In their arguments before the lower courts, UMMP claimed that CEQA's definition of a "project" mandates that all zoning ordinances are categorically projects and, therefore, all zoning ordinances must be reviewed under CEQA regardless of whether there is evidence that the particular zoning ordinance would actually have any physical impacts on the environment. (citing Pub. Res. Code, § 21080.) UMMP further argued that its position is supported by several cases including *Muzzy Ranch Co. v. Solano County Airport Land Us Commission* and several decisions from other Appellate Districts. The Fourth Appellate District of the Court of Appeal, however, disagreed, holding that CEQA does not require review of zoning ordinances where there is no evidence that a particular zoning ordinance would actually have a physical impact.

Despite this apparent split in authority, it is not uncommon for local agencies to examine each zoning ordinance on its own merits before determining whether that ordinance requires some level of CEQA review. Indeed, many "paper" zoning ordinances are even less likely than the San Diego ordinance to have any kind of impact on the environment. Thus, the California Supreme Court's decision in this case will either establish a bright line rule that all zoning ordinances must be reviewed under CEQA, or, alternatively, allow local governments the discretion to determine whether each specific zoning ordinance is a "project" subject to CEQA review.

The second issue raised by UMMP is more limited but could, by analogy, have a broader application. Specifically, UMMP asked the Court to decide whether the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a local agency's jurisdiction is categorically not subject to CEQA review. With the recent passage of Prop. 64, the Adult Use of Marijuana Act, how the Supreme Court rules in this case will add yet another element that local jurisdictions will need to pay heed to when considering how to navigate the uncharted territory of marijuana regulation. The Court's ruling here could set a significant precedent for local agencies as they grapple with zoning for both medical and recreational marijuana facilities. In addition, at the heart of this question is whether a zoning ordinance that concentrates certain uses in certain areas, or shifts existing uses from one area of a jurisdiction to another, requires some level of CEQA review. A ruling in UMMP's favor could cause local agencies to take a harder look under CEQA at activities that merely shift existing uses to different areas rather than those activities that create new uses.

Prospective developers should be aware of both issues when analyzing the zoning for future projects. Should the Court side with UMMP, any project that would involve a zoning change, whether or not that project would otherwise have any environmental impacts, would require at least some level of CEQA review, potentially increasing both the costs and the litigation exposure for those projects.

## SINGLE-USER TOILET FACILITIES IN ANY BUSINESS ESTABLISHMENT, PLACE OF PUBLIC ACCOMMODATION, OR GOVERNMENT AGENCY MUST BE IDENTIFIED AS ALL-GENDER

By Mark Mengelberg, Partner, Nathaniel Touboul, Associate, Allen Matkins Leck Gamble Mallory & Natsis LLP in San Francisco

Assembly Bill No. 1732 (AB 1732), which was signed into law on September 29, 2016, and went into effect on March 1, 2017, added Section 118600 to the Health and Safety Code (Section 118600). This requires all single-user toilet facilities in any business establishment, place of public accommodation, or government agency to be identified as all-gender toilet facilities.

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According to the author of AB 1732, California State Assembly member Philip Y. Ting, current practices that restrict access to single-occupancy restrooms by gender create problems of safety, fairness and convenience. AB 1732 became effective at a time when several cities and educational institutions across the United States are in the process or have already transitioned to a "universal access" approach to restroom facilities. AB 1732 does not affect multi-stall restrooms and does not require establishments to provide single-user toilet facilities; it simply requires single-user restrooms to be all-gender accessible.

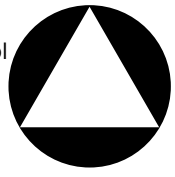
Section 118600 provides in pertinent part that all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency must be identified as all-gender toilet facilities by signage that complies with Title 24 of the California Code of Regulations, and designated for use by no more than one occupant at a time or for family or assisted use. Section 118600 defines "single-user toilet facility" as a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user. However, the California Building Code (CBC) defines "unisex (single-user or family) toilets" slightly more broadly to include toilets which contain a privacy latch, no more than one lavatory, and no more than two water closets without urinals, or one water closet and one urinal. The door symbol shown below should appear on all toilets that fall within this definition.

Regarding enforcement, it is clear from the statute that building officials or other local officials responsible for code enforcement can inspect establishments for compliance with the bathroom signage requirement. Although the penalties for non-compliance are not specified, owners should adapt their signs as soon as possible to avoid possible warning notices, penalties and fines.

If a property which contains a single-user toilet is leased, the landlord and the tenant should consult with experienced real estate counsel to de-

termine which party is responsible for ensuring that the facilities comply with the requirements of AB 1732, whether the subject facilities comply with the requirements of AB 1732, and also which party is responsible for paying for the costs associated with such compliance.

Door Symbol:
The following image represents the door symbol that is required by CBC 11B-216.8 to identify an all-gender single-user toilet facility. The symbol must comply with the requirements of CBC 11B-703.7.2.6.3.



## IS THE TIDE TURNING AGAINST NIMBYISM IN THE BAY AREA?

By Todd Williams, Partner, Wendel, Rosen, Black & Dean LLP in Oakland, Calif.

**Williams**

While housing prices in the San Francisco Bay Area rise and fall (but mainly rise), one constant remains: virtually all housing development remains controversial. Nowhere is this more apparent than in the San Francisco Bay Area where both multifamily towers and a neighborhood four-plex can draw fierce opposition.

Urban area residents raise issues of gentrification, displacement and affordability. Suburban area concerns tend to focus on issues of open space, increased traffic and demand on public services and neighborhood character. The result, along with economic factors, is a dramatic shortfall in housing production. The California Department of Housing and Community Development estimates that California averaged less than 80,000 new homes annually in the past decade — 100,000 units short of the annual need. Leading economists increasingly site the shortage of housing as the No. 1 threat to California's economic expansion.

Both elected officials and community groups growingly accept that California, and the Bay Area in particular, is mired in a long-standing housing crisis that needs to be addressed. Few agree on the proper way to solve it, however.

The non-partisan California Legislative Analyst's office (LAO) published several reports over the past two years that have urged a significant increase in the production of new housing to address affordability and stem displacement. The LAO largely points the finger of blame at Not-In-My-Backyard opponents, aka NIMBYs. This group routinely objects to new development, especially in Coastal communities, along with outdated and restrictive local planning and zoning laws that make development more costly, time-consuming and uncertain.

The tide, however, may be starting to turn. Voters in Los Angeles defeated (by a 2-to-1 margin) the anti-development Measure S that would have put a moratorium on projects requiring an amendment to the city's general plan. This year has also seen a flurry of potential legislative actions designed to address the housing shortage and to streamline the path to development.

There are currently more than 100 housing bills that have been introduced in the state legislature. These range from bills designed to provide a permanent source for affordable housing (e.g., through a recording fee on real estate documents or a statewide bond measure), to new limits on local governments' ability to approve projects at a lower than permitted density, to granting "by-right," (i.e., automatic approval to certain urban infill projects if they comply with zoning and pay prevailing wage), and even allowing the state to override a local decision denying affordable housing. All of these bills are in their early stages, and sure to go through various amendments, but the sheer number is evidence that politicians realize housing is an issue that cannot be ignored.

In addition to these legislative efforts, pro-housing citizen groups — frustrated with the slow pace of development and the resultant upward pressure on housing prices — have organized to advocate in favor of more dense development and to counter the NIMBY sentiments of existing residents. These "YIMBY" (Yes-In-My-Backyard) groups have supported the approval of recent projects in San Francisco, Oakland and elsewhere in the Bay Area, in some cases turning out more supporters than project opponents. They are becoming an increasing political voice to be reckoned with.

Whether these efforts result in a sufficient increase in housing production is yet to be seen. New development is often viewed as the answer to fix existing deficiencies through demands for inclusion of deed-restricted affordable units, impact fees and other community benefits that make profit margins untenable when coupled with increasing construction costs. ■