CALIFORNIA FOCUSES ON ITS TOUGHEST TOPICS

The Golden State looks to strengthen its environmental and sustainability initiatives; find new solutions to its ever-increasing affordable housing problem; and address density issues before they get out of control, as California's top legalese can tell you.

NEW INITIATIVES TARGET AFFORDABLE HOUSING, DENSITY AND PERMIT STREAMLINING

By David P. Waite, Partner, and Julia E. Stein, Senior Counsel, Cox, Castle & Nicholson in Los Angeles

The past year saw multiple efforts by lawmakers at the state and local levels to address the dire need for new and affordable housing throughout California. Two of those efforts present interesting opportunities for infill developers in Los Angeles. These include the City of Los Angeles' Transit Oriented Communities (TOC) Affordable Housing Incentives Program, which stemmed from the voters' passage of Measure JJJ in November 2016, and the statewide Senate Bill (SB) 35, designed to increase the amount of available affordable housing by creating a streamlined, ministerial process for planning approval of urban infill multifamily projects in jurisdictions that have not met their state-mandated Regional Housing Needs Allocation (RHNA).

The TOC Program

The TOC Program creates a new incentives system for residential projects located within a half-mile radius of a major transit stop — a rail station or the intersection of at least two bus routes with frequent service during peak commute times — which also meet certain affordable housing requirements. Housing developments are required to provide a set percentage of Extremely Low Income, Very Low Income and Lower Income units based on their proximity to particular types of transit.

The program tiers incentives based on the size of a project's affordable component and its proximity to four specific kinds of transit stops, allowing for up to an 80 percent increase in density or up to a 55 percent increase in floor area ratio (FAR) depending on the individual project's location and specifications. It also allows for a significant parking reduction for both market rate and affordable units. A project's specific tier is determined based on the shortest distance between its lot and a qualified transit stop, as well as the type of transit stop the lot is proximate to. In addition to base density, FAR and parking incentives, which any eligible project may receive in accordance with its designated tier, projects may be granted up to three additional incentives. These incentives may include reductions in yard/setback requirements, reductions in lot width, increases in lot coverage and increases in project height, in return for meeting specific affordability requirements.

As an illustration of the potential benefits of the TOC Program, consider the two scenarios in Tier 4 (for projects proximate to a metro station that is also served by a rapid bus line). *See chart below.*

While there are clear benefits to participating in the TOC Program, it is not a silver bullet for developers looking to completely bypass the complicated issues that can arise through the discretionary approvals process. Though application of base incentives remains ministerial, additional incentives are subject to discretionary review. The TOC Program does not eliminate site plan review or other discretionary approvals processes (such as a zone change to allow residential land uses, if necessary).

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SB 35

By contrast, SB 35 does not offer project incentives, but does allow for ministerial planning review under certain circumstances. In Los Angeles — which has failed to approve enough housing projects to meet its RHNA for below-moderate income housing — 50 percent of a project's residential component must be dedicated for affordable housing. Prevailing wage and labor standards must be met to take advantage of SB 35's streamlining provisions.

A project must also be consistent with "objective zoning and design review standards" set by the local land-use authority, meaning that projects requiring a zone change are not eligible for SB 35 streamlining. Projects taking advantage of the TOC Program's ministerial base incentives and only needing discretionary approval from the city for site plan review (e.g. not requiring a zone change or other discretionary approval) could utilize SB 35 to bypass discretionary review by meeting the affordable and prevailing wage requirements of SB 35.

Opportunities Abound?

The ability to take advantage of these programs will depend, in large part, on the location of the project site and the type of project under consideration. Sites close to transit that are already zoned for residential use are ideally suited to avail themselves of the TOC Program. However, projects requiring a zone change will become subject to prevailing wage and labor requirements established by a different section of Measure JJJ, and would not be able to take advantage of SB 35 streamlining. For projects that require discretionary approvals beyond site plan review, the TOC Program may provide attractive incentives, but some discretionary approvals will likely remain.

POTENTIAL BENEFITS OF THE TOC PROGRAM

	Original Project (sf = square foot)	Using TOC Program Incentives
Residential Only	75 base units 3:1 FAR on a 30,000 sf lot with 25,000 sf buildable area, translating to 90,000 sf floor area	135 units (80 percent density bonus) 4.25:1 FAR, translating to 106,250 sf floor area No parking required
Mixed-Use in Commercial Zone	150 base units 1.5:1 FAR on a 60,000 sf lot, translating to 90,000 sf of floor area	270 units (80 percent density bonus) 4:25:1 FAR, translating to 255,000 sf of floor area No parking required for residential component; 40 percent reduction in non-residential parking

TACKLING OIL WELLS IN, UNDER YOUR DEVELOPMENT

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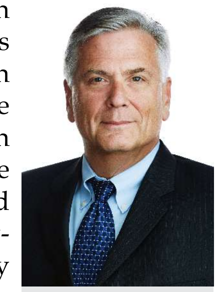

Farkas

Oil production in the United States began more than 150 years ago. Since that time, more than 4 million wells have been drilled, and more are added every day. While many are still active, millions of others are idled, orphaned (wells with no legally responsible and/or financially able party), and/or abandoned and plugged with uncertain techniques.

Dealing with older, abandoned and plugged oil wells (particularly those considered orphaned) burdens some states and localities more than others. California's long history of oil production, especially in areas that are now densely populated, puts the state at the forefront of trying to figure out how to address risks. For the state and for developers, there is concern over the safety of older wells that are now orphaned but were plugged and abandoned before adequate regulations and oversight existed to ensure that gas or fluid did not leak onto the land or into the groundwater and air. Plugging techniques once considered adequate are not acceptable today.

The Division of Oil and Gas and Geothermal Resources (DOGGR) of the Department of Conservation is vested with the responsibility of tracking active, idle and abandoned orphan oil wells in California. This division is also tasked with ensuring that well operators comply with state requirements for each classification. DOGGR also oversees the plugging or re-plugging abandoned orphan wells if the condition of the well creates environmental or safety concerns.

The Los Angeles basin produced almost 25 percent of the world's oil during the early 20th century. At that time, there were no regulatory requirements that addressed methods of plugging or otherwise abandoning a well. This led to well owners and operators using whatever techniques they thought were appropriate. Most abandoned wells were plugged and buried and, over time, commercial buildings, housing developments and even schools were built above them. Most structures in Los Angeles situated above these wells have not re-