

East Bay Times

Developer who wants to build in south Antioch sues to toss Measure T

Environmentalists say city should honor growth-control measure approved by 79% of voters



ANTIOCH, CA – MARCH 08: A portion of the Sand Creek Focus Area is seen from this drone view near Empire Mine and Mesa Ridge Roads in Antioch, Calif., on Monday, March 8, 2021. Development is being proposed in the area. (Jane Tyska/Bay Area News Group)

By [Judith Prieve](mailto:jprieve@bayareanewsgroup.com) | jprieve@bayareanewsgroup.com | Bay Area News Group

PUBLISHED: March 19, 2021 at 2:50 p.m. | UPDATED: **March 20, 2021** at 3:46 a.m.

ANTIOCH — A growth-control ballot measure that voters overwhelmingly approved in November to limit development in the city's southernmost border will be challenged in court.

Oak Hill Park LLC has filed a lawsuit in Contra Costa County Superior Court contending Measure T is illegal because it reduces the number of homes allowed, thereby violating state Senate Bill 330. That bill, also known as the Housing Crisis Act of 2019, aims to fight the state's housing crisis by restricting local governments' authority to block residential developments through Jan. 1, 2025.

Measure T, also known as Let Antioch Voters Decide, was passed by 79% of the city's voters. It seeks to preserve open space, ridges, hills, streams and wildlife habitat at Antioch's southern border and to preserve the city's urban limit line so growth cannot occur beyond it.

Measure T limits development on about 1,850 acres in the Sand Creek Focus Area from Deer Valley Road west to Black Diamond Mines Regional Park. Endorsed by the City Council in 2018, the measure reduces the number of homes allowed in that area from 4,000 to 2,100. It also restricts development in Oak Hill Park's southwestern, 418-acre area that now can only be used for rural and open space purposes.

"We knew there would be a challenge (to Measure T), but we knew politically we'd be in a better position if we had had clear mandate, and 79 percent (approval) is a pretty clear mandate," Save Mount Diablo conservation director Seth Adams said about the ballot measure.

Save Mount Diablo, which has argued that the Sand Creek Focus Area contains "the prettiest three miles in Antioch" and is a rare plant and animal habitat, has fought for decades to preserve the land.

"We qualified our initiative (Measure T) before SB 330 was passed," Adams said, noting the new state bill has not been challenged much in court yet.

Oak Hill Park representatives would not comment, saying through their attorney, Kevin Collins of Buchalter APC, they "do not comment on current litigation."

In its suit, Oak Hill Park said Measure T violates SB 330 because "the city cannot modify its land-use regulations in a way that would lessen or prohibit housing development."

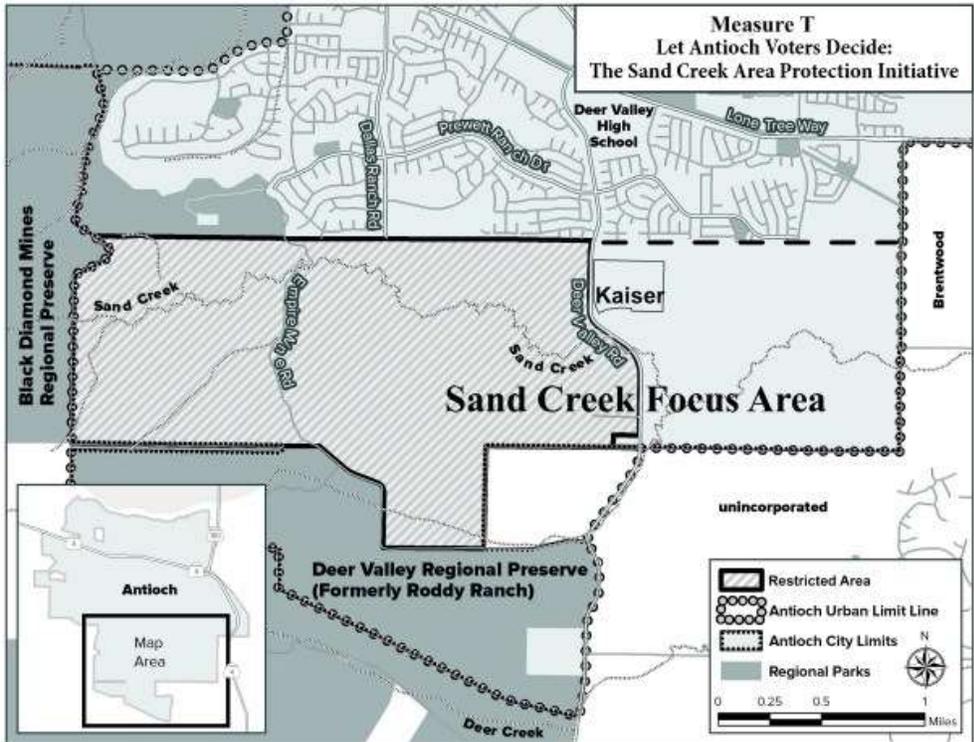
Signed into law a month before the Nov. 3 election, SB 330 significantly limits cities and counties' powers to enact ordinances or policies that hinder housing projects.

Oak Hill Park contends the bill effectively locks in all housing policies and zoning and planning regulations that were in effect on Jan. 1, 2018. "Any downsizing of land designated for residential uses below what was effective on that date is illegal," the developer's suit contends.

Because Measure T limits development, it amounts to "an unlawful taking of property without just compensation," according to the suit.

Before Measure T passed, Oak Hill Park had filed a pre-application with the city for 370 senior and executive homes, and attorneys argue those should still be allowed because they comply with the city's planning regulations at the time.

The lawsuit further asks the city of Antioch to nullify Measure T, saying "there is no possible way of preserving any portion" of the initiative because "its sole purpose is to restrict development in the city and redesignate land available for residential development as open space in the western portion of the Focus Area."



Measure T locks in Antioch’s urban limit line and reduces the total number of homes permitted in the Sand Creek Focus Area. Also, in the focus area west of Deer Valley Road, it restricts development to one home per 80 acres and impose creek and hillside protections. (Map courtesy of Save Mount Diablo.)

The city did not respond to several requests for comment. Earlier this month, an outside counsel for the city sent a letter to the Department of Housing and Community Development seeking review of the initiative to determine whether Measure T complies with SB 330. That letter was included in the developer’s lawsuit.

Save Mount Diablo attorneys sent a letter asking city officials “to defend the measure and implement the voters’ will,” noting it’s the city’s duty to do so.

In that letter, attorney Robert Perlmutter also said Save Mount Diablo believes there’s ample land in the Sand Creek Focus Area so any reduction in development potentially caused by Measure T could be offset by increasing residential development east of Deer Valley Road.

“There are a variety of things the city can do regardless of this lawsuit to enact the will of the voters,” Adams said.

“We have been fighting over land in Antioch for over 20 years and there’s ups and downs along the way but the trends have been in our direction,” he said.

Developer Responds To City Council Rejection Of Proposed 252-Home Subdivision West Of Hwy 4

Bay City News Service
March 10, 2021

By Chris Campos
Bay City News Foundation

In a rare defeat for Discovery Builders, the Brentwood City Council unanimously denied its proposed 252-home Bridle Gate subdivision west of state Highway 4 in a meeting Tuesday night.

The project has been under consideration for the past 20 years and once was approved for 166 homes in 2006 but had its permits expire before construction could begin. The proposal was resubmitted in 2017 with up to 510 homes proposed, along with multi-unit affordable housing and commercial acreage.

Following hearings, the city's Planning Commission raised a number of objections to aspects of the project, including housing density, traffic, protection of Sand Creek, noise, and impact on fire district resources. Discovery Builders then cut the number of homes to between 252 and 310, eliminated the multi-unit affordable housing element and the commercial acreage.

Local environmentalist groups, including Save Mount Diablo, filed objections to the project and a 700-signature petition opposing the subdivision was presented to the Planning Commission.

Juan Pablo Galvan of Save Mount Diablo said Wednesday, "We hope Brentwood takes this opportunity to protect its natural resources and increase the public benefits of proposed projects. Other cities should take note that residents are paying attention. Developers that rely on litigation, intimidation and threats do not make good partners."

Galvan's group had submitted objections to the project's impact on the adjacent Sand Creek.

Discovery Builders stated just before the council meeting that he would withdraw language in the proposal threatening to sue over the fire impact fees.

Discovery Builders, guided by CEO Albert Seeno III, has a long and checkered history of development in Contra Costa County. The city of Pittsburg approved the company's proposed 1,500-home Faria/Southwest Hills project in February. Brentwood has been a frequent political battleground over housing development with one initiative for west Brentwood expansion, Measure L, failing in November 2019.

At the start of the council discussion Tuesday night, Councilmember Karen Rarey told the public "Well, buckle your seatbelts," as the council peppered city staff and Discovery representative Louis Parsons with challenges to the project's impact on local school and fire district.

"All of our schools are at capacity," Rarey said while questioning if the school site allocation would be sufficient to serve the added student population. Other council members questioned the current lack of affordable housing construction, the slim park acreage and lack of traffic improvements. The developer was proposing to pay in-lieu fees rather than actually build affordable single-family units and also proposed counting "additional dwelling units" or ADUs as affordable housing.

Scores of residents expressed objections to the project during the public comment session, while a number of union representatives voiced their support.

Summarizing a list of objections from the council, the city clerk cited lack of compatibility with the General Plan, violations of land use policies, lack of affordable housing, noise impacts, potential flooding of parks and high housing density in finalizing a motion to deny the project's application.

After more than six hours, the council voted 5-0 to deny the project.

On Wednesday, Parsons responded to the vote by saying, "We were surprised at the decision by the City Council given that city staff recommended approval of the project. We also had an agreement with Brentwood Unified School District to provide them a new elementary school site, but it is clear that the City Council did not want or support the school site being incorporated into our project. We are going to re-assess things and put together a revised application for review and consideration by the city."

https://www.thepress.net/news/delta-study-examines-climate-change-effect/article_b266cc78-717f-11eb-bfe7-8f3986c50688.html

EDITOR'S PICK

Delta study examines climate change effect

Tony Kukulich

Feb 18, 2021



Press file photo

According to a new study by the Delta Stewardship Council, global warming could present the largest future threat to the Delta.

For the better part of the last two centuries, the Sacramento-San Joaquin Delta has been modified in any number of ways to meet the demands of Californians.

But a new wide-ranging study looks at what might be the most serious Delta threat that doesn't come in the form of an excavator – global warming.

“Delta Adapts: Creating a Climate Resistant Future” was released by the Delta Stewardship Council (DSC) with an overarching goal of building climate resilience in the Delta by improving the understanding of the region’s vulnerabilities to worldwide climate change. The DSC is seeking public comments on the report. Comments will be accepted until March 16.

“We recognized that we needed to study the climate change effects on the Delta specifically,” said Harriet Ross, assistant planning director for the DSC. “There have been a lot of studies that have been done regarding climate change on a particular asset or resource or a particular part of the Delta, but never comprehensively included the entire legal Delta and Suisun Marsh. This is the first climate change study that covers this large study area. We’re looking at it more holistically, regionally and comprehensively ”

The 199-page vulnerability assessment is the first of two planned phases. Work on the second phase, adaption, is expected to begin shortly and be completed in about a year. Once complete, it will detail strategies and tools that governments and other agencies can use to help communities and ecosystems thrive in the face of climate change, while protecting critical infrastructure and economic assets.

“The Delta environment is pretty important,” said Roger Mammon, an Oakley resident and secretary of Restore the Delta. “I think the study is important, and it got a lot of young people involved.”

An estimated 27 million Californians depend on the Delta for at least a portion of their drinking water. Water from the Delta is the life blood for much of the state’s \$3 trillion economy including the critical agriculture sector. Given the importance of the Delta, the findings of the vulnerability assessment are concerning.

“Climate change is already altering the physical environment of the Sacramento-San Joaquin Delta and Suisun Marsh, and we will continue to experience its effects through hotter temperatures, more severe wildfires and prolonged droughts,” reads the report’s executive summary. “Over the long term, climate change in the Delta is expected to harm human health and safety, disrupt the economy, diminish water supply availability and usability, shift ecosystem function, compromise sensitive habitats, and increase the challenges of providing basic services. Many of these impacts will disproportionately affect vulnerable communities.”

Among the report's key findings are that flooding will continue to worsen. By 2050, 10% of the Delta's population and 33% of Delta land will be exposed to flooding from a 100-year flood event, which is a severe type of flood that has a 1% chance of occurring in any given year.

By 2085, significant flood exposure will increase to 21% of Delta residents and 68% of Delta land. Additionally, the report finds that Delta water exports will be less reliable as dry years become drier, wet years become wetter and years with average rainfall become less frequent.

Noting the report's finding, Kathryn Phillips, director of Sierra Club California, questioned the logic of the \$15.9 billion Delta Conveyance Project that proposes the construction of a tunnel through the Delta to improve the reliability of water delivery to the Central Valley and Southern California.

"The report notes that climate change will significantly reduce river flows off the Sierra snowpack and into the Delta," wrote Phillips. "In other words – our words – there won't be water to capture upstream of the Delta to send elsewhere in a climate changed world. Better to invest in local and regional projects to reduce, conserve and recycle."

The DSC also noted that there appears to be an inherent social inequity in the effects of climate change in the Delta. Residents who lack a vehicle will have trouble evacuating in the event of a major flood, while extreme heat days will disproportionately affect people who work outdoors, older adults, people with chronic illness and those experiencing homelessness.

"Climate change does not affect everyone equally," Ross said. "People with resources are able to adapt to climate change, while people without resources or with limited resources can't adapt as well."

Public workshops to discuss the planning for the adaptation phase of Delta Adapts are planned for Feb. 25. and March 1.

"Climate change is here, and it's happening," Ross said. "We're going to have to understand exactly how those impacts are going to play out in our communities. We all have a part in addressing how we respond to those impacts. That's our call to action, to get folks involved in our process. Climate change is happening, no matter what. It's going to take everyone at the federal, state and local government, as well as the general public, to pitch in together and come up with a strategy that works."

The Delta Adapts report can be found at http://bit.ly/thepress_DeltaAdapts. Comments can be emailed to the DSC at climatechange@deltacouncil.ca.gov. For more information on the Delta Stewardship Council, visit <https://deltacouncil.ca.gov/>. Information on Restore the Delta can be found at www.restorethedelta.org.

Tony Kukulich

Staff Photographer/Writer

Don't have a facebook account? [Click here](#) to add your comment to the story.

Frazier Bill Would Dissolve Los Medanos Community Healthcare District

written by [ECT](#) Mar 9, 2021

If approved by the legislature and signed by the Governor, a [bill](#) introduced by Assemblyman **Jim Frazier** (D-Fairfield) would dissolve the Los Medanos Community Healthcare District by February 1, 2022.

This comes after a 2017-18 Contra Costa County Grand Jury Report recommended dissolving the district as it pays more in administrative costs than it does administering grants. In 2019, **Lamar Thorpe**, who is now the Mayor of Antioch, was appointed as the Executive Director of the Los Medanos Community Healthcare District. According to a [District agreement](#), he is making \$96,000 per year.

According to the [13-page Grand Jury Report](#):

- The Grand Jury also found LMCHD grant program administrative expenses are high compared to the amount spent on For example, in FY2016-2017, LMCHD spent 40% of its revenue on grants and 36% administering those grants, with the remaining 24% going to reserves. LMCHD's FY2017-2018 budget allocates 42% for grant programs, and 51% for grant program administration.
- The FY2017-2018 budget shows a general fund revenue of \$1.0 million. Of that amount, \$0.5 million is allocated to administrative overhead, \$0.4 million to community health programs, and \$0.1 million to reserves.
- The Grand Jury found no evidence that LMCHD collaborated with the County, non-profit hospitals, or other local entities to avoid duplication of services. Several organizations received grants from both the County and This duplication of services occurred because the County grant administrator, Keller Canyon Mitigation Fund, supports some of the same programs funded through LMCHD. If the County were to assume administration of LMCHD grant programs, there would be no duplication of administrative expenses because the County grant process is already in place.
- LMCHD receives nearly all its annual revenue from property taxes. It uses this revenue to pay for program and wellness grants, as well as administrative expenses.

In 2017, the Contra Costa County Board of Supervisors voted 5-0 to dissolve the District with Supervisor **Federal Glover** [stating](#) the time for a health care district board of directors has come and gone. LAFCO has also rejected the bid for the District to stay open, however, a judge allowed it. Meanwhile, the hospital closed in 1994.

The [District](#) services Antioch, Bay Point, Clayton, Concord, Pittsburg and other local communities within the county.

Frazier's bill ([AB 903](#)), which he has not responded to a request for comment, aims to put this debate to rest through State Law.

AB 903 would:

Require the dissolution of the Los Medanos Community Healthcare District, as specified. The bill would require the County of Contra Costa to be successor of all rights and responsibilities of the district, and require the county to complete a property tax transfer process to ensure the transfer of the district's health-related ad valorem property tax revenues to the county in order to operate the Los Medanos Area Health Plan Grant Program. By requiring a higher level of service from the County of Contra Costa as described above, the bill would impose a state-mandated local program.

According to the Bill:

CHAPTER 11. Los Medanos Community Healthcare District Dissolution 32499.6.

(a) The Los Medanos Community Healthcare District shall hereby be dissolved, **effective February 1, 2022.**

(b) The County of Contra Costa shall be the successor to the district. All assets, rights, and responsibilities of the district are transferred to the county as the successor of the district. As of the effective date of dissolution, the county shall have ownership, possession, and control of all books, records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, entitlements, agreements, contracts, claims, judgments, land, and other assets and property, real or personal, owned or leased by, connected with the administration of, or held for the benefit or use of the district. Accounts payable and all other contract obligations shall be transferred to the county.

(c) The county shall complete all of the following by the effective date of dissolution:

(1) The county board of supervisors shall **form a Los Medanos Health Advisory Committee** that reports directly to the county board of supervisors and shall develop and conduct the Los Medanos Area Health Plan Grant Program focused on comprehensive health-related services. The county board of supervisors shall appoint five members to the Los Medanos Health Advisory Committee. The Los Medanos Health Advisory Committee shall:

(A) Develop an area health plan that identifies major health disparities impacting residents in the district's territory and identify priorities for improving health outcomes.

(B) Solicit proposals from service providers interested in participating in the Los Medanos Area Health Plan Grant Program and that are capable of addressing the priorities in an adopted health plan.

(C) Monitor the efficacy of the programs to which grants are made.

(D) Report to the county board of supervisors not less than once a year on the execution of a health plan and the status of the grant program.

(2) The county board of supervisors shall commence and complete a property tax transfer process as outlined in Article 5 (commencing with Section 99) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code to transfer the district's health-related ad valorem property tax revenues to the county.

(3) The county board of supervisors shall direct the auditor-controller to establish a new special fund for the county treasure to track the receipt and disbursement of ad valorem property tax revenues received by the county pursuant the property tax transfer process.

(4) The Los Medanos Area Health Plan Grant Program shall be funded by ad valorem property tax funds received by the county as a result of the dissolution of the district and any other funds made available to the program.

(5) The county shall accept all real and personal property, books, records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, entitlements, agreements, contracts, claims, judgements, and all other assets and obligations transferred from the district in "as-is" condition, without any payment or repair obligations from the district.

SEC. 2.

The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances surrounding the Los Medanos Community Healthcare District.

SEC. 3.

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



MILLER STARR
REGALIA

LAND USE DEVELOPMENTS

Game Changer: Public Agency Cannot Mandate Payment of Attorney Fees Under Indemnity Agreement Without Specific Statutory Authority

By Bryan W. Wenter, AICP on March 8, 2021

In a low-profile but important new decision, *San Luis Obispo Local Agency Formation Commission v. City of Pismo Beach*, __ Cal.App.5th __ (2021) (Case No. B296968), the Second District Court of Appeal affirmed a trial court decision and held that the Cortese-Knox-Hertzberg Act (Gov. Code § 56000 *et seq.*) does not authorize a local agency formation commission (“LAFCO”) to require an indemnification agreement or to require the payment of attorney fees based on such an agreement.

The case arose in connection with the development of a housing project consisting of 252 single-family residences and 60 senior housing units in Pismo Beach. After the City approved the project, the City and developer applied to the San Luis Obispo LAFCO to annex the property. The SLO LAFCO application contained an indemnity agreement that provided, among other things, “This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorneys’ fees, and expert witness fees that may be asserted by any person or entity, including the Applicant, arising out of or in connection with the application.” For reasons not explained in the opinion, LAFCO denied the application.

The City and developer sued LAFCO, but LAFCO prevailed and presented a bill to the City and developer for more than \$400,000 in fees and costs on the basis of Government Code section 56383. Section 56383 authorizes the commission to establish a schedule of fees and a schedule of service charges and specifies that the fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and the service charges shall not exceed the

cost of providing the service for which the service charge is charged. The City and developer refused to pay, and LAFCO sued to recover its costs based on the indemnity provision contained in the annexation application.

LAFCO made three arguments:

- the indemnity agreement is a valid contract provision;
- it is allowed to require the indemnity agreements because the Cortese-Knox-Hertzberg Act allows LAFCOs to establish a schedule of fees and service charges; and
- it has the implied power to require the indemnity agreement.

The Court of Appeal quickly dispatched with each of LAFCO's arguments.

Reciting basic contract principles, the Court noted that a contract requires consideration, which consists of either a benefit to the promisor or a detriment to the promisee. A promise to do something the promisor is legally bound to do is not consideration. The Court rejected LAFCO's argument that the indemnification agreement is given in consideration for not requiring anticipated attorney fees to be paid as part of the application fee at the beginning of the process. Recognizing that LAFCO has a statutory duty to accept all completed applications and to review and approve or disapprove the application, the Court held that LAFCO gave no consideration in exchange for the indemnity agreement.

Addressing the Cortese-Knox-Hertzberg Act, the Court noted that the fees and charges shall be imposed pursuant to the requirements of the Mitigation Fee Act. The Court pointed out that LAFCO did not comply with the Mitigation Fee Act and explained that "when a statute mandates a particular procedure, it does not imply that the procedure may be avoided by inserting a provision in an application form." The Court also explained that the Cortese-Knox-Hertzberg Act contemplates that the fees and charges it authorizes will be limited to those necessary to the administrative process, not to post-decision court proceedings. "No matter how broadly construed," according to the Court, "nothing in the [Cortese-Knox-Hertzberg Act] authorizes the indemnity agreement."

And addressing LAFCO's implied power argument, the Court turned to Code of Civil Procedure section 1021, which provides:

"Except as attorney's fees are specifically provided for by statute, the measure and mode of

compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.”

The Court recognized the critical constraint contained in section 1021 and held that “attorney fees in post-decision court proceedings are not ‘specifically provided for by statute.’ ”

SLO LAFCO is an interesting and important case even in the somewhat esoteric world of the Cortese-Knox-Hertzberg Act, which establishes procedures for local government changes of organization. But the case deserves a more elevated profile to the extent it extends to other areas of California local government law that are more regularly part of the development process. In the land use context, for example, cities and counties routinely imbed the same types of compelled indemnity clauses in their applications for discretionary development permits. As in the LAFCO context, cities and counties are required to accept for filing and review and approve or disapprove various types of applications for development. And as in the LAFCO context, the Planning and Zoning Law does not appear to “specifically provide” for attorney fees in post-decision court proceedings.

Questions? Please contact **Bryan W. Wenter, AICP** of Miller Starr Regalia.

For more than 50 years, Miller Starr Regalia has served as one of California’s leading real estate law firms. Miller Starr Regalia has expertise in all types of real property matters, including full-service litigation and dispute resolution, transactions, acquisitions, dispositions, leasing, financing, common interest development, construction, management, eminent domain and inverse condemnation, exactions, title insurance, environmental law, and land use. Miller Starr Regalia attorneys also write Miller & Starr, California Real Estate 4th, a 12-volume treatise on California real estate law. “The Book” is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. For more information, visit **www.mslegal.com**.

LAND USE DEVELOPMENTS

March 11, 2021

Is It Legal to Require Indemnification on Project Application or as Condition of Approval?

Ryan Michael Leaderman, Paloma Perez-McEvoy

Holland & Knight LLP

+ Follow

Contact

Holland & Knight

Highlights

- Local agencies routinely require project applicants to agree to indemnification on application forms or as conditions of approval. These agreements or conditions of approval typically include language requiring an applicant to agree to defend, indemnify, protect and hold harmless the local agency in any action arising from the application.
- In *San Luis Obispo Local Agency Formation Commission v. City of Pismo Beach (San Luis Obispo)*, the Second Appellate District Court of Appeal of California struck down San Luis Obispo Local Agency Formation Commission's assertion that it had an "implied power" to contract for fees by inserting an indemnity agreement into its annexation application.

The court's decision is significant because it holds the door open to potentially challenge such practices if there is a statutory limitation on a local agency's authority to impose fees, as was the case in *San Luis Obispo*.

Local agencies routinely require project applicants to agree to indemnification on application forms or as conditions of approval. These agreements or conditions of approval typically include language requiring an applicant to agree to defend, indemnify, protect and hold harmless the local agency in any action arising from the application. Indemnification obligations would expose an applicant to various

unknown costs that may occur after the processing of the application, even for expenses that are not under his or her control.

In a recent Second Appellate District Court of Appeal of California decision, *San Luis Obispo Local Agency Formation Commission (LAFCO) v. City of Pismo Beach (City)*, Case No. B296968 (March 3, 2021) (*San Luis Obispo*), the court struck down LAFCO's assertion that it had an "implied power" to contract for fees by inserting an indemnity agreement into its annexation application. The court's decision is significant because it holds the door open to potentially challenge such practices if there is a statutory limitation on a local agency's authority to impose fees, as was the case here.

Case Background

In *San Luis Obispo*, the City and a developer submitted an application to LAFCO to annex a parcel of land into the City. The application included an indemnification clause that provided that the developer and City would indemnify LAFCO for "damages, costs, expenses, attorneys' fees, and expert witness fees...arising out of or in connection with the application."¹ Following denial of the annexation application, the City refused to pay for LAFCO's attorneys' fees and costs associated with a lawsuit that took place following the processing of the application. In response, LAFCO brought action against the City, asserting breach of contract. LAFCO contended that the indemnification agreement was "given in consideration for not requiring anticipated attorney fees to be paid as part of the application fee at the beginning of the process."²

The court held that LAFCO had no authority to impose such fees for post-administrative proceedings. The statutory authority for local agency formation commissions only permits the imposition of fees or fee increases associated with application processing,³ and application processing does not include indemnification for post-application processing. Further, LAFCO did not have the implied power to require attorneys' fees and there was no valid indemnification agreement.⁴ "Here attorney fees in post-administrative actions are not 'specifically provided for by statute.' Nor is there a valid agreement for such fees. LAFCO's

remedy is with the Legislature."⁵ Here, an "agreement" to indemnify was not an actual agreement since there was no consideration.

The holding applies specifically to the statutory authority granted by California Gov. Code § 56383 to local agency formation commissions, but may invite challenges of other local agencies that routinely insert indemnity provisions into their applications or conditions of approval if there is a limitation on a local agency's statutory authority to impose fees on application filing and processing. Local agencies routinely require indemnification for processing an entitlement application or as a condition of approval. Key questions are whether the local agency has the legal power to potentially require an applicant to indemnify the agency, and whether there is statutory authority to impose such fees for indemnification.

Conclusion and Takeaways

State law does not expressly address the assignment of attorneys' fees for local planning agencies. However, unlike local agency formation commissions, Gov. Code § 65104 grants the legislative body of a city or county⁶ broad authority to establish "any fees to support the work of the planning agency ... not to exceed the reasonable cost of providing the service for which the fee is charged." The grant of authority to the legislative bodies of local planning agencies to authorize fees is more broad than the statutory language in Gov. Code § 56383 applicable to local agency formation commissions. While Gov. Code § 65104 does not expressly provide for attorneys' fees, it broadly applies to the "work of the planning agency." Arguably, the work of the "planning agency" could include defending a project from legal challenge.

Critically, assuming that indemnification of attorneys' fees would "support the work of the planning agency," Gov. Code § 65104 mandates that the legislative body impose such fees subject to Gov. Code § 66016's procedures for imposition of fees.⁷ Absent clear planning agency local statute or resolution, imposition of fees on an ad hoc basis through an application form or conditions of approval, especially as seen with *San Luis Obispo*, could be subject to potential challenge. If cities and counties interpret Gov. Code § 65104 as a means to potentially impose indemnification, in an effort to survive a legal challenge it is likely that local agencies will formalize

indemnification requirements pursuant to local statute or resolution, as opposed to applying them on an ad hoc basis.

Notes

¹ *San Luis Obispo*, No. B296968, slip op. at 3 (Cal. Ct. App., March 3, 2021).

² *Id.*, slip op. at 4.

³ "[Gov. Code] section 56383 contemplates that the fees charged thereunder will be limited to those necessary to the administrative process, not to post-decision court proceedings." *San Luis Obispo*, slip op. at 6. "The clear mandate of [Gov. Code] section 56383, subdivision (c) is that the executive officer must settle the costs charged under the section at the end of the administrative proceedings. The section does not provide for costs that may accrue thereafter." *Id.*

⁴ See Code of Civ. Proc. § 1021.

⁵ *Id.*, slip op. at 7.

⁶ Gov. Code § 65104 also applies to charter cities.

⁷ See Gov. Code § 66016(b) ("Any action by a local agency to levy a new fee or service charge ... shall be taken only by ordinance or resolution."). See also Gov. Code § 66016(a) (restricting the amount of the new fee or service charge to the amount for which the fee or service charge is levied, and in the event the fee or service charge creates revenues in excess of actual cost, those excess fees shall be used to reduce the fee or service charge creating the excess).

 Send

 Print

 Report

LATEST POSTS

- [Amplían plazo para cambio de modalidad a propuesta de concesión diferencial en Colombia](#)
- [Mexican Lower House Legalizes Recreational Use of Cannabis](#)

Huge Wetlands Restoration Project Begins In Contra Costa County

By John Ramos
CBS San Francisco
March 25, 2021

MARTINEZ (KPIX 5) — A massive wetlands restoration project getting underway in the East Bay aims to fix a longtime problem in Martinez.

On Tuesday, Contra Costa County approved an \$11 million contract to restore the wetlands at the mouth of Walnut Creek. It's the largest such project in the county's history. Officials say this time, they intend to do it right.

Back in the 1960s, the U.S. Army Corps of Engineers dredged and installed levees on Lower Walnut Creek in Martinez to create a flood-control channel deep enough for big ships to navigate.

But there has always been one problem.

"This area is like a sediment trap," said Tim Jensen, Assistant Chief Engineer with the Contra Costa County Flood Control and Water Conservation District.

This area where the creek empties into the Carquinez Strait collects silt from the Mt. Diablo watershed. Jensen told KPIX it is natural for water to spread out in flat areas, but the Army Corps kept trying to dredge a deep channel that would quickly fill back in.

"It was just getting very expensive," said Jensen. "They said, 'We've got to figure out another way to do this.' Uou know? Sure, it's a good project, but there's got to be a less environmentally damaging way to do it."

The county has now hired a company called Four M Contracting to widen out the flood control channel so it flows more naturally. The project will be done with state and federal funding, as well as money from Measure AA, a regional conservation initiative passed by Bay Area voters in 2016.

But officials also discovered there's lots of money available for wetland habitat creation, so the company will be doing that as well, increasing tidal flows, improving access for salmon and steelhead.

A partnership with the John Muir Land Trust will eventually provide public recreation including, hiking and bike trails, kayaking and birdwatching. Jensen says they've learned a lot about achieving flood control without standing in the way of nature.

"It's the way it should have been done back then," he said. "Just, the science wasn't there and the understanding of how to work with nature instead of against it, basically, is what they were doing. Levees, dams...all those manmade facilities don't always do it right."

Orinda hires a new city manager; he takes over in April

LOCAL GOVERNMENT

By Peter Hegarty

phegarty@bayareanewsgroup.com

ORINDA >> Orinda has chosen a new city manager.

David Biggs, who has served as Hercules city manager since June 2014, will step down at the end of March to become Orinda's city manager April 5.

"While there is never a good time to make a change, especially when you are in a position which you enjoy and feel that there is more you can accomplish," Biggs said in a statement, "I am happy that I can look back on a number of significant accomplishments during my tenure in Hercules, none of which would have been possible without a supportive and encouraging City Council and a great department head team and employees." In Orinda, Biggs will take over from Steve Salomon, who retired Jan. 7.

Biggs previously served as assistant city manager in Redondo Beach, director of economic development in Huntington Beach and as director of economic development and housing in Morgan Hill.

Details about his salary in Orinda and other benefits were not available.

In 2018, Salomon's pay and benefits totaled about \$263,234, according to transparentcalifornia.com, a website that provides information on compensation made to the state's public employees.

"David has been a committed and dedicated public servant and has been a key figure in assisting Hercules in becoming more financially stable and to advancing a number of important projects including the Hercules Regional Intermodal Transportation Center and the Bayfront development, amongst many others," Hercules Mayor Chris Kelley said in a statement. "I enjoy working with Mr. Biggs, and on behalf of the entire City Council, I would like to thank David for his service and wish him well in his next position." The Hercules City Council met in a closed session Feb. 1 to begin the process to hire a new city manager.

Hercules has a population of about 25,000, and Orinda has about 20,000 people, according to the U.S. Census Bureau.

Salomon was Orinda interim city manager after Janet Keeting, the former city manager, retired in 2017. He was named city manager the same year. *Contact Peter Hegarty at 510-748-1654.*

[Copyright \(c\)2021 East Bay Times, Edition. Please review new arbitration language here. 2/11/2021](#)

[Powered by TECNAVIA](#)

Pittsburg OKs plan to build 1,500 homes

City had to approve master plan and amend its general plan to build houses on hillside

By Judith Prieve

jprieve@bayareanewsgroup.com

A Concord developer's long-planned proposal to build as many as 1,500 homes in the southwest hills of Pittsburg received the City Council's unanimous nod Monday despite opposition from environmentalists, preservationists and some residents.

To allow Faria Land Investors to build homes on the hill-

side, the council had to approve its master plan, a development agreement and an amendment to the city's general plan.

The council also signed off on environmental documents for the project, which envisions construction of homes on 341 acres clustered in valleys and the preservation of 265 acres of open space.

Minimum lot size of the low-density project would be 4,000 square feet, though many would

be much larger than that, according to Faria Land Investors, a Seeno/Discovery Builders Inc. company.

"We know this is going to be a very nice community," Discovery Builders President Louis Parsons said, noting the ridge lines will be preserved.

As part of the deal, the project will also include long sought commercial development, a youth recreation center and trails that might connect to the East Bay Regional Park District's future park at the former Concord Naval Weapons Basin, he

FARIA » PAGE 4



The hills southwest of the Pittsburg city border are seen beyond the San Marco development. Seeno Homes has gained approval from Pittsburg for its plan to build up to 1,500 homes in the area.

COURTESY OF SCOTT HEIN

said.

"It's going to be a great location," Parsons said. "It's going to be nestled in these valleys and we think it's going to be a great place for executives and people of all types to live."

Plans to develop the hills date back to 2005 when voter-approved Measure P placed the Faria site within Pittsburg's urban boundary. The city approved an agreement with Seeno that established guidelines for a permanent greenbelt buffer along the inner edges of the boundary.

The Concord-based developer filed an application in 2010, then modified it in 2014 and again in 2017 before resurrecting it in 2020. And although the Planning Commission recommended approval last summer, the hearing was continued shortly thereafter when a council member fell ill.

Then and now, critics have said the developer has not provided enough detail to assess the project's impacts.

Opponents also said the project will destroy the natural beauty of the area, impact wildlife, snarl traffic and increase fire risks. Groups opposing it included the East Bay Regional Park District, Save Mount Diablo, Greenbelt Alliance and Pittsburg Youth Action.

Juan Pablo Galván, Save Mount Diablo's land use

manager, said the proposal lacks an adequate project description and enforceable mitigation measures.

"Hundreds of Pittsburg residents have submitted comments on this project pointing to the need to protect Pittsburg's hills and wildlife habitat, address existing serious traffic issues and present to the public a complete description and analysis of this project," he said. "... It shows a complete disregard for the environment."

Galván and many others also warned of potential fire danger.

"It is an extremely windy area and you can't have much even in the way of trees ... and fire plus wind equals a bad situation," he said.

Zoe Siegel of Greenbelt Alliance also strongly urged the council to reject the proposal.

"A lot has changed in the past 20 years and we know a lot more now about the impacts of climate change," she said. "... Developments of this kind will put your community and our region at greater risks of climate change."

Pittsburg resident Mark Linde pointed to the potential impacts on local owls, turtles, frogs and bees.

"Mitigation fees, developers fees and oversight just can't remedy the insurmountable damage this development will do to the environment and mankind alike," he said.

William Goodwin, a housing advocate, questioned the developer's plan to build small acces-

sory dwelling units or tiny homes instead of 150 affordable but comparable units, as the city's inclusionary housing program mandates.

"Is it not enough that we are in the middle of an affordable housing crisis, a recession and a pandemic when many families are suffering?" he asked. "No, this developer wants to cut an estimated \$60 million off their bottom line at the expense of affordable housing for the people of Pittsburg."

Among those supporting the project was former council member Pete Longmire. "It will bring millions of dollars in impact fees that will support our basic infrastructure like traffic, fire, police and other contributions," he said.

"This could be a turning point for our community to bring a lot of opportunities," he added.

Also for the project were various unions and residents who noted it would bring good-paying construction jobs.

Some council members questioned whether the project's open spaces would connect with the trails and staging areas of the future regional park over the hill in Concord.

"I want to make sure we comply on both sides to that commitment," Councilman Juan Banales said, suggesting that such a pledge be included in the agreement while voicing his support of the project overall.

Mayor Merl Craft said the council must look at

the entire community it serves.

"We want to see what others have in their communities and we want these amenities as well," she said. "Upscale development means we can attract businesses, a grocery store. We will no longer be a food desert. Sometimes we have to say, 'what about us?'"

Craft added the city already has 1,098 affordable housing units. "We are always looking to expand our housing stock. We need to have dollars in our community," he said.

The development is expected to generate about \$2.75 million a year in property taxes for the city as well as \$1.1 million a year for public safety, \$122,000 for the fire district, \$153,000 for landscape and lighting and \$133,000 for park maintenance.

"All of these won't happen without the Faria project," she said.

"This was a big undertaking," Councilman Jelani Killings said. "You aren't taking away land. The reality is this was already designated by the voters of Pittsburg in the past (with Measure P)... The reality is it is development that pays for infrastructure."

"Another thing is it is close to BART," Councilwoman Shanelle Scales-Preston added. "I think the community benefit is huge compared to when this project was looked at 10 years ago."

Contact Judith Prieve at 925-779-7178.

Roddy Ranch Golf Course Habitat Restoration and Public Access Plan Public Meeting

written by [ECT](#) Mar 9, 2021



The East Bay Regional Park District is developing a new Regional Park at the former Roddy Ranch Golf Course in Antioch. The land use plan being developed will include restoration of native grassland habitat and recreational paths and facilities for walking, jogging, and picnicking.

The 230-acre Roddy Ranch golf course property was acquired by the Park District in 2018 with the majority of funding coming from the East Contra Costa County Habitat Conservancy and the District's Measure WW approved by voters in 2008. The 18-hole golf course closed in 2016.

The Park District is holding its first public meeting as part of the planning process to restore habitat and design and build recreational amenities at the Roddy Ranch golf course site. The public is invited to attend the meeting via Zoom to learn about the planning process, property constraints, and project goals.

The former golf course property is part of the District's planned 3,500-acre Deer Valley Regional Park intended to protect habitat and expand recreational opportunities in East Contra Costa County.

- **What: Roddy Ranch Golf Course Habitat Restoration and Public Access Plan Public Meeting**
- **When:** Thursday, March 11, 2021 – 6:30-7:30 P.M.
- **Meeting Link:** <https://ebparks.zoom.us/j/93304942688>
- **Meeting ID:** 933 0494 2688

For more information about the public meeting, contact Eddie Willis, Project Planner at ewillis@ebparks.org.

For more info, visit the project webpage at www.ebparks.org/about/planning/roddybranch

Rising sea levels, wildfires endanger state park system

CLIMATE CHANGE

By Julie Cart

CalMatters

Of all the existential threats California parks face - dwindling budgets, more visitors and costly, long-deferred maintenance - now comes a climate-driven conundrum: When is a park no longer a park? When its namesake trees disappear in a barrage of lightning strikes? When its very land is washed away by ever-rising seas?

The California Department of Parks and Recreation is coming to terms with this dilemma after a climate-reckoning

moment last August, when more than 97% of Big Basin Redwoods, California's oldest state park, was charred by a lightning-sparked wildfire.

The shock of it was almost greater than the devastation: Coastal redwoods, the so-called asbestos forests of iconic, giant trees, hadn't been hit by such ferocious blaze in living memory. The fire incinerated buildings

PARKS » PAGE 3

Parks

FROM PAGE 1

and roads along with many trees; it was the most unexpected, indiscriminate and comprehensive destruction of a California state park, ever. Established 119 years ago, Big Basin remains closed.

Although all state agencies face the threat of climate change, state parks - with the depth and breadth of their 2,300 square miles of land - are singularly jeopardized. Caretaker of the nation's largest state park system, the department is responsible for all of its historic structures, roads, bridges, land, beaches, forests, water, plants and animals.

"Every bit of California is going to be impacted by climate change. It's going to affect every person in the state and every acre of land in the state," said Jay Chamberlin, chief

Institute of Technology and an advanced degree from Harvard, wonders if California can apply its ample brainpower to come up with solutions.

"We are very fortunate to have many research institutions and national labs working on this. California is a leader in climate change policy but also technology. I think we should meld the two."

Future fires

Even those deeply familiar with every woody acre of Big Basin Redwoods - home to ancient trees of such stature that many are named and curated - the aftermath was unsettling.

"Going back into the park for the first time, it was very hard to believe what I was seeing," said Chris Spohrer, state parks superintendent for the Santa Cruz region. "To see what a fire of that

more frequent fires and more damaging megafires.

Rising threats

Darren Smith doesn't need to read a report about climate change to understand the threats to state parks. He's living it every day.

Smith, who is the natural resources manager for the park department's San Diego Coast District, is fighting water - from all sides.

"We are being squeezed," he said, gesturing to the ocean on a recent visit to South Carlsbad State Beach.

Turning, Smith points to the cliffs behind him and the city of Carlsbad on the other side of a highway. El Nino-powered storms create runoff that gushes over bluffs or percolates into porous sandstone, carving fissures that pockmark and destabilize the cliff

of the state parks' natural resources division. "State parks are not only vulnerable, but some are uniquely vulnerable." Managing California's nearly 300 parks will now require a top-to-bottom rethink: How to make public land more resilient to wildfires, rising seas, drought and extreme weather. The price tag for arming state beaches, thinning forests, moving restrooms and visitors' centers, and other climate-resilience projects has not been calculated. But experts say if the money isn't spent now to protect parks from rising seas and intensified fires, the damage and costs will multiply.

"There's needs to be a climate resilience plan for every park unit," said Rachel Norton, executive director of the nonprofit California State Parks Foundation. "This is what's coming: Drought, fire, sealevel rise, loss of habitat for species. There's a lot more work to be done to understand the scope of the potential threat." In particular, making California's state parks resilient to sea-level rise and flooding is critical; the agency manages about a quarter of the state's coastline. Although the state's climate change response is ongoing and frequently updated, a comprehensive sea-level rise plan for parks is being finalized, officials said.

Chamberlin said the agency is transitioning "to a stance where we consider climate in everything we do." "I'm talking about planning our capital investment, the vehicles we purchase or how we plan projects. When it comes to coastal issues, do not build in harm's way. If a building needs roof repair, harden it if it's in a wildfire zone. We are believers in building

intensity could do was disorienting. The landmarks were gone, the colors were monochromatic. It took several visits for it to sink in, to get your bearings. It was shocking." Even though the bulk of the contents of Big Basin was damaged or destroyed, the idea of the park, a celebration of the tallest living things on the planet, remains intact, officials say. While redwoods were burned, their bark is thick and fire-resistant, so park managers expect many of the big trees to survive, although other species, such as Douglas Firs, are not as hardy.

But things will be different. Managing a park to be resilient to fire is going to require change in a fundamental way in the decades to come: Visitors will have to alter their definition of a healthy park to include the sight of fewer trees and more prescribed burning. Managers may have to reduce the forest in order to save the park, and consider building future visitor centers and other facilities out of more fire-resistant materials like metal or concrete rather than charming but flammable wood.

Beginning in 1900, the Sempervirens Fund, a nonprofit conservation group, purchased about 17,000 acres of redwood forests and transferred them to the state, essentially creating Big Basin Redwoods.

That work paid dividends during the blaze, resulting in a low-intensity fire that cleared out overgrown vegetation but spared the giant trees on the group's land, providing an object lesson for the adjacent park.

"There's no one quick fix to any of

face. "We don't have anywhere to go." As for a park campsite on a promontory affording a magnificent view of rugged coastline, "it's a goner," he said.

The Pacific Ocean is inexorably rising on the beaches he manages, slamming into bluffs and undermining parking lots, campsites and restroom facilities.

The parks department is on a penny-pinching budget - \$858 million for 2021-22, down 34% from the previous year because of onetime bond appropriations. Coronavirus closures cost the agency lost revenue from entrance fees and concessions.

Parks are threatened by other aspects of climate change, too: Extremes of heat and cold stress facilities and operations. Drought threatens animals' habitat and makes trees more susceptible to disease and insect infestation.

Chamberlin, the parks' resources chief, said future investments will be assessing whether a proposed facility is going to eventually be underwater or vulnerable to fire.

Whether it's fire or water, climate change will continue to eat away at California's parks - and the agency's budget.



A redwood tree burns near Big Basin Redwoods State Park Headquarters & Visitor Center in

resilience into everything we do." The legislature is watching to see what the parks department comes up with.

"I tend to think, is there an engineering solution or a technology solution to this?" said Luz Rivas, a Democrat from Arleta who chairs the Assembly Natural Resources Committee.

Rivas, who has a degree in electrical engineering from the Massachusetts

this," said Laura McLendon, the Sempervirens Fund's director of land conservation.

To survive climate change, she said, California's forested parklands must be aggressively managed for fire using an array of approaches. "There needs to be a suite of activities - fuels reduction, reintroducing fire to the landscape where it has historically occurred, rethinking where we develop and the materials we use." Twenty-two state parks were hit by fire last year, according to the State Parks Foundation. Climate scientists say California can expect

Boulder Creek on Aug. 20, 2020. Worsening wildfires are growing as a state threat.

RANDY VAZQUEZ — STAFF ARCHIVES

[Copyright \(c\)2021 East Bay Times, Edition. Please review new arbitration language here. 3/23/2021](#)

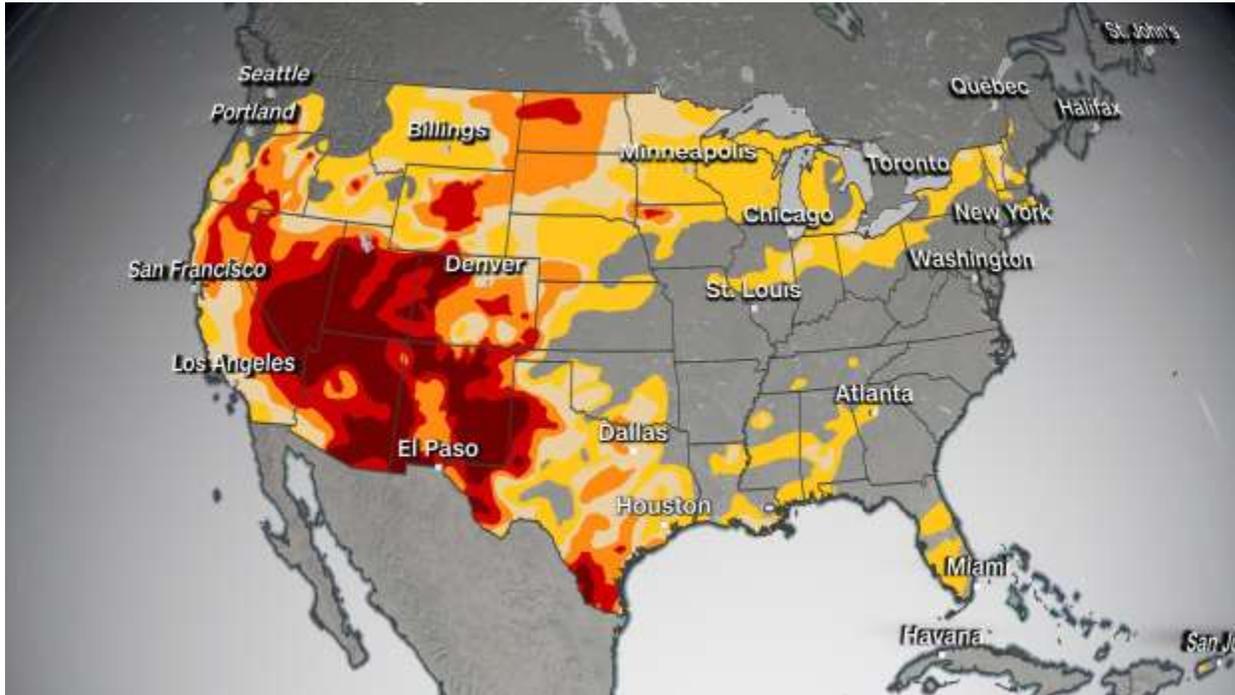
[Powered by TECNAVIA](#)

Tuesday, 03/23/2021 Page .B01

Copyright (c)2021 East Bay Times, Edition. Please review new arbitration language here. 3/23/2021

East Bay Times

Expect spring to be even drier out west, says NOAA



Dry weather is expected to linger into the spring, with below-average precipitation forecast across much of the West. This will likely make the drought situation even worse. (CNN)

By [CNN.com](https://www.cnn.com)

PUBLISHED: March 19, 2021 at 11:39 a.m. | UPDATED: **March 19, 2021** at 11:39 a.m.

By **Allison Chinchar and Jackson Dill** | CNN Meteorologists

Saturday marks the first day of astronomical spring and the outlook is grim for the western portion of the country, where drought conditions will persist.

“Drier conditions in the Southwest US associated with La Niña and the failed 2020 summer monsoon have been contributing factors to the development and intensification of what represents the most significant US spring drought since 2013,” said NOAA.

Dry weather is expected to linger into the spring, with below average precipitation forecast across much of the West. This will likely make the drought situation even worse.

One of the contributing factors to the western drought has been lack of snowfall. The greatest area of snow drought expansion has been in the Sierra Nevada where no large storms have occurred since the strong atmospheric river in late January. This has left almost all of the Sierra

Nevada weather stations below the 30th percentile of snow water equivalent, and a few locations in the Southern Sierra are even below the 10th percentile.

But what is bad for some can be good for others in terms of snowpack. It's the ultimate dichotomy.

That's because unlike in some previous years, that lack of snowmelt means flooding will be less severe across the Plains and Midwest, but it also means lack of necessary water for the western states that rely on it to keep drought conditions in check.

Drought conditions to worsen as we head into peak fire season

Drought continues to plague about 44% of the contiguous US, mostly in the western states, and the spring outlook expects that drought to persist.

Currently, the most severe drought conditions are across the western US, with 20% of the region in exceptional drought. This is the worst category on the National Drought Mitigation Center's scale. Nearly 90% of the region overall is at least abnormally dry, and these drought conditions could worsen.

Going into summer with dry conditions is also worrisome since that is when wildfire season begins to ramp up.

“With warmer spring temperatures forecast and the drought deepening, fire season could start earlier in some places and be more severe this year,” says Chad Myers, CNN Meteorologist.

Some major cities in the West have experienced record [dry streaks](#) within the past year, and this persistent drought has had an effect on the agriculture industry.

The National Integrated Drought Information System (NIDIS) — a division of NOAA — breaks down crops and livestock affected by drought. As of this week, more than 150 million acres of crops are under drought conditions in the US. The drought's impact on agriculture can be connected to higher prices due to crop losses.

In other portions of the US, a drought may begin: “Warmer-than-average temperatures this spring and low soil moisture will allow drought conditions to develop and expand in the southern and central Great Plains as well as southern Florida,” according to NOAA.

Meanwhile in the Northeast and mid-Atlantic regions, a wetter than normal spring is forecast. Some areas in this part of the country are currently experiencing dry conditions and, in some cases, a moderate drought but that will give way in the Northeast to a wet spring..

NOAA anticipates any drought in the Northeast to end thanks to the expected weather patterns this spring.

There is a bright side, but not for everyone

However, drought isn't always about rain. Snowpack, again, is a factor.

“In the West, winter snowpack can be more effective at relieving drought than summer thunderstorms. The snowpack melts slowly and doesn't just run off the parched soil,” says Myers.

As of this week, nearly 70% of western contiguous US weather stations are below median for snow water equivalent.

Snow drought conditions remain focused over the southwestern US, especially across the Sierra Nevada and Rocky Mountains. In these areas, nearly one-third of [snow telemetry stations](#) are below the 30th percentile snow water equivalent.

Lack of strong storms in the Sierra Nevada left states like California, Nevada, and Arizona at a huge disadvantage going into the dry season — the summer.

While snow drought may be low across the Colorado River headwaters, they have improved along the Colorado and Wyoming Front Range since the beginning of the month.

Last week's [record snow](#) in the Rockies helped boost overall snowpack. In fact, for the Upper Rio Grande most basins received a 15% boost in snow water equivalent.

While that particular basin saw enough of a surge to reach near average levels, “water supply forecasts still remain below average,” the West Gulf River Forecast Center says.

For the first time since 2018, [NOAA hydrologists are forecasting](#) limited widespread flooding this spring. More importantly, there are no areas greater than a 50% chance of major flooding.

“A reduced flood risk exists for the majority of the Greater Mississippi River Basin, Red River of the North, and Souris Basins, primarily due to abnormally dry conditions, ongoing drought, and a lack of snowpack and associated water equivalent.”

Even compared to last year the flood threat for much of the Midwest and Plains regions is lower, which is welcome news for people in those areas of the country. The last two years have brought increased flood threats to much of the Mississippi and Missouri River basins, so the drier conditions that are forecast this year are actually considered a positive compared to what's happening to the western US states.

Spring could feel more like summer

Temperatures this spring during the months of April, May and June are forecast to be warmer than normal for the large majority of the country.

NOAA forecasts all of the contiguous US to experience temperatures above average overall with the exception of the Northwest. Western Washington is expected to feel below average

temperatures while the rest of the region has an equal chance of above, below or near-normal conditions.

The greatest chance for above average temperatures is across the interior Southwest, which is also dealing with exceptional drought conditions.

Past springs (in months April through June) have also been on the warm side. The last time the US experienced [below average temperatures](#) during this time period was more than a decade ago in 2008.

The-CNN-Wire™ & © 2021 Cable News Network, Inc., a WarnerMedia Company. All rights reserved.