Assistant Planner** for our office in Monterey, California. Responsibilities include environmental planning, including CEQA and NEPA documentation and community planning and permitting. Requirements include:

- Bachelors degree in planning, environmental studies, or related field with specific work experience
- 1-2 years experience in land planning/environmental planning (less experience considered if specific CEQA/NEPA document preparation can be shown)
- Outstanding writing, editing, and communication skills
- Proficient in Microsoft Office programs
- Workable knowledge of GIS/Graphics programs desirable

DDA offers a full benefit package that includes paid holidays and vacation, health insurance, retirement plan, professional dues, and conference and training allotment, as well as yearly company retreats. These are both full-time, salaried positions. Salary will be commensurate with Monterey Bay area professional salaries, based on education and experience.

If you are qualified and interested in joining our dynamic team, please forward your resume to [mechevarria@ddaplanning.com](mailto:mechevarria@ddaplanning.com). Please include the job title you are applying for in the subject line of your e-mail. If you would prefer mailing your resume, with references and a sample work product, please do so to: DD&A, Inc. 947 Cass Street, Suite 5, Monterey, CA 93940.

## Environmental Planning Project Manager, RBF

Since 1944, RBF's reputation and success have been founded on a commitment to quality, professionalism and continuing innovation. We have an exciting opportunity for an Environmental Planning Project Manager to join our team and collaborate with experts throughout the Firm on a variety of redevelopment, urban infill, brownfield, and smart-growth projects.

This position may be based in any of our Northern California offices: San Jose, Walnut Creek, Sacramento or Monterey Bay. Current projects include military base conversions, urban in-fill projects, sports complexes, industrial site conversions, transit-oriented villages, and affordable housing projects that will improve quality of life in Northern California and make a difference for generations to come. This position requires proven success in EIR preparation and management, including initial studies, neg decs and mitigated neg decs, public outreach and presentations to jurisdictional entities, coordination of multidisciplinary consulting services, project organization, and proposal and project submittal preparation. Projects may require approximately 20% travel throughout the greater Bay and Monterey Bay areas. Qualified candidates will have a Bachelor's degree in environmental planning, urban planning, geography, or related field, 10+ years of relevant public or private sector experience in environmental planning, and must be CEQA experts.

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## Change of Address . . .

Please notify APA promptly if you change your address. Supply both your old and new addresses to:

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# Commissioner's CORNER

## Same Name, New Face

It's an odd coincidence, but the past and present CCAPA Planning Commission representatives share the same last name. As of January 2005, Lori Garcia completed a successful term representing commissioners across the state. Now, a new Garcia, Kathy, is pleased to be your new representative.

One day a week, I volunteer as a "citizen planner," a Planning Commissioner for the City of San Diego. We wrestle with issues of density, environmental protection, condominium conversions, affordable housing, infrastructure, and a host of other planning issues that challenge Californians. The rest of my days are filled with landscape architecture, as my colleagues and I at Wallace Roberts & Todd deal with the same issues as we plan and design our built environment.

These two tracks of my life inform each other tremendously, and I marvel at how one enlightens the other. It is a constant educational process.

Education and involvement will be key focuses of the CCAPA Board this year as we look to serve planning commissioners throughout California. To that end, we are in the process of developing this year's objectives and actions. We want to further our cooperation with the League of California Cities which will continue to offer its informative Planner's Institute in April. If you're not already familiar with the resource, visit [www.cacities.org](http://www.cacities.org) and plan to attend. Last year, I had the opportunity to meet other commissioners, share issues we all appear to be encountering, and hear about the needs of different regions. The Planner's Institute was a constructive experience, and I highly recommend that planning commissioners participate in Pasadena.

While you are saving dates, make sure that you plan to attend the annual CCAPA Conference in October. Held in Yosemite Valley, the conference will include a separate track dedicated to planning commissioners. It will be a perfect occasion to share knowledge, meet colleagues, and be inspired by the autumn beauty of Yosemite.

In addition to the annual American Planning Association conference with many sessions of interest, APA revamped *The Commissioner*, a quarterly publication targeting planning commissioners and staff. If you don't subscribe, visit [www.planning.org](http://www.planning.org) and register. The winter issue includes a provocative article on "Safe Growth" and cites resources for mitigating natural hazards, preventing crime through environmental

design, and making public safety aesthetically pleasing. The issue also has an informative discussion on effective interaction between commissioners, planners, and attorneys as well as a special profile on one of California's own: the City of La Mesa Planning Commission. It is well worth reading.

I plan to use this column as a forum for education, involvement, and discussion about topics of interest to planning commissioners. To that end, I might present opposing viewpoints on a current issue or list resources for further exploration. Articles may feature special accomplishments or alert you to activities and informational opportunities.

With that in mind, the CCAPA Board and the Planning Commissioner representative are interested in your comments. What are the hot topics facing commissioners across the State? Would you want more discussion on legislation or ethics? Are "how to" sessions, such as "working with your Planning Department" or "gathering community input" valuable? Is agricultural protection or density – or both – your biggest concern? And what about housing? How much, where, and how? That could be an ongoing feature.

There is a host of issues that can be raised, but I am particularly interested in what you would like to discuss. Please email me with any ideas, thoughts, or discussion points for future articles. Would you like to be a contributor? I can be reached at [KGarcia@SD.WRTdesign.com](mailto:KGarcia@SD.WRTdesign.com) and welcome your opinions.

This is also my opportunity to thank Lorie Garcia, a Planning Commissioner with the City of Santa Clara, who served as our representative for a number of years. She wrote this column regularly, injecting a bit of levity with the photo of her perched on her scooter. It was always a subtle reminder for us to get out of our cars and look at alternative modes of transportation. Lorie worked hard to prepare conference sessions keeping us informed on events and issues. She also practiced what she preached. We appreciate her dedication and energy.

Although riding a scooter looks like fun, I haven't begun riding a scooter, I'll continue the efforts of the Board and Lorie to provide opportunities for planning commissioners and their staff. I look forward to your input and to serving as your representative.

*Kathy can be reached at [KGarcia@SD.WRTdesign.com](mailto:KGarcia@SD.WRTdesign.com).*

### CCAPA Broadcasts Information

CCAPA will be broadcasting important information to your e-mail address. So that you don't miss out on these important messages, please check your e-mail address with National APA. You can review and update your membership information online at [planning.org](http://planning.org). On the home page go to the Member Services drop-down list and choose the Membership Database link. You will need your membership number which is located on your Planning Magazine label or your dues renewal invoice. Please call 916.736.2434 for further information.

# Letter to the EDITOR

## Oregon's Giant Step Backwards

by Ron Bass

With the adoption of ballot Measure 37, Oregon voters narrowly approved a giant step backwards in land use planning. Since the early 1970s Oregon's award-winning program has been the shining star of planning in the United States. The innovative program features a strong state-local partnership, mandatory urban growth-boundaries, limitations on the conversion of agriculture and forest land to urban uses, and the country's only Land Use Board of Appeals, an administrative court which resolves more than 90% of all land use disputes. The success of the program is evident in Oregon's vibrant urban areas and the protection of its unique natural resources.

Yet, as the recent election revealed, not all Oregonians are enamored with the state's planning requirements.

After heavy lobbying by Oregonians in Action, a conservative anti-planning organization, Measure 37 now requires compensation for land use regulations that reduce the fair market value of affected property.

The measure defines "land use regulation" broadly to include any state statute regulating land use, administrative rules adopted by the Land Conservation and Development Commission (the state's planning office) as well as most local government plans, zoning ordinances, subdivision controls or transportation ordinances. It also applies to laws and regulations dealing with farming or forest practices. Fortunately, there are a few exceptions such as for nuisance abatement, health-

based pollution regulations, and land use regulations required to comply with federal law.

Under Measure 37, a claim for compensation must be acted on within 180 days or else the applicable land use regulations may no longer be enforced against the property.

While it is much too soon to determine the effect of Measure 37 on local government planning and finances, cities and counties are bracing for an onslaught of compensation claims. In addition to concern over the cost and effects of such claims, some critics also believe that cities and counties may process such claims behind closed doors – thus, eliminating the public from the planning process. Both 1000 Friends of Oregon and the Oregon League of Cities are, therefore, encouraging local governments to process Measure 37 claims using a fair and open process that is consistent with the goals of the planning program.

As with most modern land use regulations, the ultimate fate of Measure 37 and its implementation will undoubtedly be decided in the courts. (A few years ago, a similar ballot measure was declared unconstitutional). In the meantime, local governments must adjust to a totally new planning paradigm that is especially troublesome in a state accustomed to strong planning practices.

*Ron Bass, J.D., AICP is a Legal and Regulatory Specialist with Jones & Stokes. He lives in Ashland, Oregon, and monitors Oregon land use activities for the company.*

### CalPlanner Production Schedule

Issue	Articles Submitted	Mailed*
May/June	April 4	May 16
July/August	June 6	July 18

\* Membership will receive magazine within 10 working days after this date, on average. Dates subject to change without notice.

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### 2005 CCAPA Awards Nominations Now Accepted

The 2005 CCAPA Awards nominations are now being accepted. If you know of a program, project, or plan that demonstrates great planning or a person who has made a major contribution to planning, please contact your local section awards chairperson about making a nomination. The schedule and nomination form for this year's CCAPA awards can be found on the CCAPA website at calapa.org. Nominations are due to the CCAPA office by noon on June 3, 2005.

**Celebrate the great planning efforts occurring in our communities!**



# Cal Poly Pomona Award Links Academia and Practitioners

The Department of Urban and Regional Planning at Cal Poly, Pomona is pleased to announce the winners of the 2005 William R. and June Dale Prize for Excellence in Urban Planning. The Dale Prize is awarded annually to recognize planning excellence. It is the only planning award that creates dialogue between planning scholars and practitioners.

Organized around a focused planning theme each year, the 2005 Dale Prize theme is "Voices in Planning: Transforming Land Use Practice through Community Engagement." It focuses on planners whose work gives voice to underrepresented communities, a practice which ensures that land use planning and decision-making are responsive to underrepresented communities. In the process, of course, there is a fostering of civic and community engagement.

The winner of the Practitioner Prize is Ms. Ceola Davis, Community Organizer, East St. Louis. Ms. Davis spearheaded the revitalization of East St.

Louis and is widely recognized for uniting neighborhood residents around causes of unemployment, environmental degradation, and crime.

Two Scholar Prizes are being awarded this year. The recipients are:

- Dr. Kenneth Reardon, Associate Professor and Chair, Department of Planning, Cornell University. Dr. Reardon is the foremost academic engaged in community action research.
- Dr. Leonie Sandercock, Professor, University of British Columbia. Dr. Sandercock is the preeminent theorist in this field and has influenced practice around the world.

Each of the winners will receive a \$5,000 prize and will be honored during a three-day visit to the Cal Poly Pomona campus. The winners will participate in a colloquium on "Voices in Planning."

For more information, contact the Urban and Regional Planning Department at [urpdept@csupomona.edu](mailto:urpdept@csupomona.edu) or 909.869.2688. Information is also available at [www.csupomona.edu/urp](http://www.csupomona.edu/urp).

## Great Valley Center 8th Annual Conference "Growing A Community" Register Now - 50 Interactive Sessions

by Heidi Arno

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## What Do Your Peers Need to Know?

*CalPlanner* is forming an Editorial Board to help select topics of interest to readers.

As envisioned, the Editorial Board will hold phone conferences up to three times a year to identify topics of particular interest to the planning community. After identifying topics, Editorial Board members will take responsibility for getting articles written or, in some cases, writing the piece themselves.

If becoming a member of the Editorial Board is of interest, please send your contact information and a brief description of what you do to Steve Silverman at [ssilverman@urbancounsel.com](mailto:ssilverman@urbancounsel.com).

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**Planning Manager**

Butte County

Butte County (pop. 210,500), located in beautiful northern California, seeks experienced and creative planning and development professional to lead County's Planning Division. New Planning Manager will exercise full responsibility for planning, organizing and directing work of the Planning Division staff while acting in support of the Board of Supervisors, Planning Commission, Land Conservation Act Committee, and Airport Land Use Commission. Planning Manager supervises a staff of six planning professionals. The Development Services Department resources include staff of 46 and operating budget of \$4.1 million.

The ideal candidate is a sophisticated planning and development professional with exceptional leadership, communication, management and interpersonal skills, possessing working knowledge of productivity principles and practices, and with a track record of efficiency, creativity, and building strong relationships with the community, Planning Commission, and other County departments. Successfully addressing rapid growth in a county transitioning from rural/agricultural to one of development is top priority. Bachelor's degree in Planning, Business Administration, Public Administration or related field required; five years public sector planning experience, including three years supervisory experience expected. Knowledge of State (CA) rules and regulations is essential.

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# Initiatives

by Sande George

Cleared for circulation by Secretary of State Kevin Shelley. Contact: Caren Daniels-Meade 653 6575.

**Vote Requirement for Fees/Charges. State and Local Appropriation Limits. School Funding. State Mandates.**

**Bonds. Initiative Constitutional Amendment.** Requires certain state fees/charges be enacted by two-thirds vote of Legislature, not by current majority vote. Requires certain local fees/charges to be approved by two-thirds of electorate; currently no vote required. Amends state and local appropriation limits. Provides procedure if state exceeds appropriation limit. Repeals Prop. 98 revenue transfers above appropriation limit to community college and school districts. Allocates General Fund revenue above appropriation limit to specific funds/purposes. Specifies requirements for reimbursement of local government mandates. Restricts state bond issuances. The summary of the estimate by the Legislative Analyst and Director of Finance of the fiscal impact on state and local governments indicates potential substantial reduction in state spending beginning in 2006-7. State spending would be restrained below current-law levels in future years. There would be a potential reduction in certain state and local revenues. Proponents are John Campbell, Jon Coupal, and Larry McCarthy, 916.443.6703.

Needs 598,105 valid signatures by May 23, 2005.

## HDR Acquires Operations of Two Community Planning Firms

*LCA Town Planning & Architecture and Sargent Town Planning Join Forces Under HDR Umbrella*

HDR, a multidisciplinary consulting firm, has acquired the operations of LCA Town Planning & Architecture based in Portland, Oregon, and Sargent Town Planning based in Ventura, California. Financial terms of the agreement were not disclosed. Going forward, the firms will conduct business as HDR/LCA+Sargent, Town Planning.

Steve Coyle, LCA's founding partner and principal, will manage community planning and urban design services in the downtown Oakland and the Portland offices. David Sargent, Sargent's managing principal, will direct community planning and urban design

services in the Ventura office. Under the new corporate structure, Coyle and Sargent will operate as principals with HDR/LCA+Sargent, Town Planning.

HDR ([www.hdrinc.com](http://www.hdrinc.com)) is an architectural, engineering, planning and consulting firm. More than 3,700 employee-owners, including architects, engineers, consultants, scientists, planners and construction managers, in over 100 locations worldwide, pool their strengths to provide solutions beyond the scope of traditional A/E/C firms. HDR is currently No. 18 on the Engineering News-Record "Top 500 Design Firms" rankings.

### Share YOUR Ideas!

Share your ideas with California Planner readers by sending a fax or writing to:

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Fax: 951.769.3917

E-mail: [Karen@FireRose.us](mailto:Karen@FireRose.us)

# Legislative UPDATE

by Sande George, Stefan/George Associates, CCAPA Legislative Advocate



## Legislative Crystal Ball for 2005?

To date, very few bills have been introduced in this first year of the new two-year legislative session. But, with my trusty legislative crystal ball, I am predicting that the following planning issues will be addressed in legislation in 2005:

1. Housing, housing, housing, including the Governor's housing package with 20-year zoning for housing, project review streamlining, by right approval of housing and changes in CEQA to speed up housing approvals; another round of density bonus legislation; legislation from new Senate Pro Tem Don Perata, Senate Transportation & Housing Chair Tom Torlakson, and others to increase the supply of affordable housing in California; and a proposal from the League of California Cities and the BIA to streamline housing approvals and require more up-front

decisions on housing in the general plan and less on each project.

2. A variety of CEQA changes from the Governor, BIA, and others.
3. Mandatory air element from Senator Kehoe, new Chair of the Senate Local Government Committee (SB 44).
4. Potential limitations on the ability of cities and counties to impose hours of operation restrictions on retailers accepting deliveries to improve goods movement out of the ports (more on this later).

In the next few months, also look for an expanded legislative section on the new CCAPA website, as well as a full list of planning-related legislation introduced in 2005.

## SB 1818 Questions & Answers

### CCAPA's Answers to Frequently Asked Questions Regarding SB 1818 (Hollingsworth) – Changes to Density Bonus Law - 2005

Prepared by Vince Bertoni, AICP, Bertoni Civic Consulting & CCAPA Vice President for Policy and Legislation; Barbara Kautz, Esq., FAICP, Goldfarb & Lipman, LLP; Vivian Kahn, FAICP, Dyett & Bhatia; and Terry Rivasplata, AICP, Jones & Stokes Associates

#### Background

The State of California enacted significant changes to the state's density bonus law, which went into effect on January 1, 2005. The legislation, SB 1818, introduced by Senator Hollingsworth (chaptered as Government Code Section 65915-65918), requires cities and counties to overhaul their ordinances to bring them into conformance with new state mandates. The previous law allowed for a 25% density bonus when housing projects provided between 10 – 20% of the affordable units (depending upon the level of affordability). In addition, cities and counties needed to provide at least one "concession," such as, financial assistance or a reduction in development standards. The new law significantly reduces the number of units that a developer must provide in order to receive a density bonus and requires cities and counties to provide between one to three concessions, depending upon the percentage of affordable units that the developer provides. It also imposes a new land donation rule and statewide parking standards. Given the sweeping changes that the state has established, CCAPA received numerous questions from its members regarding the new law, and the following are answers to the most frequently asked questions.

Please note that the information provided is the opinion of experts in State housing law, but the information is not intended as legal advice. Please seek the guidance of your city attorney or county counsel on implementing the provisions of the new law in your jurisdiction.

#### Major Provisions

**Density Bonus.** The number of affordable units that a developer must provide in order to receive a density bonus is significantly reduced from prior law.

- If at least 5% of the units are affordable to very low income households or 10% of the units are affordable to low income households, then the project is eligible for a 20% density bonus.
- If 10% of condominium or planned development units are affordable to moderate income households, then the project is eligible to receive a 5% density bonus.

In addition, there is a sliding scale that requires:

- An additional 2.5% density bonus for each additional increase of 1% very low income units above the initial 5% threshold;
- A density increase of 1.5% for each additional 1% increase in low income units above the initial 10% threshold; and
- A 1% density increase for each 1% increase in moderate income units above the initial 10% threshold.

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## YOSEMITE

CCAPA CONFERENCE  
October 30 - November 2, 2005



# Planners Will “Flip” Over CCAPA 2005 - YOSEMITE

**C**lean mountain air, beautiful sequoias stretching high into the sky, the most scenic waterfalls in the world, *and* Half Dome. There is no place like Yosemite, *anywhere*.

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As California Planners, we are most *recognized* by what we do to make our state a better place to live, work and play. On January 31<sup>st</sup>, California “flipped” over its new state coin, recognizing Yosemite as one of California’s most recognizable features and John Muir as one of California’s most recognizable citizens. It is for this reason that images of Half Dome and John Muir, as well as the California condor, were selected to grace the reverse side of California’s own statehood quarter.

**So save your quarters, pack your backpacks and get ready to “flip” over the Conference of the Year – CCAPA 2005 - Yosemite!**



On-line registration, lodging registration, sponsorship opportunities and a tentative Schedule-at-a-Glance have been posted on [www.calapa.org](http://www.calapa.org). Keep checking the website for up-to-date conference information. Lodging and conference registration are limited this year. Register early - so you won't be left out in the woods!

For more information please contact, Lynne C. Bynder, CMP – CCAPA 2005 Conference Planner at [lbynder@dc.rr.com](mailto:lbynder@dc.rr.com).

Conference information online at [www.calapa.org](http://www.calapa.org)

Questions and Answers on SB 1818

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These bonuses reach a maximum density bonus of 35% when a project provides either 11% very low income units, 20% low income units, or 40% moderate income units.

**Continued Affordability.** The continued affordability requirements for very low and low income units have not changed. However, the requirements for moderate income condominium units have changed significantly. The new law specifies that the city or county must insure that the initial occupants of moderate income units meet the income qualifications. However, upon resale of the units, the seller retains the down payment, the value of any improvements, and the seller’s proportionate share of appreciation. The city or county recaptures its proportionate share of appreciation, and those funds must be used within three years to promote lower or moderate income home ownership. It is unclear whether these units must be sold at market rate, or if a city or county can limit appreciation (see Question 7 below).

**Concessions and Incentives.** Cities and counties must grant more “concessions or incentives,” reducing development standards, depending on the percentage of affordable units provided. “Concessions and incentives” include reductions in zoning standards, other development standards, design requirements, mixed use zoning, and any other incentive that would reduce costs for the developer. Any project that meets the minimum criteria for a density bonus is entitled to one concession from the local government agency, increasing up to a maximum of three concessions depending upon the amount of affordable housing provided. For example:

- For projects that provide either 5% of the units affordable to very low income households, 10% of the units affordable to lower income households, or 25% moderate income condominiums, then the developer is entitled to one concession.
- When the number of affordable units is increased to 10% very low income units, 20% lower income units, or 20% moderate income units, then the developer is entitled to two concessions.
- When the number of affordable units is increased to 15% very low income, 30% lower income, or 30% moderate income units, then the number of concessions is increased to three.

**Waivers and Modifications of “Development Standards.”** A city or county may not impose a “development standard” that makes it infeasible to construct the housing development with the proposed density bonus. In addition to requesting “incentives and concessions,” applicants may request the waiver of an unlimited number of “development standards” by showing that the waivers are needed to make the project economically feasible. The bill defines “development standards” as “site or construction conditions.”

**Land Donation.** Additional density is available to projects that donate land for residential use. The land must satisfy all of the following requirements:

- a) Have the appropriate general plan designation and zoning to permit construction of units affordable to very low income households in a number not less than 10% of the units in the residential development;
- b) Be at least one acre in size or of sufficient size to permit development of at least 40 units; and
- c) Be served by adequate public facilities and infrastructure.

The base density bonus is 15%, with increases in 1% increments for each percentage increase in the units that can be accommodated above the minimum 10% of the units described in (a), up to a maximum of 35%. The maximum combined density bonus is 35% under all rules. When the land is transferred, it must have all of the permits and approvals necessary for the development of the very low income housing units. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city or county may require that the land be transferred to a developer instead of the city.

**Parking Standards.** If a project qualifies for a density bonus, the developer may request (and the City and County must grant) new parking standards for the entire development project. The new standards are:

- zero to one bedroom – one on-site parking space
- two to three bedrooms – two onsite parking spaces

- four or more bedrooms – two and one-half on-site parking spaces.

These numbers are inclusive of guest parking and handicapped parking and may be tandem or uncovered (but cannot be on-street). The parking standards may be requested even if no density bonus is requested.

Questions

1. Does this law apply to charter cities and charter counties? Yes.
2. Can inclusionary requirements be imposed on the bonus units? Most experts agree that inclusionary requirements cannot be imposed on the density bonus units themselves. The reasoning is that the Legislature intended to give developers market-rate units in exchange for affordable units. For instance, if a 100-unit project becomes a 120-unit project after receiving a density bonus, the inclusionary requirements may be imposed only on the original 100 units, not the 20 bonus units. If a city has a 20% inclusionary requirement, normally, the city would require 24 inclusionary units in a 120-unit project (20% of 120 units). However, if 20 units are density bonus units, then the 20% inclusionary requirement can only be imposed on 100 units, requiring only 20 inclusionary units (20% of 100 units). The net impact is that only 16.7% (20/120) of the total units will be affordable inclusionary units, rather than 20% (24/120) as intended by the inclusionary ordinance.
3. Do inclusionary units qualify a project for a density bonus? The density bonus law applies when an applicant “seeks a density bonus” and “agrees to construct” the required percentages of affordable units. There have been two interpretations of this section.

Many localities interpret the bill to mean that if the inclusionary units meet the requirements of the density bonus law, then the inclusionary units will qualify the development for a density bonus. For instance, in these jurisdictions, if an inclusionary ordinance requires that 10% of the units be affordable to low income households, a project complying with the ordinance will be eligible for a 20% density bonus.

Other localities interpret this to mean that when a local jurisdiction imposes its inclusionary housing requirement, the applicant is not “agreeing to construct” the units and so is not eligible for a density bonus. The legislative history of the amendments to SB 1818 confirms that the changes in the law were not intended to affect an inclusionary zoning ordinance.

You may want to discuss this issue with your city or county attorney.

**Note:** that no density bonus need be given in any case unless an applicant actually “seeks” – applies for – the bonus, even if the project would otherwise be eligible for a density bonus.

4. Can a developer successfully argue that the inclusionary requirements make the project infeasible? No. Developers can only request a waiver of “development standards” that make a project infeasible. “Development standards” are defined as “site or construction conditions.” The proponents of the bill included this definition specifically, so that an inclusionary ordinance would not be considered a development standard. An inclusionary ordinance doesn’t regulate site or construction conditions; it only affects the economics of the project. Consequently, a developer cannot request a waiver by arguing that the inclusionary ordinance makes the project infeasible.
- Some inclusionary ordinances do have requirements that might be considered to be site and construction conditions, such as requiring dispersal of units, similarity in design to market-rate units, etc. Presumably, a developer could try to show that these are site or construction conditions and request that they be waived, following the procedures discussed in Question 9.
5. Can a city or county require design review for density bonus projects, even if it renders the project infeasible? The short answer is “no” – if, indeed, design review will make the project infeasible. As discussed in the previous question, no local agency can apply any development standard that will preclude the development of a density bonus project. How would this work in the case of design review? The process of design review is not a development standard, so no waiver could be requested. Design review conditions, however, usually involve site or construction requirements,

so would probably be considered to be “development standards.” The issue would most likely arise if an applicant argued that design review conditions made the project infeasible and presented evidence showing that the project would not be economically feasible with the conditions. Cities and counties should consider including in their local ordinances a process for evaluating requests for waivers including the type of economic information which must accompany the request and how the information will be evaluated.

6. Can a city or county place additional resale restrictions on a moderate income condominium and planned developments? If an applicant receives no public subsidy and agrees to impose the equity-sharing required by SB 1818, the city or county cannot require additional resale restrictions (see discussion in Question 7 below).

However, if a city or county has an inclusionary ordinance that requires moderate income units to have resale restrictions or longer periods of affordability, the city is under no obligation to count as inclusionary units, those moderate income units that meet only density bonus standards. For instance, assume that a city has a 15% moderate income inclusionary requirement and requires a 55-year resale restriction. A developer could propose 15% moderate income units with the equity-sharing required by SB 1818 and receive a density bonus. However, since none of the units would meet the standards in the city’s inclusionary ordinance, the city would not be required to count any of the units as inclusionary units. The developer would have to provide another 15% moderate income units meeting the city’s standards for resale restrictions and 55 years of affordability. In this case, most developers would choose to apply the city’s standards to their moderate income units.

7. Is there a requirement for continued affordability for moderate income condominium and planned developments? No, only the initial occupant must meet the affordable income criteria. After the initial owner sells the unit, that person is entitled to receive the value of their down payment, improvements to the property, and proportional share of the appreciation of the unit. The city or county receives its proportional share of the appreciation and must use that money within three years to promote affordable, ownership housing.

The bill is not clear about how appreciation is defined. Proponents of the bill state that it was intended to work as follows: if a locality makes a unit available for \$200,000 to a moderate income purchaser, but the unit has a value at the time of purchase of \$300,000, then the locality gets to recapture the \$100,000 subsidy upon resale. In addition, if the unit goes up in value another \$30,000 between the date of purchase and the date of resale, the locality and purchaser split the appreciation per the formula in the bill. The bill does not specifically require that the units be re-sold at fair market price, which may allow localities to impose resale controls limiting the amount of appreciation.

8. If a developer is proposing a mixture of affordable housing types (i.e., 5% very low plus 10% low income units) how is the density bonus calculated? SB 1818 amended Government Code Section 65915 to delete the language in subsection (l), which previously stipulated that an applicant who “agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households is entitled to only one density bonus and at least one additional concession or incentive.” Localities should assume, therefore, that if the proposed percentage of units by affordable housing type meets or exceeds the thresholds stipulated in subsection (g) they will have to grant the 20% density bonus to which the applicant is entitled for each type of affordable housing that exceeds the threshold specified in subsection (g) (1). **Note**, however, that this subsection now specifies that the maximum density bonus to which an applicant is entitled is 35%, in contrast to the previous requirement, which stated that the applicant was entitled to a minimum bonus of 25%, but did not specify a maximum. If the applicant proposes a mixture of affordable housing types that meets or exceeds the threshold for more than one housing type, he or she is, therefore, not entitled to receive a bonus that exceeds 35% of the density that would otherwise be allowed by applicable zoning and the land use element.

Neither the former version of Sec. 65915 nor the amendments in SB 1818 provide more guidance about how agencies should calculate the density bonus for a project that includes a mixture of affordable housing types when the project does not meet the

specified thresholds for each affordable housing type. For example, an applicant might propose to make 5% of the units affordable to very low income households plus 5% affordable to low income households. In that case, one way to calculate the bonus would be to grant the incremental density allowed in subsection (g) for the low income units (1.5% multiplied by 5 or a total of 7.5% for the low income units) in addition to the 20% bonus to which the applicant is entitled for the 5% very low income units.

Another way to calculate a mixture of affordable housing types is to first evaluate the very low income units only. If a project has 5% very low income units, then it would be entitled to a 20% bonus. Then evaluate the 5% low income units by themselves. These don’t qualify for any density bonus (10% low income units required). Then, consider all 10% of the units as low income units. This again permits a 20% bonus. Consequently, the project is only entitled to a 20% bonus. (This has the effect of encouraging developers to have more very low income units, since 8% very low income units would give the developer the 27.5% density bonus.) Since the law is silent on which manner to calculate a density bonus for a mixture of income levels, it is important for the city or county to choose a method and be clear and consistent in the implementation.

Also, cities and counties should amend their density bonus provisions to delete any reference to the “one density bonus” limit that Sec. 65915 previously imposed. They may want to amend their ordinances to also specify how to calculate both the minimum and the maximum number of additional units that might be granted pursuant to this section and to specify the 35% maximum stipulated as a result of SB 1818.

9. Can a city or county require the developer to choose from a specific list of concessions chosen by the local agency? What happens if they want a concession that is not on the list? A city or county can request that a developer chooses a concession or incentive from a list that the city or county has prepared as acceptable concessions; however, under certain circumstances, the developer may be entitled to other incentives not on the city or county list.

Section 65915 (l) defines “concession or incentive” as a reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission. Examples include a reduction in setback and square footage requirements and reduction in parking ratios. Approval of mixed use zoning is a “concession” if the non-residential use is compatible with the housing project and the existing or planned development in the area. In addition, the developer may propose other regulatory incentives or concessions that result in “identifiable, financially sufficient, and actual cost reductions.”

Subsection (d)(1) does make clear that the city or county may refuse to grant a concession or incentive if it makes certain findings based upon substantial evidence. The type of evidence that would be required to support such findings is spelled out in subsections (d)(1) (A) and (B) and includes a determination that the concession or incentive is not required in order to provide the proposed affordable housing units or “would have a specific adverse impact ... upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources” as long as there is no way to mitigate or avoid the specific impact without making the development unaffordable to low and moderate income households. As noted in subsection (d)(3), these are essentially the same findings that Government code Section 65589.5 requires in order to deny or impose certain conditions on an affordable housing development.

Local agencies are advised to pay close attention to these provisions because of the penalties that subsection (e) imposes on localities that refuse to waive standards and requirements in violation of the law. In addition to being ordered to grant the requested waiver, the local agency may be liable for the plaintiff’s attorney’s fees and litigation costs.

In addition to the required concessions and incentives, note that subsection (f) states that cities may not apply development standards that would preclude the development of the density bonus units. The applicant may request a waiver and “shall show that the waiver or modification is necessary to make the housing units economically feasible.” Local agencies should, therefore, require that applicants provide financial data showing that



Questions and Answers on SB 1818

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the proposed waiver or modification is necessary to make the affordable units economically feasible. Pursuant to subsection (d) (3), agencies should also amend their ordinances to establish procedures for accommodating qualified projects by “waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites.” Applicants proposing qualified projects should not be subjected to a variance procedure but, instead, should be able to apply for an exception or waiver based on specific findings, including economic considerations, that are spelled out in the ordinance.

- 10. Do the new reduced parking requirements apply to the affordable units only or to the entire project? The new parking standards apply to the entire project, both affordable and market rate units but only upon request of the developer.
- 11. Can cities and counties require guest parking for affordable projects? No. The new parking standards that apply upon request of the developer are inclusive for guest parking and handicapped parking. It should be noted that state law cannot preempt Federal ADA requirements.
- 12. Does a city or county need to conduct a CEQA analysis prior to adopting changes to their local ordinances in order to comply with the new law? Yes. A change in zoning or other land use ordinance is a project subject to CEQA (State CEQA Guidelines Section 15378(a)[1]; *Bozung v. LAFCO* [1975] 13 Cal.3d 263). Under CEQA, the baseline for determining the significance of a project is the existing environment. SB 1818 will require agencies to adopt ordinances that may result in significant indirect effects on the environment by reducing the effectiveness of existing protective standards. Adopting new, less restrictive standards may result in a significant effect.

For example, in *City of Redlands, et al. v. County of San Bernardino* (2002) 96 Cal.App.4th 398, Redlands and other cities sued San Bernardino County over a general plan amendment which modified existing county general plan provisions relating to development within city spheres of influence. Where previous county policy had been to defer to city development standards within the spheres (including more restrictive regulations and growth control measures), the general plan amendment would have provided the county more leeway to approve projects that did not conform to city standards. The county adopted a negative declaration for the general plan amendment.

The court found that the county’s initial study “does not provide evidence to show how such a shift in policy would have little or no effect on the environment.” The court noted that “CEQA reaches beyond mere changes in the language in the agency’s policy to the ultimate consequences of such changes to the physical environment.” Although the CEQA analysis is not required to be as detailed as a project-specific analysis, it is required to analyze the expected secondary effects of the general plan amendment. The cities presented substantial evidence, in the form of specific examples of city standards that were more restrictive than county standards and that would no longer be required within unincorporated spheres if the general plan amendment were approved, that the general plan amendment may have a significant effect. The court ordered preparation of an EIR.

- 13. Are affordable projects exempt from CEQA, or can a local government agency require negative declarations or environmental impact reports for affordable projects with inadequate parking? SB 1818 does not establish an exemption from CEQA requirements. The regulatory concessions that must be offered to a qualifying project do not and cannot include non-compliance with CEQA. CEQA operates independently of SB 1818 and is not limited by that statute. However, a project may qualify for a categorical exemption under State CEQA Guidelines Section 15332 (Infill Development Projects) if it meets the criteria set out in that section and is not subject to any of the exceptions established under Section 15300.2.

Separately, Public Resources Section 21159.24 provides a qualified, statutory exemption for specified inclusionary infill housing projects. This exemption would not apply if there is “a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.”

An agency must prepare an initial study for any project (including an affordable project) that is not exempt from CEQA. If there is substantial evidence (e.g., facts or expert opinion based on facts) that the project may result in a significant effect on the environment, an EIR must be prepared. If there is no substantial evidence to that effect, a negative declaration or mitigated negative declaration can be prepared.

The baseline for determining the significance of a project impact is the existing environment. The significance of a project’s impacts depends upon the extent of adverse change to the environment that would result from the project. Where a project involves a density bonus, the “project” for purposes of CEQA is the proposed activity including the bonus and any related concessions.

Government Code Section 65915 comprises the density bonus law. Subdivision (d) authorizes a local agency to deny a proposed incentive/concession when there is substantial evidence that the incentive/concession would have a “specific adverse impact” on “public health and safety” (as defined in Government Code Section 65589.5(d)[2]), or the physical environment, or on a property listed on the California Register of Historical Resources, and there is “no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.” This would authorize an agency to deny a proposed incentive/concession when an EIR has been prepared that identifies significant project impacts that either cannot be avoided or that could be mitigated, but the mitigation would make the project unaffordable. Because a mitigated negative declaration can only be released when the applicant has agreed to the mitigation measures, a local agency could also deny incentives/concessions on the basis of an initial study if the applicant was unwilling to agree to the mitigation measures due to cost. The EIR or the initial study would provide the “substantial evidence” necessary to support denial under Section 65915(d).

It is important to note that the clear intent of the legislation is to facilitate the construction of affordable housing through density bonuses and reductions in local development standards. Therefore, the CEQA analysis conducted by the city or county should focus on reasonable CEQA impacts, and not as a potential loophole to make the process of building affordable housing more difficult.

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