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Issue #20

## **California Supreme Court Finds Sex Offender Residency Restrictions Under Jessica’s Law Unconstitutional As Applied; Cities Should Review Local Ordinances**

The California Supreme Court issued a decision on Monday, March 2, in *In re Taylor* — the case challenging the constitutionality of residency restrictions under Proposition 83, also known as Jessica’s Law. *For more, see Page 2.*



## **California Supreme Court Provides Guidance on the “Unusual Circumstances Exception” From Applying a Categorical Exemption under CEQA**

On Monday, March 2, the California Supreme Court issued its opinion in *Berkeley Hillside Preservation v. City of Berkeley*, clarifying and providing guidance to cities on the use of categorical exemptions for projects under the California Environmental Quality Act (CEQA). *For more, see Page 2.*



## **CalRecycle Workshop Will Review Greenhouse Gas Reduction Grant and Loan Programs**

CalRecycle will hold a workshop on March 19 from 1:30-4:00 p.m. to discuss the proposed FY 2015–16 eligibility criteria for the Greenhouse Gas Reduction Grant and Loan Programs ([Organics Grant Program](#) and [Recycled Fiber, Plastic, and Glass Grant Program](#)). The workshop will be held at the Cal/EPA Headquarters Building in Sacramento. *For more, see Page 3.*

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Jessica's Law received 70 percent voter approval when it passed in 2006. Among many other provisions, it added Penal Code section 3003.5(b) to prohibit sex offenders from living within 2,000 feet of a school or park, and expressly allowed cities to increase that distance or include other prohibited locations by ordinance.

The intended purpose of Jessica's Law was to protect children from sexual predators. On Monday, the California Supreme Court found that residency restrictions unconstitutionally infringed upon the liberty and privacy interests of registered sex offender parolees in San Diego County, and failed to accomplish the intended purpose of Jessica's Law as a whole.

The residency restrictions in Jessica's Law effectively banned registered sex offender parolees from 97 percent of available residential properties in San Diego County. According to the Court, this hindered registered sex offender parolees from accessing rehabilitative services and often caused them to resort to homelessness and transiency, resulting in a greater, rather than a reduced, public safety risk.

Because the law hampered efforts to monitor, supervise, and rehabilitate parolees, the Court concluded it bore no rational relationship to advancing its stated purpose of protecting children from sexual predators. Therefore, Penal Code section 3003.5(b) was unconstitutional as applied. The Court noted, however, that the California Department of Corrections and Rehabilitation retains authority to impose individualized discretionary parole conditions, including residency restrictions, on a case-by-case basis.

Although the case addressed only the statewide minimum residency restrictions in Jessica's Law, cities with local ordinances on the subject should consider asking their city attorney to review the enforceability of such ordinances in light of the court's ruling in this case.

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**'CEQA' Continued from Page 1...**

The city of Berkeley, in approving a permit application to build a large single-family house, relied on two categorical exemptions from CEQA review for the project (Class 3 for constructing small structures including a single-family residence, and Class 32 for an "in-fill development" project). The Court of Appeal held the exemptions did not apply, invalidated the permit approval and ordered preparation of an environmental impact report, based on CEQA Guidelines section 15300.2(c) that states: "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment *due to unusual circumstances.*" (Italics added.)

The Supreme Court reversed and remanded the case in a majority opinion. The decision confirms that cities should apply a two-part test for determining whether the "unusual circumstances exception" under section 15300.2(c) precludes a city from relying on a categorical exemption(s) for a project. First, the city must determine whether there are any "unusual circumstances" present (subject to the deferential "substantial evidence" standard of review). If not, then the city may rely on a categorical exemption(s) and can look to the local conditions in evaluating unusual circumstances. However, if there are any unusual circumstances, the agency must then determine whether there is "a reasonable possibility" that the unusual circumstance will produce "a significant effect on the environment" (subject to the less deferential "fair argument" standard of review). If not, then the city may rely on the categorical exemption(s) for the project.

The California Supreme Court has accepted ten cases covering a broad range of issues under CEQA in the past few years. The League has filed or will file amicus ("friend of the court") briefs or letters on behalf of California cities in eight of those cases. The Berkeley Hillside ruling is the second decision to emerge from the court from the ten cases, providing much-anticipated clarity for cities on when a categorical exemption from CEQA review may apply to a project.

The League congratulates the city of Berkeley on the ruling and also thanks Amanda J. Monchamp and Melanie Sengupta, with the law firm of Holland & Knight for preparing the League's amicus brief filed in the case.

**'CalRecycle' Continued from Page 1...**

These grants will promote infrastructure development at California facilities that achieve greenhouse gas emission reductions by diverting more materials from landfills and producing beneficial products. Grants are targeted to build or expand organics infrastructure, such as composting and anaerobic digestion, or reduce food waste. Other targeted activities include new or expanded infrastructure for manufacturing products with recycled content fiber, plastic, or glass.

Webinar capabilities will be available for those that are not able to attend in person. The agenda and details about the webcast will be sent to the [Greenhouse Gas Reduction Programs Listserv](#). For questions about the webcast email [GHGReductions@CalRecycle.ca.gov](mailto:GHGReductions@CalRecycle.ca.gov).

For more information visit [Climate Change: Proposed Greenhouse Gas Reduction Grant and Loan Programs](#).

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