

Strategies and Lessons from the Los Angeles Community Benefits Experience

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Introduction

The Residents’ Accountable Development Project at the Legal Aid Foundation of Los Angeles (LAFLA) works with organized groups of low-income residents (referred to in this article as “local groups”) in their efforts to shape economic development in Los Angeles. Most of these groups follow place-based organizing models that seek to develop leadership while winning community victories. Their goals, strategies, and tactics vary depending upon the conditions, opportunities, and challenges present in their neighborhoods and the priorities of their membership. But these groups share a common objective that can be summarized by the phrase “better neighborhoods, same neighbors.”¹ That is, low-income residents want change that benefits the entire neighborhood while leaving their community social infrastructure intact.² Recently, local groups have begun to organize around the concept of a “right to the city,” more directly addressing the power relationships between users and owners of urban space.³

The combination of market and local government activity that has shaped most development in their neighborhoods, however, has delivered changes that are beneficial in some ways and harmful in others and, in most cases, accompanied by substantial displacement of residents and businesses. Between 1996 and 2006, average rents in Los Angeles increased 82 percent to \$1,750 a month⁴, while the city’s median income declined substantially compared to the state and the nation.⁵ Over 13,000 units of rent-controlled housing have been demolished or converted to condominiums in the last five years.⁶ Although hampered by a lack of political and legal

power, local groups have adopted a variety of innovative strategies, some of which have been successful, to change these outcomes.

Among the tools used by local groups, perhaps none has received greater attention than the community benefits agreement (CBA), an agreement between a developer and a coalition of community groups that addresses a broad range of community needs.⁷ As the site of the first CBA to be named as such, Los Angeles is seen as a leader in a national movement to achieve greater accountability in economic development in major U.S. cities.⁸ In Los Angeles, however, the CBA, as traditionally conceived, is only one of a variety of tools local groups have employed in shaping development. The city has, more than anything, functioned as a laboratory for local groups seeking to shape economic development. Their strategies may broadly be categorized as:

1. Adopting, strengthening, and enforcing legal protections for low-income individuals
2. Taking land off the speculative market and controlling land use decisions through community ownership
3. Extracting community benefits from development

Even within this latter category, local groups have employed several different methods, of which CBAs are one, to memorialize their victories to make them legally enforceable.

This article seeks to describe the efforts of local groups to obtain their right to the city and achieve the goal of better neighborhoods while preventing community displacement. It focuses in particular on the legal strategies used and explores some of the lessons learned in local groups' campaigns. Part I describes the challenging legal and political context in which local groups must operate. Part II briefly reviews the strategies employed by local groups to impact development in this context. Part III traces the different sources of legal leverage on which local groups have relied in their community benefits campaigns. Part IV discusses the methods used to create enforceable commitments to provide community benefits. Part V synthesizes the lessons learned and offers a framework for use in approaching future community benefits campaigns.

I. Context

To appreciate the legal and political setting in which local groups must operate, one must examine who has power over any basic decision regarding the impact of development on low-income communities in Los Angeles. For example, who gets to decide whether a proposed residential project in downtown includes affordable housing units? Whether a proposed grocery store in Koreatown pays a living wage? Whether a vacant lot in South Central becomes a liquor store or a health clinic? Traditionally, as a matter of legal rights and political reality in low-income communities, the answer is invariably (1) the site owners and their investors and (2) local government. The property rights that owners have in the development

site protect their authority over such decisions from assertions by parties without competing rights. The local government has authority to regulate development through the police power, subject to constitutional and statutory limitations. With homeownership rates in Los Angeles among the nation's lowest,⁹ local groups and their members rarely have property rights of their own to assert. They are thus infrequently able to assert any legal right over the basic and fundamental land use and development decisions that affect their communities. Accordingly, to impact such development decisions in their own backyard, local groups must often rely upon the local government's exercise of its police power.

A. Police Power of California Cities

California cities have broad authority to regulate land use and development through the police power, which entitles them to adopt laws reasonably related to protecting the public's health, safety, and welfare.^{10,11} The police power is also set forth in the California Constitution, which authorizes cities to "make and enforce within [their] limits all local police, sanitary, and other ordinances and regulations not in conflict with the general laws."¹² California cities may rely on this broad power to enact legislation of benefit to low-income communities in the development context, such as an inclusionary housing ordinance.¹³

Land use regulation in California has historically been a function of local government under the police power granted in the state constitution.¹⁴ California cities exercise their land use functions within a statutory framework that provides for the creation of community plans, specific plans, overlay zones, zoning regulations, and other land use controls enacted by local legislation.¹⁵ In particular, specific plans enable cities to enact detailed and meaningful regulation affecting virtually every aspect of land use in a particular neighborhood and can include provisions beneficial to local groups.¹⁶ For example, the specific plan for the Central City West neighborhood in downtown Los Angeles provides for replacement of affordable housing lost and inclusion of affordable housing in new residential development.¹⁷ The police power also provides for the authority to adjudicate and approve development projects and to place conditions, such as exactions, fees, and dedications of land, on project approvals.¹⁸

B. Use of Police Power by Los Angeles

Unfortunately for local groups, Los Angeles has a long and ignoble history of using the police power over land use in ways that advance racial and economic segregation and inequality.¹⁹ A 2006 study found Los Angeles to be the most economically segregated of the largest 100 metropolitan areas in the United States.²⁰ As discussed below, the city's approach to ordinances, land use regulations, and project conditions have contributed at times to this segregation and otherwise stymied the interests of local groups.

Moreover, the fact that, as a matter of political convention, land use decisions in Los Angeles fall largely within the province of the city council

member in whose district the subject property lies²¹ exacerbates neighborhood provincialism and focus on individual development projects, as opposed to thoughtful and equitable citywide planning.²²

1. Ordinances

Los Angeles has a mixed record when it comes to citywide ordinances that impact development in a way that benefits local groups. The city council and mayor have historically resisted the efforts of local groups towards adoption of citywide inclusionary housing measures that require new residential development to set aside a modest percentage of affordable units. These measures, which have survived constitutional challenge in California, are currently in place in 170 other California cities and counties, including San Diego.²³ In 2003, a major study commissioned by the City of Los Angeles deemed such measures economically feasible.²⁴

Notably, in part due to the political strength of organized labor, the city has joined other major cities in adopting a living wage ordinance.²⁵ The ordinance regulates wages paid by recipients of city financial assistance as well as city contractors and lessees of city property.²⁶ It requires a minimum wage that increases annually to correspond with cost of living adjustments to members of the city employees' retirement system. In 1998, the first year that the ordinance took effect, initial rates were \$7.39 per hour with health benefits and \$8.64 without.²⁷

2. Land Use Regulation

The city, both in the geographic placement and the contents of its land use regulations, has not favored the interests of local groups. First, a strong correlation exists between the allocation of meaningful land use planning and geographic concentrations of private wealth. A LAFLA review of Los Angeles Housing Department data revealed that city council districts 11 and 5, located in the affluent Westside have high numbers of specific plans in place. By contrast, city council districts 1 and 9, which contain several of the city's lowest-income neighborhoods, have few specific plans.

Second, the city's land use regulations for affluent areas often operate to protect the property values and aesthetic tastes of those with established wealth. A LAFLA review of eleven specific plans for affluent Westside neighborhoods found that eight of those plans restrict building height to forty-five feet or less, thus inhibiting substantial multifamily residential development. It is not surprising, then, that council districts 11 and 5 together contain only 4 percent of the city's affordable housing units.

From the perspective of local groups and other observers, the city's land use regulations in downtown and the immediately adjacent neighborhoods have been given over to developers,²⁸ allowing the market to ravage low-income communities. One example is the August 2007 ordinance that rezoned downtown to allow for even larger and higher density development.²⁹ This rezoning requires making only a small number of residential units affordable if a developer requests to build even more units than

normally allowed by zoning regulations, and the developer can avoid this requirement altogether through a fee payment.³⁰ By massively increasing the allowable building envelope, the rezoning also undercuts the state-law-based affordable housing incentive scheme, which, like the ordinance, relies on developers requesting additional density.³¹ In this regulatory environment, the market downtown has in the last few years replaced thousands of units of affordable housing with luxury lofts³² that tower above the more than 5,000 homeless residents of the nearby Skid Row neighborhood.³³ About 95 percent of new residences built downtown since 2000 are expensive—renting for \$1,800 to \$2,800 a month or selling for \$450,000 to \$800,000.³⁴

In the portions of South Los Angeles that have not been gentrified as a part of the downtown boom, there are only two specific plans to help regulate land use.³⁵ Here, the private market has continued to produce and support land uses disfavored by local groups such as fast food restaurants and liquor stores while failing to produce favored uses like grocery stores.³⁶ Moreover, public infrastructure, such as streetscapes and parks, in South Los Angeles compares unfavorably with the public infrastructure in areas of the city already better positioned to attract private investment.

The city's new planning director, having somewhat successfully reversed some of the same trends during her tenure in San Diego,³⁷ has launched a campaign to "do real planning"³⁸ and has put in place a process for continually revising and updating the city's community plans. The degree to which this more meaningful planning will help correct historical and existing inequities, however, remains unclear. That the planning department is engaged in land use planning for areas of the city that have gone without such planning is, by itself, a step toward equity. Yet the experience of local groups in South L.A. has been that the department has failed to invest the time and resources in a process that would allow low-income residents to actively engage in planning for their own neighborhoods.

3. Conditioning Individual Projects

The city may also exercise its police power by imposing requirements on individual development projects as a condition of approval. This is theoretically helpful to local groups, which have been more successful organizing around individual development projects than in securing citywide policies. However, the city's vulnerability to legal challenge is greater when it places conditions on individual projects than when it enacts broad land use regulations. A city's imposition of an inclusionary housing requirement on an individual project, for example, is reviewed under the heightened standards set forth in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, which require both a nexus and proportionality between the impact of the project and the imposed condition.³⁹ In imposing an inclusionary housing requirement ad hoc, the city likely must show that the project in question will raise the cost of housing to a degree sufficient to justify the affordable housing requirement that the city opts to impose.

Thus, at the project-specific level where local groups have at least modest political power, the city is constrained in its use of the police power to support local groups' objectives. Conversely, at the citywide level where local groups lack political power, the city's police powers are greater but are often employed (or withheld) in ways that contravene local groups' objectives.

II. Approaches Used by Local Groups

In this challenging legal and political context, local groups have managed to use organizing and legal leverage to win both defensive and proactive victories. Their strategies may be grouped into three categories:

1. Adopt, strengthen, and enforce legal protections for low-income individuals;
2. Take land off the speculative market and control land use decisions through community ownership; and
3. Extract community benefits from new development.

Each of these strategies can be plotted on a spectrum based on the degree to which it requires a local group's reliance on the local government's exercise of authority. For example, local groups have helped secure important protections for tenants through the enactment of city ordinances in victories made possible by the city's legislative action and requiring city enforcement. On the other end of the spectrum, local groups have sought to take substantial amounts of land off the private market themselves and hold it to support permanently affordable housing and other uses that serve the community. In the middle, local groups seek to shape development for their own ends while relying on the local government's regulatory authority for leverage.

One may also distinguish among these approaches in terms of the degree and type of control that they allow low-income residents and community groups to assert over land use and development. Legal protections for low-income tenants, such as rent control or limitations on condominium conversions, aim to check market actors by stabilizing the housing situation of renters without controlling land or actively shaping land use and development. In extracting community benefits from new development, local groups seek to creatively and assertively direct land use and development in a beneficial way, contingent upon the developer's exercise of its property rights. Taking land off the speculative market, for example, through a community land trust that creates actual property rights in community members and control over land use, charts a more ambitious course but one that is less threatening to developers' exercise of property rights.

A. Adopt, Strengthen, and Enforce Legal Protections for Low-Income Individuals

Even as local groups seek to shape new development, their low-income members face displacement through eviction, rent increases, and intolerable

living conditions. Accordingly, local groups have sought to ensure that their members can rely on legal protections against such displacement.

Before describing these efforts, it is important to relate the challenging legal and political terrain that California offers in this regard. In 1986, California adopted the Ellis Act, which undercut a California Supreme Court decision upholding the constitutionality of a Santa Monica ordinance limiting the circumstances in which a landlord could remove rental units from the market and effectively prohibiting removal of affordable units or units occupied by low-income families.⁴⁰ The act provides that no statute, ordinance, regulation, or administrative action "shall...compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease."⁴¹ "A landlord who complies with the Ellis Act may therefore go out of the residential rental business by withdrawing the rental property from the market."⁴² "If necessary, the landlord may institute an action for unlawful detainer to evict the tenants and recover possession of the property."⁴³ In 2003, the California Supreme Court further strengthened the position of landlords by holding that a tenant cannot advance a statutory defense of retaliation in an unlawful detainer action where a landlord has shown a bona fide intent to withdraw the property from the rental market.⁴⁴ By 2005, nearly 600 buildings in Los Angeles containing close to 5,000 units were taken off the market under the Ellis Act.⁴⁵

In 1995, the California legislature adopted the Costa-Hawkins Rental Housing Act, which preempts⁴⁶ and prohibits strict forms of local rent control by imposing vacancy decontrol.⁴⁷ Vacancy decontrol allows owners to set market rental rates both initially and when a tenant voluntarily or lawfully leaves a unit.⁴⁸ Once a new tenant occupies the unit, rent controls may be imposed again using the owner-established rental rate as a baseline.⁴⁹

Recently, several business advocacy groups succeeded in placing an initiative on the June 2008 statewide ballot that would further curb a local government's ability to control rents.⁵⁰ The initiative specifically prohibits the taking of private property for a private use, and it removes any limits on the price that private owners may charge another person to purchase, occupy or use their real property.⁵¹

This successful and continuing assault at the state level on the ability of municipalities to enact protections for tenants, however, has not diminished the efforts of local groups to create legal safe harbors and footholds for low-income people. Still, the noted pace of rent increases and evictions in the city indicates that these measures are not adequate to the task of protecting low-income families and communities from the disruption wrought by gentrification.

1. Improve Tenants' Legal Protections Against Rent Increases and Evictions

Local groups and tenants' lawyers, including those at LAFLA, offer assistance through organizing, education, and advocacy to individuals whose

rights as tenants are threatened. The Los Angeles Rent Stabilization Ordinance (RSO) provides the primary source of protection for low-income individuals against the displacement that accompanies gentrification. The ordinance restricts the amount and frequency of rent increases, limits the circumstances under which a landlord may evict a tenant, and requires relocation payments to displaced tenants.⁵²

There are several limitations on the utility of the RSO as a protective measure. First, tenants seeking to enforce the RSO lack legal representation. In a recent year, more than 53,000 evictions were filed in Los Angeles County and 90 percent of those facing eviction in California proceed without a lawyer.⁵³ Second, the RSO exempts buildings constructed after 1978 and single family dwellings; of the city's 780,000 rental units, the 1979 Rent Stabilization Ordinance covers only 550,000.⁵⁴ Finally, in circumstances where a landlord may lawfully evict a tenant from an affordable unit, the amount of relocation is often insufficient to allow the tenant to afford a comparable unit in the same market.⁵⁵

2. Limit Condominium Conversions

Between 2000 and 2006, more than 11,000 units covered by the RSO were converted to condominiums, and Los Angeles led the state in evictions due to rental properties taken off the market.⁵⁶ From January 2005 to May 2006, at least 7,000 rent-controlled units in Los Angeles were lost to demolition and condominium conversion.⁵⁷ Housing advocates say the actual number is far higher (noting that the numbers do not include units not subject to the rent control ordinance) and that the problem is compounded by the lack of monitoring to prevent unlawful conversion of rental units taken off the market under the Ellis Act. Local groups have been working assiduously to address this problem, and their efforts led in May 2006 to city council passage of a moratorium on conversion of residential hotels, which serve as the housing of last resort in the city.⁵⁸ Then, in May 2007, they succeeded in obtaining passage of an ordinance that increased the relocation fees building owners must pay tenants evicted because of condominium conversions.⁵⁹ The new fees are \$6,810 for those who have lived in their apartment less than three years and \$9,040 for those who have lived there longer.⁶⁰ Renters who are sixty-two or older, disabled, or have dependent children receive \$14,850 if they have lived in their units three years or less and \$17,080 if longer. Local groups have not succeeded, however, in efforts to enact further moratoria on condominium conversions but they have continued to work on limiting the number of demolitions and conversions.

3. Require Replacement Housing

For years, a coalition of local groups called Share the Wealth, which works in rapidly gentrifying neighborhoods, has advocated the adoption of No Net Loss policies. These policies would require the city to (1) establish an accurate count of the number of affordable units, (2) set a baseline number of affordable units, and (3) ensure that the number of affordable

units do not fall below the baseline, either by constructing replacement housing or by requiring developers to construct such housing. This relatively modest and straightforward concept⁶¹ has proven to be politically controversial, and local groups have been unable to secure its adoption as policy. However, members of Share the Wealth and others managed to secure the inclusion in a settlement agreement with the city's redevelopment agency of a No Net Loss approach to housing⁶² in two redevelopment areas covering much of downtown.⁶³ The settlement agreement requires the replacement within four years of converted or demolished residential hotel units.⁶⁴ The replacement units must be made available at the same rent level as the units they replace and in no event at a level greater than 30 percent of 60 percent of the area median income.⁶⁵

B. Take Land Off the Speculative Market and Control Land Use Decisions Through Community Ownership

As noted, in the existing legal and political context, traditional approaches to directly protecting the rights of tenants have proven a necessary but not sufficient means of stemming the tide of displacement of low-income residents. Adapting to this context, local groups have sought to develop rights for themselves and their members that compete with the property rights of developers and limit their dependence on the police power of the city.

One strategy is to organize community land trusts (CLTs) that acquire and hold land permanently for affordable housing. These organizations have significant representation in their leadership of low-income individuals from a defined geographic community and often develop units for ownership, thereby ensuring greater levels of community control than that associated with conventional affordable housing development. The legal needs of such an organization are largely transactional, including assistance with formation and organizational structure and development, as well as with all legal matters a developer would require. Because, by its nature, the CLT engages in significant capacity-building of members and directors, CLT attorneys are also called upon to help develop educational materials. The Figueroa Corridor Coalition for Economic Justice, whose organizing resulted in the first Los Angeles CBA, has since organized a CLT to take land off the speculative market in the Figueroa Corridor. The rationale for starting the CLT, according to coalition leaders, was that the inclusionary and replacement housing obligations in the CBA have not begun to stem the displacement of low-income individuals in the neighborhood. The CLT also works to educate members about land use planning so that the community can engage in such planning in the neighborhoods where the CLT owns property.

One challenge confronting CLTs is the amount of capital needed to acquire land in rapidly gentrifying areas. Organizations that include substantial community representation on their governing bodies may offer a less attractive loan or investment prospect than an organization with which financiers have greater familiarity and comfort. The Figueroa Corridor

Community Land Trust (FCCLT) is unique in its approach of seeking to achieve significant scale in an extremely competitive market by using predominantly private financing. FCCLT's development budget objective of \$100 million rivals the city's entire affordable housing trust fund.

Second, like all affordable housing developers, CLTs face the same risks and delays in the governmental land use approval process that for-profit developers face but with more delicate financial arrangements.

C. Win Community Benefits in New Development

Local groups have organized a number of successful campaigns to ensure that new development benefits low-income individuals and communities. From multibillion dollar mixed-use ventures to a single grocery store, local groups throughout the city have shaped development in ways that their membership deems most important, resulting in affordable housing, access to jobs and training, and better wages. At the \$2 billion mixed-use Grand Avenue project, a coalition of local groups called the Grand Avenue Coalition for Community Benefits⁶⁶ obtained an unprecedented community benefits package that included 532 units of housing (which is 20 percent of the project's total housing units) that are affordable to households in the extremely low, very low and low-income categories; a \$1.5 million revolving loan fund to provide seed capital to developers of permanent supportive housing for homeless residents of downtown; local hiring programs for the project's construction and service jobs; up to \$2.8 million for related job training; and a living wage requirement for service jobs. This significant victory built on the success of earlier community benefits campaigns in the city, the results of which were compiled and presented to the developer during the negotiations.

Extracting such community benefits often requires local groups to navigate complex political terrain. They may be forced to compete among themselves as to whose organization or whose goals best represent community or public needs. Even as they negotiate privately with a developer, the parameters of the negotiation may be determined primarily by local officials in conversations to which the local group is not a party. Local groups may offend local officials, on whom they may depend for leverage, by seeking to go beyond the official's tacit or explicit parameters. An official may take offense on the grounds that the group's action suggests that the official does not adequately represent community interests, or simply because the group has bucked his or her authority. In one case, a local group persuaded a city council committee to require more affordable housing than the city council member for the district had publicly indicated she thought appropriate. The council member, through her staff, intimated that she might lobby her remaining colleagues against the proposal. In another case, a county supervisor, whose district contained the project at issue, wrote to a coalition of local groups, explaining that she had fought to ensure that the development at issue contained particular community benefits and calling on the coalition to respect the politically established consensus.

III. Legal Leverage for Community Benefits Campaigns

Many local groups have long track records of success using traditional community organizing methods that compensate for their relative lack of resources and legal rights. In their campaigns to shape new development, local groups have also found creative ways to generate legal leverage in support of their goals. Among the sources of leverage available to local groups are federal statutes, such as HUD Section 3 and federal civil rights laws, that force local governments to consider the interests of low-income individuals, people of color, or both. Also available are state statutes that create obligations for local governments as part of their state review and approval of projects, including the California Environmental Quality Act,⁶⁷ the Mello Act,⁶⁸ the law governing the housing element of local land use plans,⁶⁹ and redevelopment law.⁷⁰ Local groups may also find leverage in the city ordinances governing land use approvals. Finally, local groups may rely on city policies that they helped enact which, as protection against a takings challenge,⁷¹ offer subsidy or other benefit to developers in exchange for community benefits.⁷² The following sections examine some of the ways in which local groups have used these statutes, with help from nonprofit lawyers, to gain leverage over the development process and ultimately to secure community victories.

A. Federal and State Statutes

1. HUD Section 3

In 1995, the City of Long Beach applied for \$40 million in HUD Section 108 loan assistance to help underwrite a multiphase development of the city's waterfront. As a recipient of the funds, the city was required under Section 3 of the Housing and Urban Development Act of 1968 to provide opportunities "to the greatest extent feasible" arising in connection with the development, including jobs and training for local low-income residents and contracts for local low-income businesses.⁷³ The implementing regulations provide that recipients may meet their Section 3 obligations by committing to employ local low-income residents as at least 30 percent of the aggregate number of new hires on the project.⁷⁴ When the city failed to comply during the first phase of development, the Legal Aid Foundation of Long Beach (now LAFLA) filed an administrative complaint with HUD on behalf of a public housing tenants' organization. HUD ultimately resolved the complaint in the local groups' favor and required restitution by the city in the form of additional jobs and contracting opportunities subject to Section 3. The local groups also pursued litigation to ensure Section 3 compliance for the much larger subsequent phase and obtained a settlement agreement imposing local hiring and contracting requirements that were more specific than those set forth in the statute and regulations.

2. Federal Civil Rights Laws

Local groups have effectively used approaches traditional in the civil rights era to exert power over local government in the development context.

One example may be seen in the community victory at what is now called the Cornfield site, north of downtown Los Angeles. In early 2000, a developer proposed an \$80 million industrial project for the site, which had been unused and in poor condition for nearly a decade.⁷⁵ Opposition to the project was led by the network of organizations that coalesced to form the Chinatown Yards Alliance, whose members included more than thirty organizations that collectively represented a broad spectrum of stakeholders and communities interested in the fate of the Cornfield.⁷⁶ In September 2000, several of the groups filed an administrative complaint alleging that the federal government's financial support for the project violated federal civil rights and environmental justice laws,⁷⁷ namely Title VI of the Civil Rights Act of 1964, the HUD regulations implementing Title VI, and the 1994 Executive Order on Environmental Justice.⁷⁸ This legal strategy formed one part of a process that ultimately led to the site's acquisition by the Trust for Public Land and the conversion of the site into a public park.⁷⁹

This community victory followed not long after the huge success of a similar approach to transportation development. In 1994, the Bus Riders Union and the Labor/Community Strategy Center filed a lawsuit against the L.A. County Metropolitan Transit Authority (MTA) alleging violations of Title VI of the Civil Rights Act and citing unequal subsidies for the largely minority bus riders compared to the wealthier rail commuters.⁸⁰ The complaint placed the city's plans for a new commuter rail line in the context of a decades-long pattern of discrimination in city transit programs.⁸¹ The action was settled in 1996 through a consent decree requiring the MTA to improve service and control fares for its bus network. In 2000, a special master, and later the district court, ordered the MTA to purchase 248 new buses to reduce overcrowding, an order upheld by the Ninth Circuit.⁸²

The Supreme Court in 2001 undermined the strategic use of civil rights to shape land use in the cases of *Alexander v. Sandoval* and *Gonzaga v. Doe*, which sharpened the standing requirements for Title VI racial disparate impact claims.⁸³ Litigants such as those in the Cornfield and Bus Riders Union cases had come to rely on Title VI in the wake of the Supreme Court's 1977 decision in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, which required a showing of discriminatory intent in Equal Protection cases.⁸⁴ *Sandoval* and *Gonzaga* eliminated the theory that an implied right of action exists under Section 602 of Title VI to enforce regulations prohibiting federally funded state and local agencies from acting in ways that create a disparate impact on different minority groups.⁸⁵ However, local groups may still pursue an administrative complaint as the coalition did in the Cornfield case.

3. California's Mello Act

The Mello Act⁸⁶ is a state law that regulates development in California's coastal zone. The act requires one-for-one replacement of dwelling units "occupied by persons and families of low or moderate income,"⁸⁷ and requires new housing developments to, where feasible, include housing

units for persons and families of low or moderate income.⁸⁸ The Legal Aid Foundation of Long Beach (now LAFLA) and the Western Center on Law and Poverty (WCLP) represented the Barton Hill Neighborhood Organization, among other plaintiffs, in a 1993 lawsuit against the City of Los Angeles alleging that the city failed to comply with its affordable housing obligations under the act.⁸⁹ In 1996, a California Court of Appeal found in favor of plaintiffs,⁹⁰ and plaintiffs and the city entered into a settlement agreement in 2001.⁹¹

The settlement is much more specific than the Mello Act regarding the developer's inclusionary and replacement requirements and requires the city to comply with procedures⁹² that implement the Mello Act and the additional terms contained in the settlement. Both the settlement and the procedures require that new coastal zone developments set aside 10 percent of on-site units for households with incomes under 50 percent of the area median or 20 percent of on-site units for households with incomes under 80 percent of the area median, unless it is infeasible to do so.⁹³ If a developer proves that on-site compliance is infeasible, it may request approval to provide affordable units off-site by submitting an appeal.⁹⁴ The inclusionary housing requirements of the settlement and the procedures may be satisfied only through the provision of net new units, either on- or off-site, through adaptive reuse or new construction.⁹⁵

In 2003, LAFLA began to work with People Organized for Westside Renewal (POWER), which organizes low-income individuals in the rapidly gentrifying Venice and Mar Vista neighborhoods.⁹⁶ During three years of work, POWER, LAFLA, and WCLP have secured the inclusion of approximately 150 affordable units in luxury residential developments in the city's coastal zone. It is worth noting that in cases involving larger projects, substantial effort and attention have focused on the determination of what amount of affordable units is economically feasible at the project in question. All sides, including POWER, have retained economists and other experts to help make their case.

POWER also extended its campaign to enforce the Mello Act into neighboring Marina del Rey, an unincorporated area of the County of Los Angeles. There, POWER's leverage was diminished by the fact that it had to rely on the state law, as opposed to the more specific terms of the city settlement. Additionally, most development in Marina del Rey occurs on land leased from the county, which provides the county with an important source of income. Indeed, the county's department of beaches and harbors served as a co-applicant on projects under review for Mello Act compliance by other branches of county government. Nevertheless, POWER succeeded in ensuring that two large development projects included 10 percent affordable units, when in each case the county had initially proposed substantially less.

4. California Redevelopment Law

With a budget of \$671 million⁹⁷ and thirty-three redevelopment project areas spread across all but the wealthiest areas of the city (including the

rapidly gentrifying neighborhoods of downtown, Koreatown, and Hollywood), the Community Redevelopment Agency of the City of Los Angeles is an important player in development. Although many local groups criticize the agency's role in facilitating gentrification and displacement, the fact that a development project lies within a project area may also give rise to legal leverage not otherwise available to those groups. Under California redevelopment law, redevelopment agencies must ensure that at least 15 percent of all privately developed new or substantially rehabilitated housing in a redevelopment project area is affordable to moderate or lower-income households, of which 40 percent must be affordable to very low-income households.⁹⁸ If the agency is the developer of the housing, 30 percent must be affordable, of which 50 percent must be affordable to very low-income households.⁹⁹ An agency must also provide temporary or permanent replacement housing to displaced residents.¹⁰⁰ The agency may not displace a person before making available either temporary or permanent replacement housing at the same level of affordability.¹⁰¹ Additionally, the agency must provide financial assistance to those who are forced to relocate; it may provide more financial assistance than required by state and federal law.¹⁰²

One challenge in using the redevelopment law as leverage for affordable housing campaigns, however, arises from the unfortunate fact that the agency has not kept close track of affordable units in project areas. In 2004, the city controller found that the agency did not monitor property owner compliance with agency-recorded affordability covenants¹⁰³ and had not been obtaining the annual affordability compliance reports required of borrowers of agency funds.¹⁰⁴ A 2006 follow-up audit revealed that randomly sampled files still did not have the required annual reports.¹⁰⁵ To address this problem, some local groups have maintained their own count of affordable units in neighborhoods where they work. In one case, agency staff wrote to a developer and endorsed a proposal to turn a 100-unit SRO into a luxury hotel, despite the fact that the agency had itself recorded affordability covenants against the property. After the property owner evicted all of the tenants in one fell swoop, the Los Angeles Community Action Network (LACAN), which organizes low-income and homeless residents of downtown, presented the affordability covenants to the agency's board of commissioners. The group's action ultimately led to the city attorney filing a lawsuit against the property owner.

Little Tokyo Service Center CDC (LTSC) successfully used redevelopment law to create leverage for the inclusion of affordable housing. The Little Tokyo neighborhood in downtown Los Angeles, where LTSC works, is—thanks largely to the redevelopment agency—among the most well-developed in the city. Fortunately, the redevelopment plan covering the neighborhood sets an even higher standard for inclusionary housing than that set forth in state redevelopment law. The plan requires that the majority of new residential units be “of low and moderate cost.”¹⁰⁶ In 2005, LTSC organized around the agency's approval of a proposed mixed-use project containing 750 market-rate residential units.

Using its own comprehensive accounting of the affordable units, LTSC pointed out that approving the project as proposed would cause the percentage of new residential units of low and moderate cost in the project area to drop to 37 percent, resulting in a deficit of 234 affordable units below the majority figure required by the redevelopment plan. LTSC also pointed out that the agency's count of affordable units in the area was inflated by as much as 200 units; the agency had, for example, counted units in buildings no longer containing residential units. After presentations by LTSC and LAFLA to the agency, the developer agreed to include as many affordable condominium units as the agency would subsidize with its first-time homebuyers program. The developer later changed its plans to include 230 apartments and agreed to make 20 percent of them affordable to low-income households.¹⁰⁷

5. California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires an environmental impact report (EIR) to be completed for all discretionary public projects that might affect the physical environment. EIRs provide "public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."¹⁰⁸ EIRs can "cost tens and even hundreds of thousands of dollars, with preparation times running from six months to several years, depending on the complexity of the project and the determination and resources of the project's opponents."¹⁰⁹ Additionally, because a CEQA lawsuit can stop a project in its tracks, CEQA can provide a substantial source of leverage for local groups.

In 2004, the Downtown Women's Center (DWC), a housing and service provider for homeless and low-income women in downtown Los Angeles, faced a proposal for a mixed-use development project containing 400 residential lofts and 190,000 square feet of retail space that would surround its modest building on three sides. In collaboration with other local groups and LAFLA, DWC submitted extensive written comments on the draft EIR for the project and used the hearings connected to the project's CEQA process as a forum around which to organize. DWC's formal written comments focused in part on the project's noise and pollution impacts on the individuals residing at DWC and in neighboring buildings.

One particular issue on which local groups have focused their comments to draft EIRs is the false assumption that placing jobs and housing in the same area will result in reduced traffic impacts. In both the DWC and Grand Avenue cases, the draft EIRs included this assumption, which local groups seized upon to construct arguments for community benefits as mitigation measures. In its written comments, DWC noted that the draft EIR wrongly assumed that local residents would be hired for service jobs in the project; only a local hiring program could provide an assurance of that outcome. In its comments of the draft EIR, the Grand Avenue Coalition

pointed out that, based on the wages required of service jobs, workers at the project would not make enough to afford even the lowest rent “affordable” unit in the project. Accordingly, they argued, if the project was to, in fact, enable people to live where they work, more residential units should be made available at lower levels of affordability as a traffic mitigation measure.

In the Cornfield matter, described above in part III.A.2, local groups filed a petition for writ of mandate against the city with the developer named as a real party-in-interest. The petition alleged that the city had violated CEQA by adopting a mitigated negative declaration instead of requiring preparation of an EIR in connection with its review and approval of the site design plan submitted by the developer for the project. This was just one piece of a multipronged legal strategy that, as noted, led to the construction of a public park on the site rather than the proposed industrial project.

6. California Housing Element Law

Under California’s state housing element law, each locality must make “adequate provision for the housing needs of all economic segments of the community,” including the community’s share of the regional need.¹¹⁰ The housing element is a mandatory element of the general plan, which serves as “a constitution for all future developments within the city.”¹¹¹ The state law requires localities to plan for future housing needs by analyzing existing needs, resources, and constraints and by designing a comprehensive action plan to meet future housing needs.¹¹² Although there is no requirement that the locality build housing units, it must take efforts to show that its zoning does not inhibit the creation and preservation of affordable housing.¹¹³ Further, sites must be individually identified and analyzed to show that the sites in the aggregate meet the jurisdiction’s diverse housing needs.¹¹⁴

At its crux, the law attempts to ensure that cities do not hinder and actually assist in the development or preservation of affordable housing. From 1999 to the present, compliant jurisdictions that have appropriately planned in compliance with state law supplied between 78 and 92 percent of all multi-family permits issued in California.¹¹⁵ However, according to the California Department of Housing and Community Development’s 2007 Housing Element Report, twenty cities in Los Angeles County alone had failed to adopt compliant housing elements designed to further the planning of affordable housing.¹¹⁶ Between 1998 and 2005, only 28.4 percent of the Southern California region’s allocated affordable housing need was met.¹¹⁷

When a housing element is attacked, a court may issue a preliminary injunction barring all development (including nonresidential projects). The threat of such an order may increase the chances that a city offers community and affordable housing benefits. Without an adequate housing element, the city theoretically lacks the authority to approve any change in use of the property or make any discretionary approval. In particular, the lack of a mandatory element invalidates the general plan rendering a finding

of consistency impossible if the missing element is directly involved in the land use decision.¹¹⁸ Thus, if a city fails to adopt or adopts an inadequate element, the approval of a development project in that city may be challenged as per se inconsistent. Even if an element technically complies, development projects that are inconsistent with the housing element may also be subject to challenge.

In the City of Fillmore, local groups¹¹⁹ challenged the city's approval of one of the largest and most exclusive upper-income housing developments ever proposed (the Heritage Valley Parks) because the city had not updated its housing element. Local groups argued that in approving the 301 acres in Heritage Valley Park for upper-income housing, the site was lost forever as a potential source for affordable housing. Without a valid updated housing element, the local groups argued, the city had no authority to make such an approval and the development was per se inconsistent. As a result of that lawsuit, local groups obtained a settlement from the city making available approximately 2.2 acres of city-owned land for a minimum of sixteen units of very low-income farm worker housing and very low and/or low-income housing as well as obligating the city to provide funds for development of affordable housing. The units were required to be deed-restricted for at least forty-five years, and the individual client in that case obtained first preference for a unit consistent with any applicable laws. The developer in that case also agreed to provide a monetary amount to the city's redevelopment agency to be used for affordable housing.

Lawsuits challenging housing elements, such as the Fillmore case, have in the aggregate resulted in vast affordable housing gains in California. Through housing element lawsuits or the threat of lawsuit, developers have committed to construct affordable units, cities have dedicated land to affordable housing, and cities have adopted higher density zoning coupled with an inclusionary requirement. Other gains have included cities rezoning land for multifamily housing; creating affordable housing trust funds; implementing fee waivers for nonprofit developers; adopting Section 8 non-discrimination ordinances and inclusionary zoning ordinances; imposing jobs/housing mitigation fees; and setting aside land for affordable housing.

Recent changes in the law have also clarified and strengthened its reach, including clarifying the obligation to include an inventory of sites that are identified by parcel or other unique designation and the obligation to show zoning that accommodates emergency shelters and transitional or supportive housing without discretionary approvals.¹²⁰

B. Local Land Use Approvals

Los Angeles, like other California cities, has adopted pursuant to its police power a complex set of regulations governing land use within its borders. As discussed above (part I.B.2), the impact of this regulatory regime has typically not been favorable for low-income individuals. But increasingly, local groups are learning to use the land use approval process to generate leverage for their demands for development projects.

One local group, Koreatown Immigrant Workers Alliance (KIWA), organized around a project proposed by one of Koreatown's largest supermarkets, California Market, which planned to replace an existing market with a 130,500 square-foot commercial mall. For several years, KIWA had organized to improve wages and working conditions at supermarkets, which collectively comprised the largest employment sector in Koreatown. Although the project was located in a redevelopment area, it was not subject to redevelopment agency's living wage requirements because the developer had not sought an agency subsidy. However, because California Market proposed to construct a major commercial use on a lot partially zoned for residential use, the project would require zoning variances, conditional use permits, special approvals by the zoning administrator, and other city actions. A coalition of community groups, led by KIWA, focused on these approvals, contending that the market needed to benefit the neighborhood by providing quality jobs if it were to win approvals that would burden local residents, including liquor permits, a reduction in the parking spaces required for the project, and a change from residential to commercial zoning in an area of the city experiencing a severe housing shortage. The coalition's successful opposition, along with its demand that the redevelopment agency use its approval authority to impose a wage condition, created leverage that the coalition parlayed into negotiations with California Market, which ultimately agreed to attach a heightened wage condition as a part of the project's approvals.

C. City Agency Policies

After experiencing years of city-subsidized gentrification, local groups have helped bring about the adoption of city policies that they can use as leverage in community benefits campaigns. The city's redevelopment agency has, in particular, been the subject of important reform efforts. In August 2005, based in part on the efforts of local groups, the agency adopted a new housing policy that exceeded state requirements in helping to ensure the inclusion of affordable housing in subsidized residential development projects.¹²¹ The policy requires that such projects set aside 20 percent of residential units for very low- and low-income households.¹²² This policy and an agency living wage policy adopted earlier helped provide leverage to local groups in negotiating the community benefits package for the Grand Avenue project. The policy also requires that affordability covenants enforceable by tenants be recorded against all projects subject to affordability requirements.¹²³ In addition, several city agencies, including the redevelopment agency and public works department, have instituted local hiring requirements for construction contracts patterned on those included in project-specific agreements won by local groups.

D. Other Challenges

Developers, their attorneys and consultants, and city officials have found ways to undercut local groups' sources of leverage. On the policy

front, developers have succeeded in efforts to reduce the number of approvals required to construct more profitable projects. This undermines local groups' leverage directly by minimizing avenues for advocacy and indirectly by reducing the developers' need for subsidy. As noted in part I.B.2, in August 2007, the city council passed an ordinance creating a "downtown housing incentive area" that altered zoning regulations to allow developers to build substantially larger buildings either by providing a small number of affordable units or paying a fee.¹²⁴ Developers have also sought and obtained waivers and exemptions of various types from policies like those described above. In one recent case, the city's planning department unilaterally and without notice or a hearing issued a letter of clarification that exempted a developer, for a modest fee, from a Mello Act requirement imposed by a vote of the city council.

IV. Ways of Memorializing Community Benefits

Local groups have memorialized their community benefits victories using methods that vary according to organizational objectives, background law, sources of leverage used, type of development and community benefit at issue, and other parties involved. One method is to have the city place conditions on project approvals or record covenants against title that include both community benefits and provisions allowing for private enforcement by local groups and/or low-income individuals. A second method, conventionally described as a CBA, involves local groups entering into private contracts directly with private developers that include community benefits. In cases where the developer also has a contract with the local government, the community benefits terms may also be included in that contract. A third approach is to obtain a settlement agreement enforceable by a court or consent decree after (or just prior to) some degree of litigation.

A. Conditions of Project Approval, Covenants, and Other Forms of Local Government Enforcement

In connection with issuing land use approvals entitling developers to construct proposed projects, cities may within certain limitations place conditions on those projects. One significant limitation on this approach stems from the takings jurisprudence requirement of nexus and proportionality between the condition and the project's impact. Additionally, where the contemplated condition involves a monetary exaction, California's Mitigation Fee Act requires a local agency, in imposing a fee as a condition of approving a development project, to identify the purpose of the fee, the use to which it will be put, the reasonable relationship between the use and the project, and the reasonable relationship between the amount and the project.¹²⁵ However, these requirements only apply in situations when the city imposes or enforces the condition, not when a developer agrees to that condition.

In a major Mello Act case involving a 298-unit residential project, the developer and POWER entered into a private agreement under which the developer accepted language by which the city would impose a condition

requiring that a covenant containing negotiated affordable housing terms be recorded against the subject property. The city council added the language as a project condition in connection with its approval of the project. The private agreement between POWER and the developer also included the affordable housing requirements as a material term and bound the developer's successors-in-interest. This enforcement scheme provides both POWER and the city with the authority to enforce affordability requirements against future owners of the development site. Indeed, the original developer sold the site to a second developer that has thus far complied with the affordable housing requirements.

In the KIWA case, California Market agreed to a voluntary condition of project approval under which the market was required to enter into individual written employment contracts containing the negotiated wage terms. Further, the condition contained language that provided covered workers with the right to privately enforce its terms. Had instead KIWA persuaded the city to impose a wage condition in connection with project approval, the city may have faced a takings challenge from the market. The relatively rare instances in which a developer offers such concessions voluntarily, are, as here, directly tied to the effectiveness and power of local groups whose actions cause the developer to preempt protracted opposition, legal action, or both.

Finally, in the Grand Avenue case, pursuant to a general term sheet to which the Grand Avenue Coalition, the developer, and the city's redevelopment agency were parties, the community benefits package was included in the "development agreement" between the developer and the joint powers authority established to oversee the project. The coalition has no private enforcement power under the development agreement. However, the development agreement does require the redevelopment agency to create a community advisory body, which includes coalition members, to advise the agency regarding implementation of the community benefits program.

B. Community Benefits Agreements

CBAs are contracts between community groups and a developer (or developers) enabling the groups to enforce commitments to provide community benefits in connection with a development project and typically requiring the groups to support or at least not oppose the project. They are thus distinct from government-imposed conditions or covenants in that they afford community groups direct enforcement power while requiring something in exchange. They are also distinct from settlement agreements, discussed below, in that they are typically negotiated far in advance of any litigation as a means of moving a project through an administrative approvals process.

CBAs can take, and have taken, different forms in different campaigns. One simple and straightforward example is a private agreement between the developer and one or more local groups. In 2004, LACAN succeeded in its campaign to obtain quality job opportunities for low-income

downtown residents at a proposed bar-restaurant catering to the new residents of the gentrifying community. The organization entered into an agreement with the business's ownership under which applicants referred by LACAN would be given first priority and, if hired, would be paid a living wage. At the other end of the complexity spectrum lies the city's most notable CBA, which covers development in the area known as the Los Angeles Sports and Entertainment District surrounding the Staples sports arena on the southern edge of downtown. There, the wide-ranging community benefits package, which covers inclusionary housing, funding for affordable housing, parking, park space, living wages, and local hiring, is memorialized in a document called the Community Benefits Program, which itself is a material term of both (1) a private cooperation agreement between local groups and the developer and (2) the development agreement between the city and the developer. The objective of the developer, Anschutz Entertainment Group (AEG), was to entitle and sell several parcels surrounding its arena. Accordingly, although program terms were negotiated between the coalition and AEG, they govern the activities of anyone who buys or develops any of the subject parcels, both through binding-on-successors language in the cooperation agreement and by virtue of the fact that the development agreement governs all development on the parcels.

The process of implementing the Staples CBA has yielded some important lessons for local groups. Perhaps most fundamentally, the existence of the CBA with a provision for inclusionary housing and funding for affordable housing developers has not been sufficient to stem the tide of displacement in the neighborhood's profitable real estate market. A second lesson is the importance of long-term vigilance and capacity on the part of community-based organizations as opposed to relying on the weak accountability and tracking systems of local government. The Figueroa Corridor Coalition, now nine years old, continues to actively monitor implementation of the Staples CBA. A third and related lesson is that including community benefits provisions in a development agreement to which only the city and developers are parties may well lead to significant problems. In one case, a developer and city officials modified the development agreement, purporting to set new standards for the implementation of the affordable housing provisions of the community benefits program. These standards differed substantially from the vision for affordable housing of the coalition of local groups that were parties to the cooperation agreement. Moreover, the new language provided for transferable "credits" against any affordable housing obligation under the CBA or arising elsewhere in the city. Through negotiation, the local groups were able to limit the applicability of the credit system, which would otherwise threaten inclusionary housing provisions across the city.

C. Settlement Agreements

Court-approved or -enforced settlement agreements offer a powerful tool to community groups. In the event of noncompliance, groups may directly petition a court to enforce community benefits terms, providing

secure enforcement in a more efficient manner than through, for example, the filing of a breach of contract claim. One potential disadvantage for community groups may be that the negotiation, drafting, and enforcement process is likely to lead to a heavy reliance on lawyers for much of the work, thereby undermining organizing goals such as community leadership development.

In Long Beach, the settlement agreement emerging from local groups' efforts to enforce Section 3 has provided a strong basis to hold the city accountable. The agreement provides for a five-member monitoring committee, three of whom are appointed by LAFLA, to which the city must provide regular compliance reports. In 2005, concerned that the city had not complied with the settlement, the committee voted unanimously to find the city in noncompliance, thereby triggering an adjudicatory process before a mediation judge selected by the parties to the settlement. The judge reviewed submissions by the committee, the city, and LAFLA, and ultimately agreed with the committee. The judge required the city to apply Section 3 local hiring and contracting standards to future development projects of an aggregate value equivalent to that of the large project that was the subject of the finding of noncompliance.

In Los Angeles, local groups obtained a court-approved settlement agreement with the city's redevelopment agency following an action challenging the validity of a redevelopment project area covering much of downtown. The groups and the agency filed a stipulated judgment with the court providing that: (1) the parties were ordered to comply with the terms of the settlement agreement; and (2) the court retained jurisdiction with respect to the implementation of the terms and conditions of the settlement agreement. The settlement provides for retention of housing units in residential hotels at then-existing affordability levels, provision of relocation assistance to displaced persons, no net loss of affordable housing, and targeted hiring of local and local low-income individuals for construction jobs and permanent jobs on subsidized development projects. The agency must produce annual progress reports containing specified information and meet with a plaintiffs' advisory committee upon request.

V. A Framework for Local Groups Pursuing Community Benefits

The Los Angeles experiment with community benefits has yielded valuable lessons for organized groups of low-income residents seeking to shape development in their communities. The following discussion focuses on those lessons fundamental to the legal strategy component of a community benefits campaign. It does not address substantive issues (e.g., what level of affordability is needed in housing or how to create local hire programs for construction contractors) or the organizing, political, media, or other aspects of the campaign. A successful community benefits campaign requires significant planning, time, and resources. This framework is intended to assist local groups and their attorneys in better preparing for and carrying out such a campaign.

A. Threshold Decisions

At the outset of a community benefits campaign, local groups must address a set of core questions, the answers to which will determine the legal strategy.

1. Who Does the Campaign Represent?

Local groups must decide who their campaign seeks or purports to represent. Local groups should consider the importance of being able to credibly represent the interests of a community impacted by the project. Sophisticated developers and public officials can undercut the effectiveness of campaigns by pointing to segments of the affected community or other community groups not represented by the coalition. There may be key constituencies or organizations to whom the campaign must reach out and bring in as tactical allies to improve its claim to community representation. At the same time, local groups may center a campaign on bringing forward the interests of a segment of the population that is discrete, but greatly affected or especially in need of benefits that the project is able provide. LACAN's representation of the interests of homeless and extremely low-income individuals in the context of the Grand Avenue campaign is one example of such an approach.

In making this decision, local groups should also consider what capabilities or knowledge may be needed to succeed. For example, if one of the campaign's top demands is a child care center, the campaign may wish to include an organization with expertise in child care services that can help make the demand realistic and concrete and/or assist with implementation if the campaign is successful.

2. What Are the Campaign's Goals Concerning the Project?

Within the campaign, different groups may have different positions on the subject development project, but it is essential to the legal strategy that the group establish its ultimate goals at the outset. Specifically, the group should decide whether it wants to stop the project altogether, extract community benefits from the project (e.g., on-site affordable housing), or extract resources from the project that the community can use for its own purposes (e.g., land acquisition by a local community land trust). The campaign may settle on a hierarchy of goals. This decision is fundamental to strategy because a source of leverage for one goal may not provide a source of leverage for another. For example, if a campaign seeks to stop the project through the CEQA and land use approval processes and fails, the remaining source of leverage, for example, redevelopment law, may support a lower-tier campaign goal only.

3. What Can Each Organization Contribute to the Campaign?

Community benefits campaigns may consist of multiple local groups, each with its own interests and objectives. Achieving clarity within the campaign on goals, expectations, and relationships is important to an effective

legal strategy. Local groups should candidly explore what each member of the coalition hopes to obtain, what level of resources and time it can contribute, and whether the member will continue to support the campaign once it achieves its own individual objectives.

4. What Is the Campaign's Position on Government Subsidy?

Perhaps less fundamental, but nevertheless important to address early in the campaign, is the question of what the campaign will do if its goals are met through government subsidy of private development. For example, a private developer may agree to include affordable housing in a residential project so long as the city underwrites the cost using public resources that might have otherwise gone directly to support the creation of affordable housing. Local groups should consider, among other things: (1) What is the likely use of the particular public funds at issue absent the agreement; (2) How much community benefit (in this example, affordable housing units) is obtained through the agreement as opposed to if the public funds were used to obtain the same benefit directly; and (3) How much benefit can the developer realistically afford to provide.

B. Building Legal Leverage

One objective of local groups engaged in a community benefits campaign should be to maximize the legal leverage that supports the campaign's goals. The following steps can help campaigns achieve that objective.

1. Start Early

Successful community benefits campaigns take time partially because they track development projects from the earliest stage so that local groups are aware of all of the relevant information and opportunities to exert leverage. Taking this approach will also allow the campaign adequate time to make crucial decisions that may require substantial education of the constituent members of a local group. It will also ensure that local groups and their attorneys have time to prepare high-quality submissions and presentations. Establishing a relationship with the local agency or agencies having jurisdiction over project approvals can be an important step toward ensuring that the campaign is included in early discussions. In Los Angeles, local groups may develop relationships with the particular city planner and/or redevelopment agency staff person assigned to the project.

2. Collect Your Own Data

As the SRO and the LTSC cases (part III.A.4) demonstrate, local groups can and often do have better data about issues that matter to them than the local agencies charged with maintaining that data. Indeed, in both cases, having superior data provided an additional source of leverage and put the local groups in a better position than even city staff to present the issue to city decision makers. Local groups should make aggressive but strategic use of public records requests to obtain data from local agencies.¹²⁶

3. Consider the Relationship of Leverage to Goals

Each source of legal leverage may support one, some, or all of a community benefits campaign's goals. Accordingly, it is important to have a clear sense of the function of and opportunities presented by each source of leverage. For example, if the campaign's goal is the inclusion of affordable housing, the land use approval process may prove less useful because, as discussed in part I.B.3, getting the city to impose an affordable housing requirement as a condition of approval is extremely difficult. In contrast, a redevelopment agency's application of a specific inclusionary percentage pursuant to state law raises fewer legal questions. In undertaking this analysis, groups should also consider what options for memorializing benefits arise from each source of leverage. Continuing with the previous example, if the project is in a redevelopment area but is not the subject of any agreement between the agency and the developer and does not require agency approval of particular entitlements (such as a minor variation from the redevelopment plan), the agency may be less willing or able to impose an affordable housing condition solely in connection with basic review for redevelopment plan compliance.

4. Map Out Events

Each participant, including local groups, in the decision-making process has a sequence of events that most favors its interests. Based on the campaign goals and the anticipated sources of leverage, local groups should map out their ideal sequence of events and work to make it happen. In the KIWA case, the coalition wanted consideration of its demand for heightened wages by the redevelopment agency's board of commissioners to occur early in the process. Because the agency staff had not raised the project to the level of board review, KIWA wrote a letter to the board and raised the issue during the public comment period at a board meeting, with the result that the board held subsequent meetings on the issue.

5. Try to Prevent Private Deals by Local Officials

Because of the political power of the Los Angeles city council member in whose district a project is located,¹²⁷ a developer may regard its obligation to provide community benefits as extending no further than what is demanded by that council member. As the experiences of local groups suggest, community benefits campaigns are well advised to ensure that their local elected official either supports their goals or agrees to allow local groups to negotiate for community benefits without undermining their bargaining power. Once elected officials reach an agreement with the local group, they have invested their own political interests in the process and may be unwilling to support a different outcome.

6. Use Experts

Experts, whether they produce a detailed analysis of a project's economic feasibility or traffic impact, have been essential to community benefits campaigns. The campaign should seek expertise early in the process,

particularly if it intends to use CEQA, the Mello Act, or federal civil rights laws as a source of leverage. LAFLA has contracted with and obtained the pro bono services of experts for community benefits campaigns with successful results.

C. Memorializing Victories

The vehicle by which local groups elect to memorialize their victories has implications at every stage of the campaign and should be discussed in the campaign's early stages. The following steps can help local groups have this discussion effectively.

1. Decide Who Will Enforce and Implement the Community Benefits Program

A central consideration for local groups in choosing a means by which to memorialize their victories is who they would like in the enforcement role. Ideally, local groups preserve their ability to privately enforce community benefits terms, thereby creating contract rights that compete with the property rights of developers and the police power of local government. However, some groups may not have the capacity or desire to monitor compliance. Alternatively, a group may be unwilling to trade away its ability to present future challenges to the project in exchange for the authority to privately enforce community benefits terms. Where a community benefits program includes funding for service provision, one or more of the groups may want to bid for the funds and thus forego an implementation or enforcement role to avoid a conflict of interest. On the other hand, as the Mello Act "letter of clarification" case discussed in part III.D illustrates, groups may have good reason not to rely exclusively on the local government for enforcement purposes. The problem in that case was identified and rectified only as the result of aggressive monitoring.

2. Determine What Vehicle Is Best

The experience of local groups in Los Angeles suggests a hierarchy of methods for memorializing community benefits based on the degree to which the method confers direct and complete enforcement power on the local groups involved in the campaign. However, local groups should consider several other factors before selecting a method.

a. Hierarchy of Options

At the top of the hierarchy sits the court-monitored settlement agreement. This method is favored for conferring enforcement power directly and solely on local groups (and/or their designees) and for ease of enforcement procedure. In the Long Beach local hiring case, LAFLA and the monitoring committee were able to petition a preselected mediation judge regarding the city's alleged breach of the settlement. This process was far less time and resource intensive than pursuing a breach of contract claim in state court would have been. Predetermining the adjudication process and venue may also remove any advantage a developer may obtain from the various tactical options available to well-financed litigants.

Next comes the private contract between a developer and local groups (which could take the form of a settlement agreement) but without court enforcement. These contracts may still specify a monitoring regime, a process to be followed in the event of an alleged breach, and a specific set of available remedies for breach. The Mello Act settlement agreement in Los Angeles, which does all of these, has proven an invaluable tool for ensuring that the city enforces affordable housing requirements at individual development projects. Nevertheless, ultimate enforcement in the event of breach may require the filing of a new action in state court.

Third in the hierarchy are agreements between local government entities and developers (such as a development agreement or disposition and development agreement) containing community benefits terms and providing for private enforcement by designated third-party beneficiaries such as local groups and their members. Here, local groups still have enforcement power but, as nonparties, cannot prevent rescission or modification of the terms.¹²⁸ A supplemental private agreement with a developer could also prohibit the developer from agreeing to modify the terms of the agreement with the local government absent the consent of local groups. This method not only allows for private enforcement, it likely avoids several potential legal challenges by a developer that may arise out of a city's imposition of project conditions.

Groups that obtain community benefits through a government agreement may wish to provide for some specialized monitoring process that includes local groups, as the coalition did in the Grand Avenue case.

Finally, for groups that do not want or cannot obtain private enforcement power, community benefits may be set forth as conditions of project approvals. Such conditions may provide for a private right of enforcement by third-party beneficiaries. However, as with a development agreement or disposition and development agreement, local groups do not have the ability to directly modify or prevent the modification of terms. Such modification would require a renewed administrative process in which local groups could participate. As suggested, although they are a routine part of the project approval process, project conditions imposed by the city may be vulnerable to legal challenge.

b. Factors to Consider

Local groups may have a completely different vision for enforcement and implementation of a community benefits program than the one underpinning the foregoing discussion, which privileges enforcement power. Among other factors, local groups should consider the following in deciding how to memorialize their victories.

First, members of the campaign may wish to have an active role in either enforcement or implementation. In such situations, a contract with the developer is preferable both because it confers enforcement power and because it likely allows coalition members to avoid conflict of interest problems if they directly pursue a service contract or other benefit related to implementation.

Second, local groups should consider what they are willing to give up to obtain a contract with a developer. One important factor in the creation of CBAs is the establishment of consideration for the exchange. Customarily, local groups give up the ability to challenge project approvals and sometimes provide affirmative support in exchange for the developer's provision of community benefits. This has in some cases led to defections from community benefits coalitions by those local groups unwilling to forego the right, for example, to challenge the issuance of alcohol permits for project vendors. However, this is not the only form of consideration available to support a community benefits agreement. In the LACAN case (part IV.B), for example, LACAN agreed to provide outreach, intake, screening and referral services to potential job applicants. Illustrating a different approach to this potential challenge, in negotiating the terms of provision of funding for affordable housing with a developer that had purchased land from AEG covered by the Staples CBA, local groups specifically carved out issue areas, including alcohol and labor relations, where they would not provide support to the developer.

Third, local groups should weigh the legal defensibility of any government-imposed conditions they might seek as well as the risk of legal challenge by the developer. Although the defensibility of some conditions may be unclear, if the developer fails to challenge them within the allotted statute of limitations, the right to do so may be waived forever.

Fourth, local groups should weigh the risk of nonenforcement or even mischief by the local government agency with the power to enforce an agreement or project condition containing community benefits. In the Staples case (part IV.B), for example, the redevelopment agency created the concept of credits against affordable housing agreements arising under development agreements to which the agency was a party. If local governments favor this approach to enforcing community benefits, local groups should consider including (1) community benefits terms only in agreements to which they are party, or (2) language in the cooperation agreement that prohibits the developer from modifying or agreeing to modify the terms of the development agreement without local group approval.

Finally, the campaign should consider the relationship it has and wants to have with the project developer. Implementing a successful community benefits program through cooperative efforts can be rewarding for both the developer and local groups. On the other hand, the parties may never be able to overcome any adversarial posture that characterized their relationship during the campaign.

Conclusion

In a city where the government's use of its police power and developers' exercise of property rights have worked and continue to work against the interests of low-income individuals, local groups have successfully pursued innovative strategies to protect and improve their communities. Community benefits campaigns, which continue to grow and evolve as a strategy,

are just one approach. In undertaking community benefits campaigns, local groups have relied on a range of sources of leverage to overcome their deficit in power and have turned this leverage into project conditions and contract rights. Other local groups pursuing similar campaigns may draw on the Los Angeles experience for its important lessons.

1. Strategic Actions for a Just Economy (SAJE)—About SAJE, www.saje.net/site/c.hkLQJcMUKrH/b.3091489/k.C9D0/About_Us.htm (last visited Mar. 18, 2008).

2. Manuel Pastor, *How to build in South Central*, L.A. TIMES, Aug. 22, 2007 at A21.

3. Local groups have helped organize a national “Right to the City” alliance focused on combating gentrification and displacement. The alliance describes itself as offering a “framework for resistance” to gentrification and “a vision for a city that meets the needs of working class people.” Right to the City homepage, www.righttothecity.org (last visited Mar. 27, 2008). The alliance “provides a vehicle to shift the national debate from land as a commodity to land and community as a right.” One concrete example of such an approach can be found in Brazil, where the constitution and federal statutes require participatory master planning processes for cities larger than 20,000 people and allow for adverse possession of private property after only five years of continual occupancy. Ngai Pindell, *Finding a Right to the City: Exploring Property and Community in Brazil and the United States*, 39 VAND J. TRANSNAT’L L. 435, 453–54 (2006).

4. Nancy Cleeland, *Low pay, high rent, wit’s end*, L.A. TIMES, Oct. 24, 2006, at A1.

5. CITY OF LOS ANGELES, DEP’T OF CITY PLANNING, HOUS. ELEMENT REPORT, 3–8 (2008).

6. Gayle Pollard-Terry, *The Tenants*, L.A. TIMES, Jan. 14, 2007, at K1.

7. JULIAN GROSS ET AL., GOOD JOBS FIRST & THE CALIFORNIA P’SHIP FOR WORKING FAMILIES, COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE 3 (2005).

8. See Los Angeles Alliance for a New Economy—Community Benefits Agreements, www.laane.org/policy/cbas.html (last visited Mar. 18, 2008).

9. SOUTHERN CALIFORNIA ASS’N OF GOV’TS, STATE OF THE REGION 2006 63 (2006).

10. See *Assoc. Home Builders, Inc. v. City of Livermore*, 557 P.2d 473, 483–84 (Cal. 1976); *City of Del Mar v. City of San Diego*, 183 Cal. Rptr. 898, 902–03 (Ct. App. 1982).

11. Although the police power is broad, it is not unlimited. One fundamental check is the Fifth Amendment’s prohibition against the taking of private property for public use without just compensation, also included in Article I, Section 19, of the California Constitution. The courts have established a two step analysis for determining whether a local regulation is a taking: (1) whether it substantially advances a legitimate state interest, *Ehrlich v. City of Culver City*, 911 P.2d 429, 429, 440 n.7 (Cal. 1996); or (2) whether it denies the property owner all economically viable use of the property. *Agins v. City of Tiburon*, 447 U.S. 255 (1980). Generally, in applying this analysis to local land use regulations, the courts give deference to the local government’s exercise of its police power.

See *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 4–6 (1974); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926). Certainly, developers in Los Angeles have challenged local land use regulation on the grounds that the regulation failed to meet these standards. See, e.g., *Bixel Assocs. v. City of Los Angeles*, 265 Cal. Rptr. 347 (Ct. App. 1989).

12. CAL. CONST. art. XI, § 7.

13. See DANIEL J. CURTIN, JR. & CECILY T. TALBERT, *CURTIN'S CALIFORNIA LAND USE AND PLANNING LAW* 62 (Solano Press Books 24th ed. 2004) (“In general, cities enact such programs pursuant to their local police power.”).

14. *Bownds v. City of Glendale*, 170 Cal. Rptr. 342, 344 (Ct. App. 1980).

15. CAL. GOV'T CODE §§ 65300 *et seq.*, CAL. GOV'T CODE §§ 65800 *et seq.*

16. CAL. GOV'T CODE §§ 65451, 65452.

17. LOS ANGELES, CAL., ORDINANCE 167,944, Central City West Specific Plan § 11.

18. See *Trent Meredith, Inc. v. City of Oxnard*, 170 Cal. Rptr. 685, 689–90 (Ct. App. 1981).

19. See DAVID R. DIAZ, *BARRIO URBANISM: CHICANOS PLANNING AND AMERICAN CITIES* 237 (Routledge 2005); VICTOR M. VALLE & RODOLFO D. TORRES, *LATINO METROPOLIS* 26 (University of Minnesota Press 2000) (“[T]he political and economic elites of Los Angeles early on decided to sacrifice the eastern hemisphere of the city and county to the demands of industrial production, while everything west of the city would become landscapes of recreation and residence.”); Robert Garcia & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 STAN. J.C.R. & C.L. 143, 153–54 (2005).

20. JASON C. BOOZA, JACKIE CUTSINGER & GEORGE GALSTER, *THE BROOKINGS INSTITUTION, WHERE DID THEY GO? THE DECLINE OF MIDDLE-INCOME NEIGHBORHOODS IN METROPOLITAN AMERICA* 6 (2006).

21. See Steve Hymon, *Land-use power eludes local panels*, L.A. TIMES, Jan. 2, 2008, at B4.

22. See Cary Lowe & William Cipes, *Development on the fly*, L.A. TIMES, Mar. 25, 2007, at M6.

23. NON PROFIT HOUS. ASS'N OF NORTHERN CALIFORNIA, *AFFORDABLE BY CHOICE: TRENDS IN CALIFORNIA INCLUSIONARY HOUSING PROGRAMS* 5 (2006).

24. Jocelyn Y. Stewart, *Affordable Housing Rule Deemed Feasible for L.A.; Requiring developers to include low-income units is good policy, a report concludes*, L.A. TIMES, Mar. 29, 2003, at M4.

25. Jean Merl, *Council Approves 'Living Wage' Law for City Contracts; Labor: with Enough Votes to Override Promised Riordan Veto, Panel Oks Minimum Pay for Lowest-Level Workers. Opponents Say It Signals that L.A. Is Hostile to Business*, L.A. TIMES, Mar. 19, 1997, at A1.

26. City of Los Angeles Living Wage Ordinance, LOS ANGELES ADMIN. CODE §§ 10.37 *et seq.*

27. *Id.*

28. VALLE & TORRES, *supra* note 19, at 25–26.

29. Sharon Bernstein & David Pierson, *L.A. aims for a more urbanized downtown*, L.A. TIMES, Aug. 8, 2007, at A1.

30. Douglas Ring & Sister Diane Donoghue, *Down-to-earth housing; City Hall has to change course or downtown will become a gilded ghetto*, L.A. TIMES, July 24, 2007, at A17.

31. See CAL. GOV'T CODE § 65915.
32. Cara Mia DiMassa, *1-Year Ban OK'd on Loft Conversions*, L.A. TIMES, May 11, 2006, at B1.
33. LOS ANGELES HOMELESS SERVICES AUTHORITY, 2007 GREATER LOS ANGELES HOMELESS COUNT 1 (2007), available at www.lahsa.org/homelesscount.asp.
34. Ring & Donoghue, *supra* note 30, at A17.
35. Crenshaw Corridor Specific Plan, LOS ANGELES, CAL., ORDINANCE 176,230; Conditional Use Approval for Sale of Alcoholic Beverages, LOS ANGELES CITY ORDINANCE 171,681.
36. See ANDREA AZUMA, CTR. FOR FOOD & JUSTICE, URBAN & ENVTL. POLICY INST., FOOD ACCESS IN CENTRAL AND SOUTH LOS ANGELES 5 (2007); Tammy Abdollah, *A strict order for fast food*, L.A. TIMES, Sept. 10, 2007, at A1; Deborah Schoch & Rong-Gong Lin II, *15 years after L.A. riots, tension still high*, L.A. TIMES, Apr. 29, 2007, at B1.
37. Lori Weisberg, *Top planner led agency rebirth; Champion of San Diego's 'vilages' plan heads to L.A.*, SAN DIEGO UNION-TRIB., Jan. 23, 2006, at B1.
38. Steve Hymon, *Planning Commission rejects the status quo*, L.A. TIMES, Apr. 24, 2007, at B1.
39. In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the U.S. Supreme Court held that there must be an "essential nexus" between an ad hoc dedication imposed as a condition of development and the impacts of the development. *Id.* at 837. Then, in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the Court found that the degree of the nexus between the impact and the dedication must be one of "rough proportionality" as assessed by an "individualized determination" with some "quantification." *Id.* at 391. The California Supreme Court considered this "*Nollan/Dolan* heightened scrutiny test" in *Erhlich v. City of Culver City*, 911 P.2d 429 (Cal. 1996), and held that the test applies to fees as well as to dedications, but only to those imposed "on an individual and discretionary basis." *Id.* at 444.
40. Hugo E. Castillo, Comment, *How California Can Harmonize a Tenant's State Rights and a Landlord's Right to Go Out of Business Pursuant to the Ellis Act*, 31 GOLDEN GATE U. L. REV. 251, 253-54 (2001).
41. See CAL. GOV. CODE § 7060(a).
42. *Drouet v. Superior Court*, 73 P.3d 1185, 1188 (Cal. 2003) (citing *Los Angeles Lincoln Place Investors, Ltd. v. City of Los Angeles*, 62 Cal. Rptr. 2d 600 (Ct. App. 1997)).
43. *Id.* (citing CAL. GOV. CODE § 7060.6).
44. *Drouet*, 73 P.3d at 1188.
45. Andy Fixmer, *Condo conversions create council quandary*, L.A. BUS. J., May 22, 2006, at 1.
46. In *DeZerega v. Meggs*, the court addressed the Costa-Hawkins Act's preemptive impact on rent control:

Its overall effect is to preempt local rent control ordinances in two respects. First, it permits owners of certain types of property to adjust the rent on such property at will....Second, it adopts a statewide system of what is known among landlord-tenant specialists as 'vacancy decontrol'...."

DeZerega v. Meggs, 99 Cal. Rptr. 2d 366, 375 (Ct. App. 2000), modified by *DeZerega v. Meggs*, 83 Cal. App. 4th 935C (Ct. App. 2000) (holding that plaintiff landlord improperly evicted defendant tenant under a Berkeley ordinance,

and that the Costa-Hawkins Act explicitly does not preempt the power of local governments to regulate evictions).

47. Costa-Hawkins Rental Housing Act, CAL. CIV. CODE § 1954.50–1954.535 (2001).

48. See 4 WITKIN SUMMARY OF CALIFORNIA LAW—REAL PROPERTY 727 (9th ed. 1998).

49. See *id.*

50. John Hill, *Tenants fear end to rent control; Residents of mobile home parks say Prop. 98 would let owners victimize them*, SACRAMENTO BEE, Mar. 24, 2008, at A1.

51. *Id.*

52. LOS ANGELES, CAL., MUNICIPAL CODE § 151–151.21.

53. Jessica Garrison, *Aid is in their corner for legal fight; In eviction cases, renters who face a lawyer but don't have their own can turn to self-help centers*, L.A. TIMES, Dec. 28, 2006, at B1.

54. Pollard-Terry, *supra* note 6, at K1.

55. Peter Dreier, *New life on leasing; Renters may become real players in L.A. as scarce housing becomes a hot issue*, L.A. TIMES, May 27, 2007, at M5.

56. Fixmer, *supra* note 45, at 44.

57. Nancy Cleeland, *The State; There Goes the Enrollment*, L.A. TIMES, June 11, 2006, at A1.

58. DiMassa, *supra* note 32, at B1.

59. *In Brief Los Angeles County/Los Angeles; Mayor signs plan to raise renters' relocation fees*, L.A. TIMES, Apr. 25, 2007, at B4.

60. *Id.*

61. Recently, the city controller wrote in an audit of the city's housing department: "While the overall goal may be to preserve all existing, assisted multi-family apartments in the City, this may not be possible. A goal that may be more attainable is 'no net loss' whereby the number of affordable units preserved and new units added should not be less than the number lost through 'opting out' or conversion to market rate or condominiums." LAURA N. CHICK, L.A. CITY CONTROLLER, PERFORMANCE AUDIT OF THE LOS ANGELES HOUSING DEPARTMENT'S AFFORDABLE HOUSING & OCCUPANCY MONITORING ACTIVITIES 26 (2007).

62. In one redevelopment area, the No Net Loss standard applies to all housing; in the other, it applies only to residential hotels.

63. Settlement Agreement, *Wiggins v. Comty. Redevelopment Agency*, No. BC 277539, at 9–10 (L.A. Super. Ct.)

64. *Id.*

65. *Id.*

66. Coalition member organizations included, among others, Strategic Actions for a Just Economy (SAJE), Los Angeles Community Action Network (LACAN), Concerned Citizens of South Central Los Angeles, Community Development Technologies Center (CDTech), and LAFLA.

67. CAL. PUB. RES. CODE § 21000 *et seq.*

68. CAL. GOV. CODE § 65590.

69. *Id.* § 65400.

70. CAL. HEALTH & SAFETY CODE § 33000 *et seq.*

71. See discussion of takings jurisprudence, *supra* note 11.

72. See, e.g., Living Wage Ordinance, LOS ANGELES, CAL., ADMIN. CODE §§ 10.37 *et seq.*; CMTY. REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, HOUSING POLICY (2005).

73. 12 U.S.C. § 1701u; 24 C.F.R. Pt. 135.
74. 24 C.F.R. Pt. 135.30(b)(2)(ii)(C).
75. Paul Stanton Kibel, *Los Angeles' Cornfield: An Old Blueprint for New Greenspace*, 23 STAN. ENVTL. L.J. 275, 310 (2004).
76. *Id.* at 313.
77. *Id.* at 315.
78. *Id.*
79. *Id.* at 330.
80. David R. Rice, *The Bus Rider's Union: The Success of the Law and Organizing Model in the Context of an Environmental Justice Struggle*, 26 ENVIRONS ENVTL. L. & POL'Y J. 187, 194-95 (2003).
81. Patrick Moulding, *Fare or Unfair? The Importance of Mass Transit for America's Poor*, 12 GEO. J. ON POVERTY L. & POL'Y 155, 173-74 (2005).
82. Sean B. Seymore, *Set the Captives Free! Transit Inequity in Urban Centers, and the Laws and Policies Which Aggravate the Disparity*, 16 GEO. MASON U. CIV. RTS. L.J. 57, 82-83 (2005).
83. *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002); *Alexander v. Sandoval*, 532 U.S. 275 (2001).
84. David Monsma, *Equal Rights, Governance, and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility*, 33 ECOLOGY L.Q. 443, 461 (2006).
85. *Id.* at 455-56.
86. CAL. GOV. CODE § 65590 *et seq.*
87. *Id.* § 65590(b).
88. *Id.* § 65590(d).
89. *Venice Town Council v. City of Los Angeles*, No BC089678 (L.A. Super. Ct. 1995).
90. *Venice Town Council v. City of Los Angeles*, 55 Cal. Rptr. 2d 465 (Ct. App. 1996).
91. City of Los Angeles Mello Act Settlement Agreement [hereinafter Settlement].
92. City of Los Angeles Interim Administrative Procedures for Implementing the Mello Act [hereinafter Procedures].
93. Settlement § V(G.) (1); Procedures § 5.0.
94. Settlement § V(G.) (2); Procedures § 7.3.1.
95. Settlement § V(D); Procedures § 7.4.1.
96. POWER has organized around individual development projects in the coastal zone, demanding compliance with the Mello Act settlement and the inclusion of as many affordable units as possible.
97. Community Redevelopment Agency of the City of Los Angeles, Proposed Budget 2007-2008.
98. CAL. HEALTH & SAFETY CODE § 33413(b)(2)(A)(i). An agency can also meet up to half its inclusionary obligation for a project area by acquiring affordability covenants for units that are not already affordable. CAL. HEALTH & SAFETY CODE § 33413(b)(2)(B). An agency can also meet inclusionary obligations from one project area by developing affordable housing outside of that project area at twice the rate as would be required inside the project area. CAL. HEALTH & SAFETY CODE § 33413(b)(2)(A)(iii).
99. CAL. HEALTH & SAFETY CODE § 33413(b)(1). Inclusionary requirements apply to project areas with final plans adopted after 1976, land added to existing

project areas after 1976, and to project areas adopted prior to 1976 but whose time limits have been extended. CAL. HEALTH & SAFETY CODE § 33413(d)(1).

100. CAL. HEALTH & SAFETY CODE §§ 33411.1-33412.

101. CAL. HEALTH & SAFETY CODE § 33411.1.

102. CAL. HEALTH & SAFETY CODE §§ 33415, 33410; *see also* Uniform Relocation Act, 42 U.S.C. § 4601 *et seq.*; 49 C.F.R. § 24.1; 42 U.S.C. § 5304(d); 24 C.F.R. § 42.1; California Relocation Assistance Act, CAL. GOV. CODE § 7260 *et seq.*; Relocation and Real Property Acquisition, CAL. CODE REGS., tit. 25, § 6000 *et seq.*

103. CITY OF LOS ANGELES OFFICE OF THE CONTROLLER, FINANCIAL AND COMPLIANCE AUDIT OF THE COMMUNITY REDEVELOPMENT AGENCY (CRA) DEVELOPMENT LOANS AND DEVELOPERS' SUBSIDIES 25 (Oct. 25, 2004); CITY OF LOS ANGELES OFFICE OF THE CONTROLLER, FOLLOW-UP AUDIT OF THE COMMUNITY REDEVELOPMENT AGENCY 5, 17 (Sept. 28, 2006).

104. FOLLOW-UP AUDIT, *supra* note 103, at 17.

105. *Id.*

106. Little Tokyo Redevelopment Project Plan § 604.

107. *Related Cos. Adds 'Affordable' Units to Little Tokyo Plan*, L.A. GARMENT & CITIZEN, Jan. 26, 2007, www.garmentandcitizen.com/category/archives/archived-news-stories/2007-01-26-0_1253.php.

108. CAL. PUB. RES. CODE § 21061.

109. George Lefcoe, *Should CEQA Require Local Governments to Analyze the Impacts of Development Displaced by Restrictive Land Use Planning?* 33 *ECOLOGY L.Q.* 1015, 1023 (2006).

110. CAL. GOV. CODE § 65583.

111. *O'Loane v. O'Rourke*, 42 Cal. Rptr. 283, 288 (Ct. App. 1965).

112. CAL. GOV. CODE § 65583.

113. *Id.* § 65583 (c)(3).

114. *Id.* § 65583.2.

115. CALIFORNIA HOUS. & CMTY. DEV., STATUS OF HOUSING ELEMENTS IN CALIFORNIA (2004), *available at* www.hcd.ca.gov/hpd/hrc/plan/he/2004hes.pdf.

116. CALIFORNIA DEP'T OF HOUS. & CMTY. DEV., 2007 HOUSING ELEMENT COMPLIANCE REPORT 9-11 (2007).

117. Housing Element Compliance and Building Permit Issuance in the SCAG Region, April 2006; Table 2, *available at* www.scag.ca.gov/Housing/pdfs/summit/housing/SCAG-Housing-Permit-April2006.pdf. Because there is no uniform, reliable data source for the creation of lower-income housing units, SCAG used Lower Income Housing Tax Credit projects and units as a minimum measure of achievement.

118. *Kings County Farm Bureau v. City of Hanford*, 270 Cal. Rptr. 650, 676 (Ct. App. 1990).

119. California Rural Legal Assistance and the California Affordable Housing Law Project filed the suit on behalf of a low-income resident of Fillmore.

120. *See, e.g.*, S.B. 2 (effective January 1, 2008); *see also* CAL. GOV. CODE § 65583.2 (enacted through A.B. 2348, effective January 1, 2005).

121. CMTY. REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CRA HOUSING POLICY (Aug. 4, 2005).

122. *Id.* § 9.03.3.2.

123. *Id.* § 11.0.

124. Los Angeles City Council File Nos. 05-1173-S1, 05-1174, 05-1174-S1, 05-1175, 05-1175-S1.

125. CAL. GOV. CODE § 66001.

126. In Los Angeles, local groups have used the California Public Records Act, CAL. GOV'T CODE § 6250, *et seq.*, to obtain, redevelopment agency records of affordable housing, early CEQA submissions from developers, and other documents.

127. *See Hymon, supra* note 21.

128. 1 WITKIN, SUMMARY OF CALIFORNIA LAW—CONTRACTS § 685 (10th ed. 2005).