

WEBVTT

1

00:00:06.800 --> 00:00:13.680

Jackson Nutt-Beers / SPUR: Everybody welcome. We're just gonna give folks a couple of minutes to get into the zoom room, so we'll be starting moment to

2

00:00:33.710 --> 00:01:02.209

Jackson Nutt-Beers / SPUR: Okay. And now it's a good time as any happy election day. Everyone My name is Jackson Up bears, and I am one of Spurs public programming associates. Thank you So much for joining us for this digital discourse today. Many of you here today are spur members. So thank you so much for your support. If you're not a member. I encourage you to join to support Spurs ongoing work and using education, policy, analysis, and advocacy to make our cities and region a more prosperous, sustainable, and equitable places to live.

3

00:01:02.220 --> 00:01:32.210

Jackson Nutt-Beers / SPUR: Your financial support enables us to continue our work, including the hosting of programs like today's, you'll find more information about membership online as spurred org slash. Join our next public Forum. Public Forum is scheduled for tomorrow at twelve thirty Pm. In person at the Urban Center. It is called about last night an election recap. Today's elections put hot button issues before the voters in San Francisco and across the United States. Uh, what will these results mean for the city, and a much love, Tradition

4

00:01:32.220 --> 00:01:43.879

Jackson Nutt-Beers / SPUR: and local political analysts provide a witty and incisive post selection recap. This form will be held on the second floor of the Per Urban Center, located at six hundred and Fifty-four Mission Street in San Francisco

5

00:01:44.070 --> 00:02:02.320

Jackson Nutt-Beers / SPUR: Today's digital discourse is an untapped remedy to California's housing crisis. Since one thousand nine hundred and ninety affordable housing projects have been able to use for the Housing Accountability Act calls builders remedy to bypass, zoning codes and plans, not in compliance with housing element law.

6

00:02:02.330 --> 00:02:14.610

Jackson Nutt-Beers / SPUR: Until recently developers were not submitting building building remedy projects to bypass local ordinances. Now thousands of units of builders remedy housing are being proposed in jurisdictions like Santa Monica.

7

00:02:14.620 --> 00:02:44.610

Jackson Nutt-Beers / SPUR: Today we will be taking a deep dive into Chris Almendorf's paper a primer on California's building builder's remedy for housing element and non-compliance to learn more about the builder's remedy, and what could enable builders to make even better use of this tool in the future. Today's forum will be moderated by Spurs Senior advisor, Sarah Karlinski. Sarah is an expert in housing and nineties policy. She has led the publication of numerous spur policy reports on topics ranging from housing, affordability and

8

00:02:44.620 --> 00:02:58.580

Jackson Nutt-Beers / SPUR: mit Ctl and the Bay area to adapt to disaster, resilience to historic preservation prior to joining spur, Sarah developed affordable housing throughout the bay area with mid-pen housing, and with that Sarah I will turn it over to you to introduce our panelists one hundred and fifty.

9

00:02:58.920 --> 00:03:28.879

Sarah Karlinsky: Great. Thank you so much, Jackson. Um, and thanks everyone for being here today. I'm really excited for this conversation. Um, I will just say when we first put the panel together. The panel was Filter's remedy. Why is nobody using it? And we've actually had to change the um description of the uh of the Forum because of the ways in which um there's kind of fast moving changes in the landscape, and there are more and more of these builders remedy projects that are um that are coming up. So

10

00:03:28.890 --> 00:03:47.270

Sarah Karlinsky: so. Um i'm really excited. It's it's super timely. Um. So i'm just gonna start off by introducing the panel. Um, we have with us Professor Chris Elmendorf, Uh. Professor Ellen dorp is a Martin Luther, King, junior Professor of law at Uc Davis, and he's an expert in California landies and housing raw.

11

00:03:47.320 --> 00:04:03.290

Sarah Karlinsky: Uh, We also have mia kang mia, has over twenty-five years of experience in affordable housing finance and development, and has entitled and constructed more than two thousand five hundred affordable multi-family housing units in California, with over five hundred million dollars.

12

00:04:03.430 --> 00:04:33.390

Sarah Karlinsky: Her breakthrough projects have overcome numerous obstacles to produce award-winning communities that exemplify social responsibility and sustainable design. Mia also advocates for smart growth policies and legislation she was a lead advocate and sponsor for a B uh seven hundred and forty-four, ab one thousand five hundred and sixty-eight and a b twenty, ninety uh seven, um, and last, but certainly not least, we have Dylan, Casey and Dylan is the executive director of the California Renters Legal

13

00:04:33.400 --> 00:05:02.329

Sarah Karlinsky: Advocacy and Education Fund, a legal advocacy nonprofit dedicated to improving housing, affordability and accessibility by enforcing state housing laws in exclusionary cities throughout California. So basically we have this all star panel here today to talk about builders remedy. We're going to start off with a presentation by Chris, who's going to kind of lead us through what this tool is. Um, what it means from a legal context. Uh, we're then going to go to Dylan, who's going to talk about some of the um The

14

00:05:02.340 --> 00:05:15.919

Sarah Karlinsky: uh projects um themselves that are being proposed, and then mia is going to help us understand from a developer's perspective, Why or why not? People might use this particular tool? Um. So without further ado. Chris, Please take it away.

15

00:05:19.840 --> 00:05:21.340

Sarah Karlinsky: Chris. You are on mute.

16

00:05:23.410 --> 00:05:26.329

Chris Elmendorf / University of California, Davis: I am on mute, but no longer correct.

17

00:05:26.770 --> 00:05:30.820

Chris Elmendorf / University of California, Davis: Okay? Nice to meet everybody. Um, it's great to be here.

18

00:05:30.830 --> 00:05:52.059

Chris Elmendorf / University of California, Davis: Uh, I put together a set of slides uh which provide a fairly comprehensive introduction to the builder's remedy. However, I'm only going to talk about them at a high level uh the full slide deck is available on, or will be available on spurs uh website, along with a little primer that I wrote about uh the builder's remedy. So

19

00:05:52.070 --> 00:06:11.729

Chris Elmendorf / University of California, Davis: uh, just to lay out the plan of attack Here I want to first explain the core idea. Then i'll say a little bit about the origin story where the builders remedy came from uh the thirty year period of quiescence or non-use that followed, and then, uh, briefly touch on some of the complications uh that remain. Okay, So here's the big idea.

20

00:06:11.750 --> 00:06:41.720

Chris Elmendorf / University of California, Davis: California requires cities to adopt a housing element every eight years, which shows how the city will uh accommodate its share of regionally

needed housing. Um, But a housing element may uh not be adopted by the deadline, or it may be substantively inadequate in some way, and under the Housing Accountability Act. If you're in a city uh that doesn't have a uh compliant housing element uh the city forfeits its authority uh to rely on its own in code, or it's general

21

00:06:41.730 --> 00:06:45.180

Chris Elmendorf / University of California, Davis: plan to deny an affordable project which is defined,

22

00:06:45.740 --> 00:06:57.240

Chris Elmendorf / University of California, Davis: has twenty percent low income or a hundred percent moderate income. Uh, And also the city may not impose conditions of approval that render the project infeasible. Okay, that's the idea.

23

00:06:57.250 --> 00:07:13.639

Chris Elmendorf / University of California, Davis: Um, this is cashed out. Um um in more detail in uh subdivision d of the ha uh which defines the permissible grounds on which the city may deny or render infeasible uh and affordable project.

24

00:07:13.650 --> 00:07:29.369

Chris Elmendorf / University of California, Davis: Um! So what are those grounds uh one? The city is in compliance with the housing element law and is met. It's uh affordable housing targets. Second, the project violates written objective health or safety standards that were in effect when the project application was deemed complete.

25

00:07:29.380 --> 00:07:35.600

Chris Elmendorf / University of California, Davis: Uh third, the city has to deny the project in order to comply with a specific State or Federal law.

26

00:07:35.650 --> 00:07:54.089

Chris Elmendorf / University of California, Davis: Fourth, the project site was zoned for agriculture, resource, preservation, or lacks adequate water or waste water facilities. And then, finally, the project is inconsistent with the zoning or general plan. I apologize for the background, noise, and the city is in compliance with the housing element. Law, right? That's the key point

27

00:07:54.100 --> 00:08:01.730

Chris Elmendorf / University of California, Davis: for the city to rely on its own encoded, or general plan to deny the project, the city must be in compliance with the housing element Law one.

28

00:08:02.190 --> 00:08:17.049

Chris Elmendorf / University of California, Davis: But also this should make clear that just because the city is out of compliance doesn't mean that the project automatically gets approved right? There may be a health or safety problem. There may be some other specific State or Federal law,

29

00:08:17.060 --> 00:08:27.359

Chris Elmendorf / University of California, Davis: and or there may be zoning for agricultural resource, preservation, or a lack of water or wastewater facilities that would justify denial of the project. One:

30

00:08:27.750 --> 00:08:32.989

Chris Elmendorf / University of California, Davis: Okay, um origins. Where does this uh idea come from?

31

00:08:33.000 --> 00:08:48.030

Chris Elmendorf / University of California, Davis: Uh: well, if you go way back in time, it comes from uh the New Jersey uh uh courts in the nineteen seventy S. And nineteen eighties. But it comes to California in nineteen ninety through uh a bill that amended the Housing Accountability Act

32

00:08:48.040 --> 00:09:08.149

Chris Elmendorf / University of California, Davis: um, and transform the Housing Accountability Act into a law that was just about um um making cities uh approve projects that comply with their zoning to a law that was also about making cities or threatening cities uh with real severe consequences if they didn't adopt a compliant housing element.

33

00:09:08.160 --> 00:09:38.150

Chris Elmendorf / University of California, Davis: Um! So Specifically it was a coalition of uh the Bay Area Council um and affordable housing advocates, including uh uh, California uh rural legal assistance foundation and others. Um, the teamed up behind this bill uh that created the new affordable housing section of the Haa Um. And this is the San Francisco Chronicle, writing in one thousand nine hundred and ninety, describing this bill as powerful and designed to bludgeon exclusive suburban communities into accepting

34

00:09:38.160 --> 00:09:39.640

low-income housing.

35

00:09:39.690 --> 00:09:56.109

Chris Elmendorf / University of California, Davis: Uh, and indeed there was a lot of anxiety at the time within those suburban communities. Um! There was fierce opposition within the Governor's office from Opr. Which strongly opposed the bill; whereas Hcd. On the other hand, was lobbying for the Governor to approve it,

36

00:09:56.180 --> 00:09:58.250

Chris Elmendorf / University of California, Davis: and after the bill is passed

37

00:09:58.260 --> 00:10:18.309

Chris Elmendorf / University of California, Davis: we see candidates uh here in Berlin game, a city council candidate, saying, I am running for City council on the platform of repealing the builder's remedy, because if we don't, get rid of it, a developer could conceivably build a high rise building in the middle of an R. One neighborhood, right? So these are the fears that are getting banded around. Uh, uh, at the time.

38

00:10:18.330 --> 00:10:22.910

Chris Elmendorf / University of California, Davis: Um! But did those fears materialize? No, they didn't.

39

00:10:22.980 --> 00:10:32.659

Chris Elmendorf / University of California, Davis: Instead, we enter what I call the period of quiescence uh a thirty year period, where the builders remedy is on the books, but it is not actually used.

40

00:10:32.670 --> 00:10:49.970

Chris Elmendorf / University of California, Davis: Um! There's only one documented use before or attempted use that I've been able to discover. Um, uh, despite repeated efforts. Uh at searching for examples. Um um! During this thirty year period um! And that one use or attempted use was in Albany.

41

00:10:49.980 --> 00:11:02.890

Chris Elmendorf / University of California, Davis: Uh. In which a homeowner tried to legalize an existing ad you an existing but illegal ad You and the city said, Oh, you need to provide two off street parking spaces if you're going to do that.

42

00:11:02.900 --> 00:11:13.049

Chris Elmendorf / University of California, Davis: And the homeowner said, No, you're not in compliance with the housing element Law, you can't apply your zoning or general plan to me. You need to legalize my Edu without any additional off-three parking.

43

00:11:13.190 --> 00:11:23.919

Chris Elmendorf / University of California, Davis: Ah! And the planning director thereupon made a finding that the Adu would quote, have adverse impacts on public health or safety by increasing the potential for residents to park on the Street two hundred, and

44

00:11:24.180 --> 00:11:37.300

Chris Elmendorf / University of California, Davis: denied the project and uh the homeowner either didn't have the resources or motivation to sue. So So much for the dramatic, powerful new uh uh builders remedy um,

45

00:11:37.310 --> 00:11:58.390

Chris Elmendorf / University of California, Davis: and uh people either uh forgot about it, or we're too fearful to use it. We we don't really know um Until a few years ago I started asking through Twitter, and otherwise. Come on. Someone's got to have an example of somebody using this, or even considering using this remedy that's been on the books for so long. Why, there are no examples of this. Um and

46

00:11:58.400 --> 00:12:09.440

Chris Elmendorf / University of California, Davis: um, there's no sort of consensus view that uh developed in response to my uh um periodic tweets about the matter. Um, uh, but if there is um,

47

00:12:10.000 --> 00:12:14.599

Chris Elmendorf / University of California, Davis: if you want to know my own view, my own view is, it was just too risky.

48

00:12:14.970 --> 00:12:36.039

Chris Elmendorf / University of California, Davis: Uh, there are a lot of complications in the law which we'll get to in a bit um. And if a developer were to propose, a builder's remedy project, even if it weren't quite so dramatic as a apartment tower in an r one zone um they would likely aggravate uh um to put it mildly. The city council with whom they're dealing. They would burn bridges.

49

00:12:36.050 --> 00:13:02.269

Chris Elmendorf / University of California, Davis: Um! And most housing approvals in California, especially for multi family housing are discretionary. So why um burn your reputation on a very high risk project where the law is Unclear? Um, and you may not get the project entitled uh uh, after uh, much effort in litigation. Um! Why, why take that risk? If your if your reputation, your relationship with the city um would suffer

50

00:13:02.280 --> 00:13:03.280

Chris Elmendorf / University of California, Davis: um,

51

00:13:03.290 --> 00:13:33.260

Chris Elmendorf / University of California, Davis: and I think that explanation is probably a pretty accurate one as to why the builders remedy wasn't used up for many years, but I think now um uh developers and cities alike are are playing on a new field. Um! The world has changed so. First um housing element. Requirements have been dramatically ramped up between um the last cycle and the current cycle. So the the arena targets for housing production are much higher, thanks to Sba. Twenty-eight two to three times higher than in the last

52

00:13:33.270 --> 00:13:56.709

Chris Elmendorf / University of California, Davis: uh cycle. Um! They're much more stringent requirements on the books. Um! That make it hard for cities to get away with, assigning their housing to sites that that are impossible to develop. And there's new uh affirmative furthering fair housing requirements. Um! That are pushing cities to rezone uh neighborhoods that were uh traditionally uh very low density and and exclusionary.

53

00:13:56.810 --> 00:14:16.190

Chris Elmendorf / University of California, Davis: Um Second, there's a high level uh political commitment um from uh new, some and others in the administration to make uh this process work. Um! Put those two things together, and it's become much harder for cities to get housing element approved right? So you have many more cities, at least on paper or out of compliance with the housing element. Law,

54

00:14:16.200 --> 00:14:19.520

Chris Elmendorf / University of California, Davis: then, beyond that, the Housing Accountability Act,

55

00:14:19.530 --> 00:14:48.210

Chris Elmendorf / University of California, Davis: not focusing on this. One uh builder's remedy provision, but more generally has been remade uh in ways that greatly strengthen it. Um, and give developers. Um. And housing advocates really much stronger grounds to sue on uh and much stronger remedies in cases where um uh projects are are denied or reduced in density. Um.



And finally, there are new um pathways. Through Sb. Thirty-five, And now, Ab, two thousand and eleven

56

00:14:48.220 --> 00:15:07.589

Chris Elmendorf / University of California, Davis: to get um at least some projects approved ministerially. And so you're starting to see some uh developers say, saying, Look, I can afford to burn bridges with a builder's remedy project, because if it's denied um, i'm still going to be able to get, or even if I do burn those bridges. I'm still going to be able to get other projects approved.

57

00:15:07.680 --> 00:15:16.749

Chris Elmendorf / University of California, Davis: I'm going to get other projects approved because they're ministerial or I'm going to get other projects approved, because if they're disapproved, i'm going to be able to sue under Theha, and so

58

00:15:16.760 --> 00:15:43.260

Chris Elmendorf / University of California, Davis: um! It's no longer the case that developers to have a viable business model are entirely dependent, and maybe mia will dispute this, but no longer, or they're not as strongly dependent as they once were on being in the good graces of uh the city councils uh where they work, and I think that's made um at least some developers willing to take a uh risks on Builder's remedy projects where they wouldn't have risked them uh previously.

59

00:15:43.570 --> 00:15:44.680

Chris Elmendorf / University of California, Davis: Um,

60

00:15:45.290 --> 00:15:54.099

Chris Elmendorf / University of California, Davis: last thing I should say there's now a process under sp three hundred and thirty, which was passed just a couple of years ago to file a preliminary application

61

00:15:54.110 --> 00:16:22.380

Chris Elmendorf / University of California, Davis: uh, which is not a terribly expensive process to go through, and when you file that preliminary application that vests the rules that apply to your project. Uh, and an important um um memo. The Hc. Released uh, just a couple of months ago. Uh. Hc. Or a month ago, Hcd. Confirmed that the filing of a preliminary application, while a city is out of compliance um with the housing element. Law vest, the projects, eligibility for the builder's remedy.

62

00:16:22.510 --> 00:16:23.890

Chris Elmendorf / University of California, Davis: In other words,

63

00:16:23.970 --> 00:16:41.460

Chris Elmendorf / University of California, Davis: um, even if city drags out the approval process for a couple of years, and during that period adopts its housing element in a compliant form. The city still has to process the developers application as if the city were out of compliance with the housing element law

64

00:16:41.470 --> 00:16:47.339

Chris Elmendorf / University of California, Davis: again, because the preliminary application was filed when the city was, in fact, out of compliance.

65

00:16:47.900 --> 00:16:55.600

Chris Elmendorf / University of California, Davis: Okay, but uh, there are complications uh uh a lot of them. Um! And um

66

00:16:55.610 --> 00:17:24.699

Chris Elmendorf / University of California, Davis: uh, because we are, or at least I am uh closing it on the twelve minute, mark. I'm going to leave these complications uh for the Q. A. Uh. Or for further investigation by anybody who wishes to download these slides from Aspir's website. Thanks, Chris. Actually, um! I know we gave you. I really appreciate you meeting meeting your twelve minute, mark. But I was wondering if you could talk about two things when specifically the sequel piece, because I think it's really important. And then, secondly,

67

00:17:25.020 --> 00:17:40.920

Sarah Karlinsky: um can a developer um propose a project on any parcel regardless of zoning, or must it have an underlying residential or mixed use? Zoning designation could just answer those two pieces, and then we'll move on to Dylan.

68

00:17:40.980 --> 00:17:52.149

Chris Elmendorf / University of California, Davis: Yes, uh the first piece sequence um is a mess. Um uh, because um, there's not a an established

69

00:17:52.240 --> 00:18:01.839

Chris Elmendorf / University of California, Davis: um legal remedy When a city um prolongs its secret process unnecessarily.

70

00:18:01.960 --> 00:18:18.060

Chris Elmendorf / University of California, Davis: So the concern is in the context of builders remedy projects. Is that um the four hundred and sixty-nine stevenson uh fiasco from San Francisco would be repeated over and over and over again, Right? Whereas city would

71

00:18:18.070 --> 00:18:36.459

Chris Elmendorf / University of California, Davis: planning Department would conclude its sequel. Review. Somebody who wants to block the project will appeal on the secret clearance to the City council and the City Council will make some completely unwarranted under sqa determination that the secret documentation is inadequate,

72

00:18:36.470 --> 00:18:39.269

Chris Elmendorf / University of California, Davis: and say you have to conduct additional studies,

73

00:18:39.490 --> 00:18:51.950

Chris Elmendorf / University of California, Davis: and there's no remedy, or I won't say, there's no remedy. There may be a remedy for this under the Housing Accountability Act, but it's certainly not clear whether there's a remedy for this under the Housing Accountability Act. Um,

74

00:18:51.960 --> 00:19:08.400

Chris Elmendorf / University of California, Davis: and so cities may effectively dare developers to you know. Go to court and try to make them finish the sequel process. Um! Instead of actually uh just outright denying the project which would violate the um uh the ha!

75

00:19:08.410 --> 00:19:25.859

Chris Elmendorf / University of California, Davis: And on the second question, uh, is there a um requirement that the uh project that the project site be zone residential? No. The only requirement with respect to the zoning of the project site is that it not be zoned for agriculture or resource preservation

76

00:19:26.840 --> 00:19:30.570

Sarah Karlinsky: Great. Thank you so much. Okay, Dylan.

77

00:19:31.430 --> 00:19:32.989

Sarah Karlinsky: Let's go to you.

78

00:19:34.200 --> 00:19:42.160

Dylan Casey / CaRLA: Everyone. Um, thanks, Chris. I uh. So. Since Chris has gone through some of the um,

79

00:19:42.510 --> 00:19:47.430

Dylan Casey / CaRLA: some of the legal background in the builder's remedy. I thought it would be interesting to look at

80

00:19:47.680 --> 00:20:05.979

Dylan Casey / CaRLA: what I think is probably a good thing to consider when shaping a builder's remedy proposal. Um, and then go through real quick a couple of uh the developments that have actually been proposed in Santa Monica. And look at how uh those developers are are thinking of shaping their projects.

81

00:20:05.990 --> 00:20:12.889

Dylan Casey / CaRLA: I have shaped projects,

82

00:20:13.760 --> 00:20:24.729

Dylan Casey / CaRLA: awesome. Thank you. So before I get into the projects uh i'll talk a little bit about how I think I would go about trying to shape a project under the builder's remedy.

83

00:20:24.760 --> 00:20:38.489

Dylan Casey / CaRLA: Um! It's probably at that, like i'm not a developer uh we have been talking to developers in the bay area that are keenly interested in taking advantage of it. So we've gone through this process on a few different sites.

84

00:20:38.660 --> 00:20:53.080

Dylan Casey / CaRLA: Um! And I think the the main bullet points I would look at are one. Make sure you time your application, so that the city is actually or you're as sure as possible that the city is, does not have an adopted

85

00:20:53.090 --> 00:21:05.199

Dylan Casey / CaRLA: housing element that is, in substantial compliance. That's mostly a timing issue. But you just need to have your application ready to go, and be as sure as possible about the status of the housing element at that time.

86

00:21:05.800 --> 00:21:09.900

Dylan Casey / CaRLA: Um, just start with something. Whatever is

87

00:21:09.930 --> 00:21:15.010

Dylan Casey / CaRLA: development that'd be the most feasible and marketable to build on that site and start there

88

00:21:15.950 --> 00:21:32.789

Dylan Casey / CaRLA: next. I would go look at whether any of the other allowed um justifications for denial might apply on the site. Um. In general, I think those are going to be pretty rare. The main one is whether there's a health and safety impact on the site, and I think that

89

00:21:32.800 --> 00:21:38.890

Dylan Casey / CaRLA: would be extremely rare. But you can imagine some kind of site specific condition.

90

00:21:39.190 --> 00:21:47.220

Dylan Casey / CaRLA: I don't think the justification that historical case relating to traffic could. Um,

91

00:21:47.610 --> 00:21:51.029

Dylan Casey / CaRLA: I don't think that would stand up so legitimate health and safety impact,

92

00:21:51.330 --> 00:21:52.559

Dylan Casey / CaRLA: I mean.

93

00:21:52.760 --> 00:22:07.369

Dylan Casey / CaRLA: And next, I think I would look at the all this zoning and development standards in the site, and do my best to comply with um with those standards as sort of a gesture of goodwill, even though I think there's a good argument that

94

00:22:07.380 --> 00:22:14.830

Dylan Casey / CaRLA: if anything leads to any of those standards makes the development less feasible. You shouldn't have to

95

00:22:15.020 --> 00:22:16.190

Dylan Casey / CaRLA: um.

96

00:22:23.480 --> 00:22:33.169

Dylan Casey / CaRLA: And then, lastly, of course, I would do my best to avoid any secret issues by looking at the environmental impacts on the site, and what level of sequel would be required?

97

00:22:33.190 --> 00:22:40.469

Dylan Casey / CaRLA: Most uh sequel exemptions would are um require zoning

98

00:22:40.550 --> 00:22:58.750

Dylan Casey / CaRLA: compliance or compliance with local zoning and general plan standards so well you wouldn't necessarily qualify for an exemption. You could use an exemption as a baseline to sort of make the argument that the project shouldn't have or shouldn't be viewed to have significant environmental impacts.

99

00:22:59.940 --> 00:23:06.620

Dylan Casey / CaRLA: So that being said, let's look at how a couple of these projects look at what the underlying zoning looks looks like,

100

00:23:08.250 --> 00:23:09.790

Dylan Casey / CaRLA: There we go.

101

00:23:13.860 --> 00:23:21.499

Dylan Casey / CaRLA: Okay. The first one is this project: one thousand two hundred and fifteen nights, Nineteenth Street affordable housing.

102

00:23:21.560 --> 00:23:30.980

Dylan Casey / CaRLA: Um. And this is a project that is being proposed for this long, narrow, parking lot on Nineteenth Street, just off Ah, Wilshire Boulevard in Santa Monica.

103

00:23:31.570 --> 00:23:35.509

Dylan Casey / CaRLA: This project is being proposed by an affordable housing developer.

104

00:23:35.830 --> 00:23:43.630

Dylan Casey / CaRLA: It is, uh being built to satisfy the offsite inclusionary housing requirements for a couple of other developments nearby.

105

00:23:43.800 --> 00:23:45.010

Dylan Casey / CaRLA: Um

106

00:23:46.050 --> 00:23:55.550

Dylan Casey / CaRLA: and the developer has already submitted a density bonus project for the same site. I have not. I don't actually have that application, but um,

107

00:23:56.030 --> 00:24:03.530

Dylan Casey / CaRLA: I don't know if it's the exact same project, or if it would require rezoning um, or if it just a density bonus under the current zoning.

108

00:24:03.740 --> 00:24:09.429

Dylan Casey / CaRLA: But lastly, the site is listed for thirty four units of affordable housing

109

00:24:09.560 --> 00:24:12.700

Dylan Casey / CaRLA: under the Santa Monica housing element.

110

00:24:12.960 --> 00:24:18.080

Dylan Casey / CaRLA: That is exactly what the developer is proposing here under the builder's remedy.

111

00:24:18.640 --> 00:24:20.980

Dylan Casey / CaRLA: So this is what the building would look like.

112

00:24:21.320 --> 00:24:29.649

Dylan Casey / CaRLA: Um to left. There is another building that I believe, is already been approved, or is in the pipeline, but the affordable buildings to the right,

113

00:24:30.580 --> 00:24:34.609

Dylan Casey / CaRLA: it would have thirty-four units, a hundred percent affordable

114

00:24:34.730 --> 00:24:37.109

Dylan Casey / CaRLA: um sixty feet tall,

115

00:24:37.350 --> 00:24:44.660

Dylan Casey / CaRLA: and the other probably relevant one is that it's only a five foot front set back, so it's right up against the road there.

116

00:24:44.980 --> 00:24:51.430

Dylan Casey / CaRLA: The zoning, on the other hand, is uh our two zoning, so it allows a base density of five units

117

00:24:51.550 --> 00:24:58.139

Dylan Casey / CaRLA: height limit of thirty feet, which requires stepping back above the second floor, the

118

00:24:58.540 --> 00:25:09.139

Dylan Casey / CaRLA: um forty-five percent walk coverage and a front back set back of twenty feet. So basically this building is nothing like what uh the zoning and visions for this site,

119

00:25:09.230 --> 00:25:14.930

Dylan Casey / CaRLA: but at the same time it's achieving a goal that the city claims is

120

00:25:15.080 --> 00:25:19.330

Dylan Casey / CaRLA: its goal for this site, and thirty four units of affordable housing.

121

00:25:19.510 --> 00:25:20.560

Dylan Casey / CaRLA: Um,

122

00:25:20.730 --> 00:25:21.970

Dylan Casey / CaRLA: so

123

00:25:22.130 --> 00:25:37.899

Dylan Casey / CaRLA: it's a little unclear to me whether the city plans to rezon this site, or why they think, afford these. This type of building would fit here. But the builder's Remedy is providing them basically a shortcut to get to the goal that they already have established for the site.

124

00:25:39.670 --> 00:25:44.669

Dylan Casey / CaRLA: The next one is is the big one. This is a three thousand

125

00:25:44.820 --> 00:25:48.210

Dylan Casey / CaRLA: Uh Nebraska Avenue, which is

126



00:25:48.240 --> 00:25:54.750

Dylan Casey / CaRLA: just off of the Olympic Boulevard there, and right there. Um an ex-fined transit. Stop

127

00:25:55.070 --> 00:26:03.090

Dylan Casey / CaRLA: the proposed development is fairly large I think a city council member referred to as beyond the pale

128

00:26:03.220 --> 00:26:08.260

Dylan Casey / CaRLA: Um. This one is two thousand units, four hundred low-income units,

129

00:26:08.300 --> 00:26:14.249

Dylan Casey / CaRLA: fifteen stories, six far, eight hundred and fifty thousand square feet

130

00:26:14.300 --> 00:26:16.179

Dylan Casey / CaRLA: takes out that whole block.

131

00:26:16.210 --> 00:26:17.350

Dylan Casey / CaRLA: Um,

132

00:26:17.600 --> 00:26:23.560

Dylan Casey / CaRLA: and that's an elevation. Shows you kind of the scale of what is being proposed here.

133

00:26:24.610 --> 00:26:41.940

Dylan Casey / CaRLA: The the Zoning, on the other hand, is um capsite, fifty-seven feet, and an far of Florida area ratio of two point two which um is only about three hundred thousand square feet on the whole site. So this this: what's being proposed here is uh

134

00:26:41.990 --> 00:26:45.250

Dylan Casey / CaRLA: over twice, two and a half times what

135

00:26:45.280 --> 00:26:48.410

Dylan Casey / CaRLA: the uh the zoning would allow on the site.

136

00:26:48.870 --> 00:26:59.890

Dylan Casey / CaRLA: And another key restriction is that it requires the zone requires fifty percent commercial and fifty percent residential on the site. So this is much more heavily residential.

137

00:26:59.930 --> 00:27:01.519

Dylan Casey / CaRLA: Then it would be allowed.

138

00:27:02.500 --> 00:27:11.120

Dylan Casey / CaRLA: Um, And then lastly, uh, the zoning requires a maximum of twenty-five thousand square feet for a floor place. So basically you'd have to

139

00:27:11.230 --> 00:27:17.859

Dylan Casey / CaRLA: divide this big building into many smaller buildings, smaller floor plates in order to comply.

140

00:27:18.380 --> 00:27:24.540

Dylan Casey / CaRLA: So again, this is a project that really has nothing to do with the zoning that the city is established on the site.

141

00:27:25.330 --> 00:27:26.510

Dylan Casey / CaRLA: Um.

142

00:27:26.990 --> 00:27:28.040

Dylan Casey / CaRLA: And

143

00:27:28.120 --> 00:27:32.240

Dylan Casey / CaRLA: the reason, I think it's interesting to look at both of these projects

144

00:27:32.410 --> 00:27:42.419

Dylan Casey / CaRLA: is that when I look at them and I see what the underlying zoning requires, and what the city's affordable and mark right housing goals are, I just,

145

00:27:47.520 --> 00:27:50.729

Dylan Casey / CaRLA: I think, three thousand Nebraska would

146

00:27:50.810 --> 00:27:56.110

Dylan Casey / CaRLA: certainly be much much larger than the surrounding buildings, and that

147

00:27:56.250 --> 00:28:11.029

Dylan Casey / CaRLA: would have some impacts. But when you weigh those against four hundred units of low income housing, and all the and two thousand units and new homes. Um, I think the answer to whether we should go ahead is pretty easy.

148

00:28:11.170 --> 00:28:12.390

Dylan Casey / CaRLA: Um.

149

00:28:13.210 --> 00:28:28.700

Dylan Casey / CaRLA: Lastly, this is just kind of a cursory Look at the zoning. There's probably many, many uh design and development standards that these projects are ignoring um that may come up later in the application process.

150

00:28:29.450 --> 00:28:45.130

Dylan Casey / CaRLA: So I think bottom line here. This the builders remedy in Santa Monica would over all the projects that are being proposed result nearly four thousand new homes, and over eight, that eight hundred of which would be low income.

151

00:28:45.140 --> 00:28:55.490

Dylan Casey / CaRLA: Um! This is nearly half of this. The city's housing goals for the next eight years for above moderate and low-income housing

152

00:28:55.880 --> 00:28:57.050

Dylan Casey / CaRLA: um!

153

00:28:57.810 --> 00:29:02.410

Dylan Casey / CaRLA: So I really hope the city kind of embraces the solution to uh

154

00:29:02.520 --> 00:29:04.919

Dylan Casey / CaRLA: where it's housing goals and

155

00:29:05.230 --> 00:29:10.780

Dylan Casey / CaRLA: gets kind of the jump. Start on compliance with arena. But we'll see what happens.

156

00:29:12.710 --> 00:29:26.590

Sarah Karlinsky: Dylan, can you say anything, and I apologize if I missed it about the developer of this particular project. Like, are they? Are they a developer that has roots in Santa Monica, or are they, you know.

157

00:29:26.600 --> 00:29:42.559

Dylan Casey / CaRLA: So I do know the lawyer Um, who's representing them is the same for both these projects. I believe the the low income. One is a nonprofit, affordable housing developer. Um, that has done other developments in Santa Monica,

158

00:29:42.580 --> 00:29:53.010

Dylan Casey / CaRLA: and for the Nebraska one I also think it's um. It is a kind of repeat player to developer who is working Santa Monica before I don't know exactly. I don't know the name of the person. So

159

00:29:54.240 --> 00:29:56.060

Sarah Karlinsky: Okay, Great. Thank you.

160

00:29:56.220 --> 00:30:10.040

Sarah Karlinsky: Okay. We're gonna move on to Mia and mia. I'm just gonna ask you um as a developer who is not use the builder's remedy to date. Um, Could you talk a little bit about um? Basically, Chris is kind of first

161

00:30:10.160 --> 00:30:29.380

Sarah Karlinsky: the way that he framed from his first opening remarks. He? Um! He mentioned. This has been on the book since the early nineties, but now, you know, there was a twenty year period of quiescence, of quiet. Nobody used it, and i'm wondering if you could talk a little bit about why, as a developer, why, you think that is,

162

00:30:29.390 --> 00:30:58.579

Sarah Karlinsky: and if you think, and then. Secondly, if you think that the changes that he spoke about kind of the strengthening of State law and um Hdds kind of recent um coming out with, uh! With what they had mentioned about how the um entitlements are now vested. If, even if uh a city comes into compliance, the entire entitlements we've been tested. If that changes the way that you would perceive using this tool.

163

00:30:59.670 --> 00:31:04.240

Meea Kang / Related California: Um, I think the long and short answer is, yes,

164

00:31:04.260 --> 00:31:11.730

Meea Kang / Related California: I think it's a positive thing. I think the quiescence, the New World word i'll learn for scrabble. Um,

165

00:31:12.020 --> 00:31:17.169

Meea Kang / Related California: You know it's interesting. I think developers are not as sophisticated as sort of, you know,

166

00:31:17.210 --> 00:31:36.039

Meea Kang / Related California: add to seek advocacy groups like C. A. Rla, you know, like in terms of like really knowing the accountability act, and like suing cities and all that we kind of rely. We sort of follow the advocates and the laws around in some ways getting cities to do the right thing like I was once involved in the city of Vallejo.

167

00:31:36.050 --> 00:31:42.179

Meea Kang / Related California: Um, and the only reason why they were finally thinking about building affordable housing is because they were sued,

168

00:31:42.450 --> 00:32:01.260

Meea Kang / Related California: and so they had. You know they had missed some of the reporting or blah blah blah. And so, anyway, long story short, there was motivation to do the right thing. So I think in many regards I think there are a lot of folks within city government that want to do the right thing. But then there are political forces around them that prevent them from doing the right thing.

169

00:32:01.270 --> 00:32:05.289

Meea Kang / Related California: And I think there's a lot of folks that like to protect the status quo,

170

00:32:05.660 --> 00:32:12.559

Meea Kang / Related California: because you know the devil That, you know is a lot easier than the devil that you don't know, and everybody's kind of entrenched within

171

00:32:12.680 --> 00:32:35.170

Meea Kang / Related California: the structure that exists. You know that sort of quiet period like who you know. And then you also Don't, forget you have changing governance. So you have a mayor. That's an office for four years, and then that mayor is now out of office. You've got

different sort of, you know, governance structures within communities, and you know, like city of La. There Hasn't, been a general plan in how many years,

172

00:32:35.180 --> 00:32:53.669

Meea Kang / Related California: you know It's sort of hard to get people to walk in the same direction, even if you're kind of all going to the same place. So you know, I think, in in many respects I think what I see is, it's a leverage. This is a point of leverage. It's not like every developer is going to go start suing cities. But now, all of a sudden. We have some a hammer

173

00:32:53.680 --> 00:33:02.370

Meea Kang / Related California: like we had a hammer in Sb. Thirty-five, so as an affordable housing. Developer. You know I have successfully used Sb. Thirty, five, and it is pure gold.

174

00:33:02.810 --> 00:33:19.299

Meea Kang / Related California: There's no it just you know it's clearly communicate. Cities must do X, y, and Z. If you meet objective standards. If your design is is solid, then go for it. So in the city of South Lake Tahoe related California Um.

175

00:33:19.310 --> 00:33:39.219

Meea Kang / Related California: And I worked on a proposal for executive order State on land two thousand and nineteen Governor put out an executive order that said, Okay, all of our surplus land. That, by the way, is not necessarily zone for housing. Uh, we want to build housing on it, and we don't know exactly how and what, but that's that's what we're doing now. And So one of the first sites was a site in the city of South. Like Tahoe, it was eleven acres

176

00:33:39.230 --> 00:34:07.479

Meea Kang / Related California: um of Conservancy land land that was bought to save the trees and for water quality, and over the years it, you know, became apparent that the whole neighborhood came up around it. It's actually better for housing. So uh in Trpa, in the land of Tahoe there are two agencies. There's like the local agency, and then there's the Tao of Regional Planning agency. There are two planning agencies. We were able to successfully on eleven acres, get approved. Two hundred and forty-eight units of one hundred percent deed restricted, affordable housing

177

00:34:07.900 --> 00:34:22.769

Meea Kang / Related California: two jurisdictions. City of South Lake Tahoe, we're able to use Sb. Thirty-five which got us through in nine in um ninety days, three months and collectively in tandem with the city. We got the Trpa approval to follow suit, so we were fully approved in three months,

178

00:34:23.360 --> 00:34:52.610

Meea Kang / Related California: and it was we we had the tool. There was complications on how to use it. No one had ever done it before, so it allows us an opportunity. If the wills are there, you know, to get it done. And then, quite honestly, from a local government perspective. It's wonderful to say, Don't, blame me, blame the Governor, and I guarantee, and That's one of the reasons why I've been successful trying to get legislation passed around parking reform, because you know, local planners and local planning Commissioners often face a lot of opposition, a lot of frustration from neighbors when things start to change,

179

00:34:52.900 --> 00:35:22.299

Meea Kang / Related California: and there's an immediate backlash to. We don't want change. It's bad enough as it is, traffic is bad enough as it is any little bit, it's going to add more so, anyway. So getting to back to build a remedy, you know I don't necessarily think everyone's just going to go in there and start suing their cities, but they will say, Hey, I've got a I'm. I'm going to file. My, I love it, you know. Administrative. Permit with Hcd. To just, you know, for the Record, say i'm in. So now the time clock starts. So let's all make this happen together, because ultimately all good development is a partnership,

180

00:35:22.310 --> 00:35:36.819

Meea Kang / Related California: and I couldn't have gotten south like Tahoe done without the State support without all the local, the county you name it every funding source. So you kind of need to make everyone work together, and and kind of especially in affordable housing, so we never want to bite the hand that feeds us, so to speak,

181

00:35:36.830 --> 00:35:42.780

Meea Kang / Related California: but we also want to be able to fight the battles that we know we have to fight to get local approvals in place.

182

00:35:43.220 --> 00:36:07.619

Sarah Karlinsky: That sort of answer the question. Yeah, it's. I mean, it's completely fascinating. I don't know Chris or Dylan, if you've seen anybody do with me. It just suggested where somebody comes in kind of files. But then, you know, just like, okay, city. We're just letting, you know we're we're gonna file our administrative permit. But really we want to work with you, and it's like the hammer sort of really clear that if you don't kind of come to the table and negotiate with us Um,

183

00:36:07.630 --> 00:36:09.200

Sarah Karlinsky: you know what

184

00:36:09.250 --> 00:36:15.589

Sarah Karlinsky: we're going to move forward under this this other tool. Um! Have either of you seen that yet?

185

00:36:17.370 --> 00:36:25.720

Dylan Casey / CaRLA: Um, I don't speculate, but I think the the first development I went through They they do have a separate application from the city.

186

00:36:25.860 --> 00:36:37.019

Dylan Casey / CaRLA: Um, and I think, in the the letter of submission, they said they submitted the builders Germany project to keep their as many options open to approval as they could. Um,

187

00:36:37.300 --> 00:36:40.639

Dylan Casey / CaRLA: so well. It's not an explicit like

188

00:36:40.670 --> 00:36:44.299

Dylan Casey / CaRLA: threat or or negotiation technique, but it's

189

00:36:45.010 --> 00:36:49.540

Dylan Casey / CaRLA: It's like here. We have two options here, City, you choose which one you want to go to.

190

00:36:49.780 --> 00:36:50.649

Yeah,

191

00:36:51.780 --> 00:37:20.249

Sarah Karlinsky: it's fascinating. So um mia, just one more question from you for you. So Chris and his remarks speculated that um at this point given changes in State law developers are not as dependent on being in the good graces of city council. And i'm just wondering how you how you see that relationship. I mean you're talking about an Sb. Thirty-five project where you did work with these different entities in part, because it sounds like you had a very particular set of

192

00:37:20.260 --> 00:37:29.650

Sarah Karlinsky: land that you're trying to work with. But do you see, do you see that shifting. Have you seen that shifted over the course of Let's say the last five or six years,

193

00:37:30.400 --> 00:38:00.390



Meea Kang / Related California: you know I have to say. I think we all want to say like as a developer you want you all kind of, especially if things are not going your way. You want to say. Oh, tell if you we're going to figure out another way around you. But at the same time you really need cities, and you know, just to say yes to a lot of things in terms of like infrastructure, and you know, as an affordable housing developer. Again, we're really aligned with the city's goals and counties, goals and local governments goals, so we tend not to um spoil those relationships we tend to, you know, really nurture those

194

00:38:00.400 --> 00:38:17.050

Meea Kang / Related California: relationships. Uh, but I think there's certainly other developers who are fed up. I know that there are a lot of developers who go through a lot of brain damage to get projects approved, and they still get, you know, frankly jerked around, and I think those are the ones that probably, you know, have the most

195

00:38:17.060 --> 00:38:33.480

Meea Kang / Related California: to gain when it comes to filing a suit and sort of saying, i'm done, you know, like you can't, you know, continue to break me over the calls, but it is death. Five thousand razor blade cuts getting through a process because it's the one opportunity where you, I call it fish in a barrel.

196

00:38:33.490 --> 00:38:59.639

Meea Kang / Related California: We're in a barrel, and they're the ones with like guns, and they could just like shoot, you know, like there's no way to go, and it's like extract. Extract. Extract this fee that infrastructure costs this thing that think. Oh, by the way, we forgot, you also need to solve for this. So it's really in a a moment of sort of Gotcha, and and there's a way that you have to kind of, you know. Maintain the integrity of your project. Um, while also, you know, being able to get to. Yes,

197

00:38:59.650 --> 00:39:18.590

Meea Kang / Related California: and um, even though we have these tools that absolutely help us keep things on track, we also still need ultimately, in my opinion. Anyway, um support support from the community and support from the the governance structure, because that's really how you get, I think, to the communities that are really beloved, and that we're going to, you know. Take us to the next level.

198

00:39:19.510 --> 00:39:44.850

Sarah Karlinsky: Okay, Great. Thank you. Thank you all. So i'm going to switch now over to um. Q. A. And I see that there's been already sort of a robust uh set of questions in the in the Q. A. I encourage you to put your questions there. I'll be looking there more than in the chat. So um? Daniel asked. Um is open space. Can Zoning considered resource, protection? And I think, Chris, you probably are

199

00:39:44.860 --> 00:39:46.589

Sarah Karlinsky: in the best position to answer that.

200

00:39:47.220 --> 00:39:52.550

Chris Elmendorf / University of California, Davis: I mean, I think the answer to all of the legal questions is, Um,

201

00:39:52.680 --> 00:39:55.440

Chris Elmendorf / University of California, Davis: uh, make your best argument,

202

00:39:55.830 --> 00:39:57.169

Chris Elmendorf / University of California, Davis: because

203

00:39:57.260 --> 00:39:59.909

Chris Elmendorf / University of California, Davis: that there's no case law in any of this.

204

00:40:00.140 --> 00:40:05.270

Chris Elmendorf / University of California, Davis: Uh, so you can read the statute, and I can read the statute and Um,

205

00:40:06.360 --> 00:40:19.399

Chris Elmendorf / University of California, Davis: um! There's no, there's no uh clear answer. But certainly if I were, if I were a city attorney, and there was a designated open space zone under the general plan. I would argue that's resource preservation,

206

00:40:19.580 --> 00:40:35.800

Chris Elmendorf / University of California, Davis: and if I was a developer I would say, no resource. Preservation can't just be something a city labels open space, or the city could label its entire city open space. There has to be some independent judicial determination as to whether there's actually a resource of regional or statewide significance there.

207

00:40:36.440 --> 00:40:40.499

Chris Elmendorf / University of California, Davis: But you got me as to as to which of those arguments would ultimately prevail.

208

00:40:42.140 --> 00:40:43.120

Sarah Karlinsky: Great?

209

00:40:43.240 --> 00:40:46.209

Sarah Karlinsky: Okay. Our next question is,

210

00:40:46.480 --> 00:40:58.639

Sarah Karlinsky: Um, What is the effect of the California Supreme Court's August first ruling that Fpa. Which I don't know what that is, and i'm hoping one of you does um doesn't fully preempt sequence authority.

211

00:41:03.360 --> 00:41:04.759

Chris Elmendorf / University of California, Davis: No idea.

212

00:41:06.080 --> 00:41:08.270

Sarah Karlinsky: Do you know what Fpa is?

213

00:41:08.570 --> 00:41:22.570

Sarah Karlinsky: I don't even know what the ruling is? They like? I'm not sure. I'm gonna be okay? Well, maybe that uh participant could give a little bit more uh um

214

00:41:22.760 --> 00:41:26.680

Sarah Karlinsky: context in a in a future comment.

215

00:41:26.770 --> 00:41:43.639

Sarah Karlinsky: Um, Okay. So uh, another question is, can a recently entitled project uh Use The builder's remedy? And if so, for a San Francisco site? Um. Does the builders remedy negate impact fees and offsite inclusionary requirements

216

00:41:43.750 --> 00:41:47.520

Sarah Karlinsky: so like, Can you go back and re-entitle under the builder's remedy

217

00:41:48.030 --> 00:41:50.220

Sarah Karlinsky: I guess, is the first part of that question.

218

00:41:51.530 --> 00:41:52.399

Um,

219

00:41:53.270 --> 00:42:01.490

Dylan Casey / CaRLA: I don't see why not? I mean I the kind of barrier to get a uh preliminary application isn't that high, so

220

00:42:01.550 --> 00:42:02.640

Dylan Casey / CaRLA: I wouldn't.

221

00:42:02.960 --> 00:42:06.479

Dylan Casey / CaRLA: I would just submit a new application um

222

00:42:06.700 --> 00:42:08.939

Dylan Casey / CaRLA: based on builders remedy.

223

00:42:09.640 --> 00:42:19.919

Dylan Casey / CaRLA: And if you wanted to build the same project, just submit the same one. But if it's like a project and you don't need to worry about concessions or anything like that,

224

00:42:21.860 --> 00:42:26.820

Chris Elmendorf / University of California, Davis: Dylan. Do you want to take the second part of that question?

225

00:42:26.910 --> 00:42:33.700

Sarah Karlinsky: It's about the um. The does. The bill is remedy. Negate impact fees and onsite or off-site inclusion or requirements.

226

00:42:35.220 --> 00:42:38.970

Dylan Casey / CaRLA: Chris do you have an opinion on that. I don't think it does

227

00:42:39.350 --> 00:42:40.490

Chris Elmendorf / University of California, Davis: um

228

00:42:40.590 --> 00:42:43.830

Chris Elmendorf / University of California, Davis: I think the only

229

00:42:43.910 --> 00:42:45.080

Chris Elmendorf / University of California, Davis: um

230

00:42:45.470 --> 00:42:55.300

Chris Elmendorf / University of California, Davis: uh argument you might have would be to say that the um impact fees render the project in feasible.

231

00:42:55.990 --> 00:42:57.410

Chris Elmendorf / University of California, Davis: And

232

00:42:57.700 --> 00:43:05.160

Chris Elmendorf / University of California, Davis: um they they're not within a savings clause in a different part of the ha for

233

00:43:05.250 --> 00:43:10.939

Chris Elmendorf / University of California, Davis: fees that are necessary to provide infrastructure.

234

00:43:11.600 --> 00:43:25.370

Chris Elmendorf / University of California, Davis: Uh. So maybe uh, you could, if you can really, if you can, if you want to like, lay out your performance and show that they render the project in feasible, and that they're not necessary for um

235

00:43:25.540 --> 00:43:26.629

Chris Elmendorf / University of California, Davis: uh

236

00:43:26.900 --> 00:43:28.640

Chris Elmendorf / University of California, Davis: infrastructure.

237

00:43:28.670 --> 00:43:29.790

Chris Elmendorf / University of California, Davis: Um!

238

00:43:30.140 --> 00:43:37.849

Chris Elmendorf / University of California, Davis: You might have an argument, but I think it's a stretch, and there's a another provision of the ha that that

239

00:43:38.990 --> 00:43:57.460

Chris Elmendorf / University of California, Davis: purports to to save that is to protect um development standards that are uh objective and consistent with meeting city share of regional housing need. And the city might say, Well, you know we need those that high. I Z. In order to have

240

00:43:57.470 --> 00:44:10.339

Chris Elmendorf / University of California, Davis: I a a fair shot at meeting our lower income uh arena. And again you could argue Well, the high Z is not helping if it's rendering projects in feasible, but I think it's a it's a um.

241

00:44:10.780 --> 00:44:13.149

Chris Elmendorf / University of California, Davis: It's an edge case at best.

242

00:44:13.310 --> 00:44:16.569

Dylan Casey / CaRLA: Yeah, I think it's a better case for the

243

00:44:16.630 --> 00:44:26.719

Dylan Casey / CaRLA: high inclusionary requirements exceeding the twenty percent low income in the those are in to basically zoning requirements, and I can definitely imagine situations where,

244

00:44:26.850 --> 00:44:30.539

Dylan Casey / CaRLA: uh, like a thirty percent requirement, you can make a project and feasible.

245

00:44:34.980 --> 00:44:51.009

Sarah Karlinsky: Okay? So Anne has two questions. Um. One question is, Um, Are there any circumstances under which um a builder's remedy project would be um able to get a sequel exemption? And if so, which ones

246

00:44:51.020 --> 00:44:57.180

Sarah Karlinsky: um, and then the second is more of a hypothetical. Well, why don't we do this one first, and then I want to go to the hypothetical one.

247

00:45:00.580 --> 00:45:08.129

Chris Elmendorf / University of California, Davis: So most secret exemptions require that the project comply with general plan and zoning.

248

00:45:08.460 --> 00:45:26.489

Chris Elmendorf / University of California, Davis: So um by assumption. The reason you're using the builder's remedy is because you don't want to comply with the general plan and zoning, and so that takes you out of most sequence exemptions. There is a so called common sense exemption that you

249

00:45:26.500 --> 00:45:30.879

Chris Elmendorf / University of California, Davis: might be able to use for a small project. Um,

250

00:45:30.970 --> 00:45:41.380

Chris Elmendorf / University of California, Davis: there's but there's not much common sense to sequence, so you know don't count on it. Um. I think also under Sb. Three hundred and seventy-five. Um

251

00:45:41.510 --> 00:45:57.219

Chris Elmendorf / University of California, Davis: uh the which is the um transportation and climate bill um there are um. There's a sustainable communities, environmental assessment or skia process, which is kind of like an exemption.

252

00:45:57.230 --> 00:46:15.310

Chris Elmendorf / University of California, Davis: Um, and that the skia process doesn't require the project to comply with uh general plan and zoning. So maybe if you're on one of those uh sites and you can fit it within within the ski of framework, you might be able to get some kind of explained sequel Review.

253

00:46:15.660 --> 00:46:16.879

Interesting,

254

00:46:17.260 --> 00:46:31.970

Sarah Karlinsky: hey? Her other question is more of a hypothetical um, which is a a question as to whether we'll see Spite Builders Remedy project like some homeowner proposes five units just because they can, and they're mad at the city, or

255

00:46:32.160 --> 00:46:33.709

Sarah Karlinsky: you know, do you think

256

00:46:33.740 --> 00:46:40.359

Sarah Karlinsky: It's hard to imagine people building anything out of spite. I suppose some people do. But

257

00:46:40.490 --> 00:46:45.100

Sarah Karlinsky: I don't know. Do you guys have any thoughts about whether we're going to see spite projects.

258

00:46:46.650 --> 00:47:03.470

Dylan Casey / CaRLA: I'd say it's probably hard to distinguish between you. I'm sure there are developers and property owners out there that are frustrating the city. Um, but I think it's a probably unlikely that someone would invest some money to actually pursue a bill uh a development application,

259

00:47:03.540 --> 00:47:04.929

Dylan Casey / CaRLA: any scale

260

00:47:05.170 --> 00:47:08.490

Dylan Casey / CaRLA: that they just have No. So

261

00:47:08.760 --> 00:47:12.910

you still want that you still are going to see projects that people actually think they can go.

262

00:47:13.130 --> 00:47:13.970

Yeah,

263

00:47:14.300 --> 00:47:31.919

Sarah Karlinsky: Okay, All right. Next question. Um! What are the other ways that cities are going to try to? Um? What legal routes will cities try to use to deny these projects? So sequel purgatory is one um that was proposed, and seems likely. Um! Are there any others?

264

00:47:32.730 --> 00:47:42.650

Chris Elmendorf / University of California, Davis: Uh? So a couple of others? Um! One is. The city may argue that they have development standards that they can apply to the project that are,

265



00:47:42.750 --> 00:47:59.929

Chris Elmendorf / University of California, Davis: uh within the indeterminate scope of that Uh h. A savings clause for development standards. Um second thing they might uh try to argue is that their housing element um is actually compliant, even though hcd said it wasn't

266

00:47:59.940 --> 00:48:11.229

Chris Elmendorf / University of California, Davis: um, and there are some um um bad old precedents about housing element compliance, and nobody knows whether those are still a good law. However,

267

00:48:11.240 --> 00:48:22.489

Chris Elmendorf / University of California, Davis: uh someone uh suggested the other day an argument that I thought um made a lot of sense on that question about housing element, compliance, and And the argument is this: There's a statutory framework

268

00:48:22.530 --> 00:48:28.920

Chris Elmendorf / University of California, Davis: within, through which Hcd. Can contest a city's determination that its housing element is not compliant.

269

00:48:29.840 --> 00:48:36.279

Chris Elmendorf / University of California, Davis: The city can make findings when it adopts its housing element, explaining why it disagrees with Hcd.

270

00:48:36.440 --> 00:48:40.110

Chris Elmendorf / University of California, Davis: The City can go to Court and get a declaratory Judgment

271

00:48:40.220 --> 00:48:44.879

Chris Elmendorf / University of California, Davis: from the Court that it's housing element is compliant, even though h of these said it wasn't,

272

00:48:45.140 --> 00:48:48.899

Chris Elmendorf / University of California, Davis: and so I think there's a fair argument that if a City

273

00:48:49.160 --> 00:48:52.910

Chris Elmendorf / University of California, Davis: didn't make those findings disagreeing with Hcd.

274

00:48:53.270 --> 00:49:05.920

Chris Elmendorf / University of California, Davis: Um, or adopting its housing Element in Disagreement with Hcd. And if it didn't take advantage of the statutory procedure to go to court um uh and get a Court to to um

275

00:49:06.090 --> 00:49:21.429

Chris Elmendorf / University of California, Davis: adjudicate the dispute between the City and Hcd. Then the city has waved um the argument uh that it's housing element was really compliant on um, notwithstanding it's a failure to contest Hcd's determination.

276

00:49:23.770 --> 00:49:39.970

Chris Elmendorf / University of California, Davis: Um. One other thing I should mention sorry, because this is actually um an argument that is being made apparently in Santa Monica, and I don't know if it will be made in court, because I think it's pretty frivolous; but it's being but it's being made in before the City Council. Uh Santa Monica's argument is

277

00:49:40.020 --> 00:49:41.160

Chris Elmendorf / University of California, Davis: on.

278

00:49:41.660 --> 00:49:46.129

Chris Elmendorf / University of California, Davis: At the time these Builders remedy projects were submitted.

279

00:49:46.780 --> 00:49:51.779

Chris Elmendorf / University of California, Davis: Hcd. Had approved our draft housing element.

280

00:49:52.190 --> 00:50:01.699

Chris Elmendorf / University of California, Davis: The city Council hadn't, adopted the housing element by resolution, but the draft that had been submitted to Hd. For review had been approved

281

00:50:02.180 --> 00:50:05.430

Chris Elmendorf / University of California, Davis: because our draft had been approved.

282

00:50:05.650 --> 00:50:21.229

Chris Elmendorf / University of California, Davis: We were actually in substantial compliance. And that's all. The statute require substantial compliance, not perfect compliance. Um, At the time of the developer's preliminary application. Um, I think that argument is a laughable,

283

00:50:21.320 --> 00:50:35.739

Chris Elmendorf / University of California, Davis: because, uh a a draft housing element is just a staff recommendation to the City Council as to what the city Council should adopt right. It has no legal force, and the text of the haa says,

284

00:50:35.750 --> 00:50:51.279

Chris Elmendorf / University of California, Davis: um that the city can only apply uh it's zoning and general plan to the project. If the city has adopted a housing element that is, in substantial compliance with this article, right? So the word adopted is in the text as clear as day.

285

00:50:51.290 --> 00:50:59.640

Chris Elmendorf / University of California, Davis: Um, So i'm I'm actually kind of puzzled that this seems to be the the argument that it's getting the most play uh in Santa Monica.

286

00:51:00.910 --> 00:51:08.629

Dylan Casey / CaRLA: This i'll add real quick. I also think we'll uh we'll probably see cities just flat out legally denying these um

287

00:51:08.870 --> 00:51:15.290

Dylan Casey / CaRLA: these developments. Uh, at least some of them, because five years ago cities would just ignore

288

00:51:15.490 --> 00:51:21.650

Dylan Casey / CaRLA: Vha when they're denying a development, and that's the majority of organizations. Lawsuits resulted in,

289

00:51:21.720 --> 00:51:29.170

Dylan Casey / CaRLA: and that and we still see in other context cities completely ignoring ha findings and denying developments.

290

00:51:29.250 --> 00:51:32.649

Dylan Casey / CaRLA: I think there's one just recently in Manhattan.

291

00:51:33.100 --> 00:51:35.290

Dylan Casey / CaRLA: I think that's also pretty likely to happen.

292

00:51:37.750 --> 00:51:48.989

Sarah Karlinsky: Dylan. Here's a question for you, as it relates to this three thousand Nebraska project. Um. Patrick wants to know if it would be impossible to approve that project given the sequel impacts.

293

00:51:50.310 --> 00:51:51.529

Dylan Casey / CaRLA: Um,

294

00:51:52.110 --> 00:51:54.270

Dylan Casey / CaRLA: I don't think so. Uh,

295

00:51:55.090 --> 00:51:56.359

Dylan Casey / CaRLA: so. Um,

296

00:51:57.430 --> 00:51:59.840

Dylan Casey / CaRLA: I don't know what. When I look at that project.

297

00:52:00.070 --> 00:52:05.310

Dylan Casey / CaRLA: Yes, it's very large, and very tall. But if we're going to have a large dense

298

00:52:05.340 --> 00:52:15.300

Dylan Casey / CaRLA: all multi-family residential building, that is the kind of ideal spot for it. Um being right on the transit line. Um

299

00:52:20.060 --> 00:52:22.299

Dylan Casey / CaRLA: um as far as specific impacts,

300

00:52:22.710 --> 00:52:23.939

Dylan Casey / CaRLA: I guess

301

00:52:24.810 --> 00:52:42.939

Dylan Casey / CaRLA: just because it's tall and and dense doesn't mean the impacts would be higher. Um, I think, with certain things it probably does. But they're not like like, are we? Is the

city really going to deny it because of shadows? Um, And if they are, are they going to argue those are health and safety

302

00:52:42.990 --> 00:52:44.410

Dylan Casey / CaRLA: impacts.

303

00:52:45.280 --> 00:52:49.649

Dylan Casey / CaRLA: So I I I don't think that the impact should be so.

304

00:52:49.780 --> 00:52:50.639

We didn't have to

305

00:52:53.690 --> 00:52:54.839

Sarah Karlinsky: thank you.

306

00:52:55.370 --> 00:53:01.279

Sarah Karlinsky: So David wants to know if the builder's remedy applies to unincorporated county areas.

307

00:53:02.420 --> 00:53:06.810

Sarah Karlinsky: Counties are required to have updated housing elements, But how does it work

308

00:53:07.020 --> 00:53:09.750

Sarah Karlinsky: in an unincorporated county area?

309

00:53:12.390 --> 00:53:14.530

Chris Elmendorf / University of California, Davis: I think you're more likely to have

310

00:53:14.750 --> 00:53:26.699

Chris Elmendorf / University of California, Davis: those water and waste water or resource preservation issues? Perhaps in an unincorporated area. But there is no requirement that a builder's remedy project be an infill project.

311

00:53:29.510 --> 00:53:33.230

Dylan Casey / CaRLA: There are also plenty of urbanized areas and unincorporated areas

312

00:53:33.580 --> 00:53:35.059  
um with the Internet.

313

00:53:35.360 --> 00:53:36.509  
Okay, Great?

314

00:53:39.470 --> 00:53:40.520  
Sarah Karlinsky: Okay,

315

00:53:40.760 --> 00:53:49.950  
Sarah Karlinsky: Um. Another question about the relationship between historic district and historic properties as they relate to Builders remedy, Can you Um.

316

00:53:50.090 --> 00:53:55.299  
Sarah Karlinsky: Put forward a builder's remedy project. Let's say, in a historic district

317

00:53:56.030 --> 00:54:03.069  
Sarah Karlinsky: that um proposes altering a um contributor to the district.

318

00:54:11.970 --> 00:54:16.430  
Dylan Casey / CaRLA: This probably falls again in the undested category

319

00:54:16.910 --> 00:54:21.249  
Dylan Casey / CaRLA: as far as the specific historic district standards again like,

320

00:54:21.960 --> 00:54:27.140  
Dylan Casey / CaRLA: I would do those for the same as zoning. Comply with what you can, but also propose. Some

321

00:54:28.500 --> 00:54:32.380  
Dylan Casey / CaRLA: feel like you should. Don't need to comply with things that would limit the density

322

00:54:33.420 --> 00:54:34.299  
project.

323

00:54:37.480 --> 00:54:50.080

Sarah Karlinsky: Okay, Mia: this one's for you. Do you anticipate widespread utilization of the builder's remedy for projects amongst um the Development community at any point in time going forward.

324

00:54:51.980 --> 00:55:03.700

Meea Kang / Related California: You know it's so interesting, since it's so tied to housing elements, and being out of compliance, or in compliance, I think. But Dylan talked about like being on alert. As to you know where the city is in our process is one that

325

00:55:03.710 --> 00:55:22.280

Meea Kang / Related California: I think kind of makes it a little not necessarily reliable, like, say, a city gets into compliance, and all of a sudden all those tools are off. And so you're gonna like super charge the density like that. Three thousand Nebraska site, and all of a sudden, now the cities in compliance, or you know, or something to that effect. So but I think

326

00:55:22.500 --> 00:55:31.279

Meea Kang / Related California: you know there's just so many sweet spots in what it can do to help, you know, get more housing

327

00:55:31.290 --> 00:55:56.430

Meea Kang / Related California: approved that I do think there's going to be a surge of creativity around how it can be utilized in areas that are maybe not accustomed to having a lot of housing, because there has been a sort of nindy past, and I think you do find those in. For example, i'm doing a project in Saint Gabriel, the same Gabriel Valley area, and there's only one city within the entire

328

00:55:56.440 --> 00:56:26.429

Meea Kang / Related California: greater kind of region that has a um. So this is small. La county. Um that has a compliant housing element. So of course, the city we're doing. The project in has the compliant housing element, so I can't use the builders remedy. But, for example, the site we have is a left over surplus piece of land that zoned commercial. That's a little bit dirty like It's got vapors. So the vapor thing, and having a little bit dirty of a site, completely throws you out of secret exemptions, and then, not being compliant like not having the house, the you know, the the res

329

00:56:26.440 --> 00:56:32.740

Meea Kang / Related California: status also completely throws you out of any kind of Sp. Thirty, five or any other sort of compliance. So you,

330

00:56:32.790 --> 00:56:52.630

Meea Kang / Related California: you know, had the city been across the the lines and been in another city that was out of compliance. You know. I think you can use some of these tools to really push, you know, getting housing approved in areas that um we're not traditionally zone for housing at densities that make it more financially feasible to build. So I absolutely see that.

331

00:56:52.640 --> 00:57:01.780

Meea Kang / Related California: Um. You know that there's an a an avenue to success. It's just ironic that we're kind of rewarding cities that don't want housing with housing.

332

00:57:02.250 --> 00:57:03.779

Meea Kang / Related California: So

333

00:57:05.010 --> 00:57:17.979

Sarah Karlinsky: um and mia this this this question, this next one's for you also. So Jeff asks um Speakers mentioned that developers are less concerned with the relationship with city councils if they have more leverage now with streamlining bills.

334

00:57:17.990 --> 00:57:47.980

Sarah Karlinsky: But for a hundred percent affordable projects. They are more dependent on local funding, and that's more sensitive to those relationships. Do we think that builders remedy will be used much by a hundred percent affordable projects, or only eighty twenty projects. And i'm just curious on your perspective on that. I definitely think it's more of a market rate. Tool, you know. Sb: Thirty-five has really been a a a lifesaver for a lot of projects it's got limitations on where it can be used. But that's, I I would say, from an affordable housing developer perspective. If you can use Sp: thirty-five that's where you're going to go,

335

00:57:47.990 --> 00:57:52.459

Meea Kang / Related California: because it's just a little bit more tailored, I think, to the affordable housing application.

336

00:57:52.470 --> 00:58:14.459

Meea Kang / Related California: Um. And yeah, I think it comes down to. We don't want to bite the hand that feeds us. So, as an affordable housing developer, you often get, you know, waving a fees, or you know, some level of subsidy, or we do applications together that you really we



foster a ner for this relationship, because in some in some respect, sometimes we feel like we're the housing department for the city trying to get the housing built.

337

00:58:15.770 --> 00:58:38.859

Sarah Karlinsky: Great. Well, I This has been incredibly fascinating, and I really appreciate you taking the time to answer everyone's questions, and a lot of good ones. I just want to end with one question. Um, which is for each of you. Can you just share if people want to follow your work or follow along with you. What's the best way to do that if either email or twitter, handle or website. So i'm gonna start with Dylan.

338

00:58:41.620 --> 00:58:46.589

Dylan Casey / CaRLA: Sure. Um. So I think the best way to organizations website. It's

339

00:58:46.640 --> 00:58:51.249

Dylan Casey / CaRLA: Carla C. A. R. L. A. E. F. Dot org

340

00:58:51.380 --> 00:58:57.940

Dylan Casey / CaRLA: um, and also on Twitter. It's uh carla, C. A. Rla underscore. A

341

00:58:59.390 --> 00:59:05.719

Sarah Karlinsky: great Oh, sorry, D. Dylan. Did I cut you off? Okay, Great uh Chris.

342

00:59:06.040 --> 00:59:19.620

Chris Elmendorf / University of California, Davis: Uh, probably the best way to follow it. What i'm up to is on uh Twitter at Cs Elmendorf. Um. You can also find a lot of my uh papers on Ssrn. Or other places, but

343

00:59:19.730 --> 00:59:22.749

Chris Elmendorf / University of California, Davis: usually things will get noted, at least through Twitter,

344

00:59:23.310 --> 00:59:25.090

Sarah Karlinsky: Great and mia.

345

00:59:25.720 --> 00:59:32.189

Meea Kang / Related California: I i'm not really a social media person, so I follow Chris and others. So I would just say, you know

346

00:59:32.200 --> 01:00:02.190

Sarah Karlinsky: you'll you'll find out about the things I do when they come out. So, anyway. And then there's always the related website. I'm also on the Council of Intel Builders and um, you know, and always doing something with spurs so happy to always join Sarah on anything she asks uh things to me. Yeah. And the Council of Info Builders done amazing work and mia, You've done just such great work with them. So thank you for all you do. Um, all right. Well, thank you, thanks so much, and uh look forward to, you know, seeing what happens next.

347

01:00:02.200 --> 01:00:09.349

Meea Kang / Related California: It's very exciting, evolving a conversation. So thank you to all.