



NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, September 7, 2022, 6:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

The Council will not begin consideration of any item on this agenda later than 10:00 p.m. unless such consideration is approved. Any items on this agenda not considered this evening will be continued to a future meeting.

Copies of the agenda packet are available for review at the Pacific Grove Library, in the Finance Department, and electronically at www.cityofpacificgrove.org/agendas. The most effective method of communication with the City Council is by sending an email to citycouncil@cityofpacificgrove.org. In order to allow the City Council adequate time to review communication related to an agenda item, it is recommended that the communication be sent no later than 9:00 AM on the day prior to the City Council meeting.

THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).

CHAMBER CAPACITY SEATING IS LIMITED AND PROVIDED ON A FIRST COME, FIRST SERVED BASIS.

THE VIRTUAL MEETING IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
<https://us02web.zoom.us/j/209579290>

To participate telephonically, call any number below:

**888 788 0099 US (Toll-free)
877 853 5247 US (Toll-free)
669 900 9128
669 219 2599**

**Webinar ID: 209 579 290#
If prompted to enter a participant ID, press #.**

Help Line 831-648-3128

[MEETING INSTRUCTIONS](#)

The public may also view the meeting on the Peninsula Channel 25.

AGENDA

CALL TO ORDER

- A. Remote Teleconference - AB 361 **Action required by 8/3/2022 PG 6**
Reference: Sandra Kandell, City Clerk
Recommended Action: Ratify Resolution No. 21-029 Emergency Teleconferencing authorizing remote teleconference meetings of all City legislative bodies for the following 30 days in accord with the Ralph M. Brown Act.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

PLEDGE OF ALLEGIANCE: Mayor Pro Tem Amelio

1. APPROVAL OF AGENDA

2. PRESENTATIONS

- A. Mayor's Proclamation: Monterey Peninsula College 75th Anniversary **PG 11**
Reference: Bill Peake, Mayor
Recommended Action: Receive proclamation.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

3. COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)

- A. Other

4. GENERAL PUBLIC COMMENT

General Public Comment must deal with matters subject to the jurisdiction of the City and the Council that are not on the Regular Agenda. This is the appropriate place to comment as to items on the Consent Agenda, only if you do not wish to have the item pulled for individual consideration by the Council. Comments from the public will be limited to three minutes and will not receive Council action. Comments regarding items on the Regular Agenda shall be heard prior to Council's consideration of such items at the time such items are called. Whenever possible, written correspondence should be submitted to the Council in advance of the meeting, to provide adequate time for its consideration.

CONSENT AGENDA

The Consent Agenda deals with routine and non-controversial matters, and may include action on resolutions, ordinances, or other public hearings for which testimony is not anticipated. The vote on the Consent Agenda shall apply to each item that has not been removed. Any member of Council, staff, or the public may remove an item from the Consent Agenda for individual consideration. When items are pulled for discussion, they will be automatically placed at the end of their respective section within the Regular Agenda. One motion shall be made to adopt all non-removed items on the Consent Agenda.

5. APPROVAL OF CITY COUNCIL MEETING MINUTES

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business

A. Minutes of the August 17, 2022 City Council Closed Session and Regular Meetings **PG 13**

Reference: Sandra Kandell, City Clerk

Recommended Action: Approve minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

6. RESOLUTIONS

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

7. ORDINANCES

Items pulled from this section will be placed under 11. Public Hearings

A. Amend the City of Pacific Grove's Conflict of Interest Code **Action required by October 3, 2022. PG 21**

Reference: Sandra Kandell, City Clerk

Recommended Action: Hold second reading and adopt an ordinance to amend Pacific Grove Municipal Code (PGMC) Chapter 2.40, Conflict of Interest, to account for the addition, deletion, and modification of positions listed as “designated employees”; determine that, for the purposes of the City of Pacific Grove’s (City) Conflict Code, the City is the “agency;” approve the updated Conflict Code; and direct that a summary of a proposed ordinance be published as approved by the City Attorney.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

8. REPORTS – INFORMATION ONLY

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. 2022 Sanctuary Annual Management Plan **PG 28**

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive report.

9. **REPORTS – REQUIRING ACTION**

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Ratification of New Local Emergency Actions **PG 70**

Reference: Ben Harvey, City Manager

Recommended Action: Receive report of emergency directives/modifications.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

Items pulled from this section will be placed under 13. New Business

A. Beautification and Natural Resources Committee Minutes: July 19, 2022 **PG 72**

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. Economic Development Commission Minutes: June 9, 2022 and July 14, 2022 **PG 78**

Reference: Ben Harvey, City Manager

Recommended Action: Receive minutes

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

C. Traffic Safety Commission Meeting Minutes: May 28, 2022, and July 26, 2022 **PG 83**

Reference: Cathy Madalone, Chief of Police

Recommended Action: Receive minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. **PUBLIC HEARINGS**

For public hearings involving a quasi-judicial determination by the Council, the proponent of an item may be given 10 minutes to speak and others in support of the proponent’s position may be given three minutes each. A designated spokesperson for opposition to the item may be given 10 minutes to speak and all others in opposition may be given three minutes each. Very brief rebuttal and surrebuttal may be allowed in the sole discretion of the Council. In public hearings not involving a quasi-judicial determination by the Council, all persons may be given three minutes to speak on the matter. Public hearings on

non-controversial matters or for which testimony is not anticipated may be placed on the Consent Agenda, but shall be removed if any person requests a staff presentation or wishes to be heard on the matter.

12. **UNFINISHED AND ONGOING BUSINESS**

13. **NEW BUSINESS**

A. **LULAC District Elections Letter PG 93**

Reference: Bill Peake, Mayor

Recommended Action: Direct the City Attorney to advise Council on a response to the League of United Latin American Citizens' (LULAC) demand for district elections and authorize the Mayor to sign a legal services agreement with the law firm of Nielsen Merksamer Parrinello Gross and Leoni, LLP to provide legal advice to the City Council in regard to the issues of the California Voting Rights Act ("CVRA").

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT

NOTICE OF ADA COMPLIANCE: Pursuant to Title II of the Americans with Disabilities Act (Codified At 42 United States Code Section 12101 and 28 Code of Federal Regulations Part 35), and Section 504 of the Rehabilitation Act of 1973, the City of Pacific Grove does not discriminate on the basis of race, color, religion, national origin, ancestry, sex, disability, age or sexual orientation in the provision of any services, programs, or activities. The City of Pacific Grove does not discriminate against persons with disabilities. City Hall is an accessible facility. A limited number of assisted listening devices will be available at this meeting. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Sandra Kandell, City Clerk
MEETING DATE: September 7, 2022
SUBJECT: Remote Teleconference - AB 361 *Action required by 8/3/2022*
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Ratify Resolution No. 21-029 Emergency Teleconferencing authorizing remote teleconference meetings of all City legislative bodies for the following 30 days in accord with the Ralph M. Brown Act.

DISCUSSION

Governor Newsom signed AB 361 into law on September 16, 2021 to become effective on October 1, 2021. AB 361 extends the provisions of the Governor's Executive Order N-29-20 and Executive Order N-35-20 and is effective until January 1, 2024. AB 361 amends sections of the Brown Act to allow legislative bodies to continue to hold teleconference meetings during a state of emergency if the legislative body finds that as a result of the proclaimed state of emergency, meeting in person would present imminent risks to the health or safety of attendees.

Assembly Bill 361 requires the City within 30 days of holding a virtual meeting for the first time, and every 30 days thereafter, to make findings ratifying the state of emergency.

The exact language of the Bill is as follows:

If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

- (A) The legislative body has reconsidered the circumstances of the state of emergency.
- (B) Any of the following circumstances exist:
 - (i) The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - (ii) State or local officials continue to impose or recommend measures to promote social distancing.

At its October 6, 2021 meeting, Council approved Resolution No. 21-029 Proclaiming a Local Emergency, Ratifying the State of Emergency Proclaimed on March 4, 2020, and Authorizing Remote

Teleconference Meetings of All City Legislative Bodies for the Following 30 days in Accord with the Ralph M. Brown Act. Resolution No. 21-029 has effect for only 30 days. The Council has ratified that resolution each month since and must now renew the effect of the resolution by ratifying it again or adopting another.

This item will be added to the Council's first meeting of the month as the first item of business.

OPTIONS

Take no action and resume in person meetings.

FINANCIAL IMPACT:

There is no fiscal impact.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Reso 21-029

RESOLUTION NO. 21-029

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE PROCLAIMING A LOCAL EMERGENCY,
RATIFYING THE STATE OF EMERGENCY PROCLAIMED ON MARCH 4, 2020,
AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF ALL CITY
LEGISLATIVE BODIES FOR THE FOLLOWING 30 DAYS
IN ACCORD WITH THE RALPH M. BROWN ACT**

FACTS

1. The City of Pacific Grove (City) is a charter city and public entity established under the laws of the State of California.
2. The City is committed to preserving and nurturing public access and participation in meetings of the City Council and all its Boards and Commissions; and
3. All meetings of City legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and observe City legislative bodies conduct business; and
4. The Brown Act, Government Code section 54953(e), enables remote teleconferencing participation in meetings by members of a legislative body, without strict compliance with requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and
5. One required condition is that a state of emergency has been declared by the Governor of the State of California pursuant to Government Code section 8625, proclaiming existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and
6. A proclamation is made that there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the City's jurisdiction, caused by natural, technological, or human-caused disasters; and
7. State or local officials have imposed or recommended measures to promote social distancing, or that having the legislative body meet in person would present imminent risks to the health and safety of attendees; and
8. The City Council affirms these conditions now exist in the City. Specifically, on March 4, 2020, the Governor proclaimed a State of Emergency to exist as a result of the threat of COVID-19. That Proclamation has not been terminated by either the Governor or the Legislature pursuant to Government Code section 8629; and

9. Despite sustained efforts to remedy this circumstance, the City determines that meeting in person poses an imminent risk to health and safety of attendees due to the COVID-19 virus and its variants; and
10. The City Council finds the emergency created by the COVID-19 virus and its variants has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City, and desires to proclaim a local emergency and ratify the proclamation of state of emergency by the Governor and similar local health orders that require social distancing; and
11. As a consequence of the local emergency, the City Council determines that all legislative bodies of the City of Pacific Grove are required to conduct their meetings without full compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that those City legislative bodies shall comply with the requirements to provide public access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and
12. Each City legislative body shall continue to conduct meetings with public access available via call-in or internet-based service options and the public shall be allowed to address the legislative body directly in real time; and
13. This Resolution shall authorize the City Manager to establish and maintain platforms necessary for each City legislative body to hold teleconference meetings and provide an avenue for real-time public comments for such meetings; and
14. The City Council finds the introduction and adoption of this resolution is not subject to the California Environmental Quality Act (CEQA) as the activity is not a project as defined in Section 15378) of the CEQA Guidelines.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. RECITALS. The foregoing Findings are true and correct and are adopted by the City Council as though set forth in full.

SECTION 2. PROCLAMATION OF LOCAL EMERGENCY. The Council hereby proclaims that a local emergency now exists throughout the City, and meeting in person would present imminent risk as a result of the COVID-19 virus and its variants.

SECTION 3. RATIFICATION OF PROCLAMATION OF A STATE OF EMERGENCY. The Council hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

SECTION 4. REMOTE TELECONFERENCE MEETINGS. The City Manager and legislative bodies of City of Pacific Grove are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

SECTION 5. EFFECTIVE DATE OF RESOLUTION. This Resolution shall take effect immediately upon its adoption and shall remain in effect for a period of 30 days, or until such time the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which City legislative bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 6th day of October 2021, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Coletti, McAdams, Poduri, and Tomlinson.

NOES: None.

ABSENT: None.

APPROVED:

DocuSigned by:
Bill Peake
2F6E9DF48137414...

BILL PEAKE, Mayor

ATTEST: 10/25/2021

DATED: _____

DocuSigned by:
Sandra Kandell
4F11A81C850B4E1...

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
David C. Laredo
F08545E32B2846E...

DAVID C. LAREDO, City Attorney



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Bill Peake, Mayor
MEETING DATE: September 7, 2022
SUBJECT: Mayor's Proclamation: Monterey Peninsula College 75th Anniversary
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive presentation.

Attachments

Proclamation



Mayor's Proclamation
Recognizing the 75th Anniversary of Monterey Peninsula College (MPC)

WHEREAS, on September 5, 1947, first classes began at Monterey High School and on September 10, 1948, first classes began at its Fremont Street campus; and

WHEREAS, on June 9, 1949, Thirty-four students receive their degrees at MPC's first graduation ceremony; and

WHEREAS, MPC celebrates significant historical events such as MPC track star Jackie Williams running the 100-yard dash in 9.7 seconds on June 9, 1949 - a school record that still stands today; receiving a speech from Former First Lady and Civil Rights activist Eleanor Roosevelt on January 16, 1960; receiving a speech from Dr. Martin Luther King, Jr. on March 24, 1961; allowing over 20,000 people camp on the football field during the Monterey Pop Festival from June 16 – 18, 1967; receiving a photography workshop from Ansel Adams on March 24 – 28, 1970; and

WHEREAS, since its humble beginnings in 1947, MPC has established itself as essential to the educational and cultural development of the Monterey Peninsula and has improved the lives of innumerable students, and by extension their families and its communities; and

WHEREAS, as MPC approaches its 75th year, it now offers exceptional educational opportunities at its campus in Monterey, its Education Center at Marina, its Public Safety Training Center in Seaside, its partner high schools, and online, as well as comprehensive supportive resources and specialized programs dedicated to ensuring its students have the tools they need to succeed; and

NOW, THEREFORE BE IT RESOLVED, that on behalf of the City of Pacific Grove, we recognize and commend Monterey Peninsula College on the eve of this special occasion, for its steadfast, 75 year-long commitment to transforming lives through education for those here in Pacific Grove and on the Monterey Peninsula.

Bill Peake, Mayor



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Sandra Kandell, City Clerk
MEETING DATE: September 7, 2022
SUBJECT: Minutes of the August 17, 2022 City Council Closed Session and Regular Meetings
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

CLOSED SESSION MEETING

Wednesday, August 17, 2022, 5:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).

CHAMBER CAPACITY SEATING IS LIMITED AND PROVIDED ON A

FIRST COME, FIRST SERVED BASIS.

THE VIRTUAL MEETING IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

Join the Zoom Meeting to participate live at:

<https://us02web.zoom.us/j/692219855>

CALL TO ORDER

Mayor Peake called the meeting to order at 5:00 p.m. City Clerk Kandell conducted roll call with the following Council present in Chamber: Mayor Peake, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson. Mayor Pro Tem Amelio joined the meeting at 5:04 p.m.

APPROVAL OF AGENDA

Action: Upon motion by Councilmember Smith and seconded by Councilmember McAdams, Council voted to approve the agenda.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: Mayor Pro Tem Amelio.

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

No public comment was received.

- A. Conference with Real Property Negotiators (Government Code § 54956.8)
Property: 77 Asilomar, Pacific Grove (Pacific Grove Golf Links)
Agency Negotiator(s): Ben Harvey, City Manager and Tori Hannah, Administrative Services Director / Assistant City Manager
Negotiating Party(ies): Michael Sharp, PGA, CourseCo. President/CEO and Tom Bugbee, CourseCo. Chief Operating Officer
Under negotiation: *Price and terms of payment*



DRAFT MEETING MINUTES
CITY OF PACIFIC GROVE
CITY COUNCIL
REGULAR MEETING

Wednesday, August 17, 2022, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

**THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).
CHAMBER CAPACITY SEATING IS LIMITED AND PROVIDED ON A
FIRST COME, FIRST SERVED BASIS.
THE VIRTUAL MEETING IS COMPLIANT WITH THE GOVERNOR'S
EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF
TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.**

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
<https://us02web.zoom.us/j/209579290>

CALL TO ORDER

Mayor Peake called the meeting to order at 6:00 p.m. City Clerk Kandell conducted roll call with the following Council present in Chamber: Mayor Peake, Mayor Pro Tem Amelio, Councilmembers Coletti, McAdams, Poduri, Smith and Tomlinson.

PLEDGE OF ALLEGIANCE

Mayor Peake led the pledge of allegiance.

1. APPROVAL OF AGENDA

Action: Upon motion by Councilmember Smith and seconded by Mayor Pro Tem Amelio, Council voted to approve the agenda.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Amelio, Councilmembers Coletti,
McAdams, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

2. PRESENTATIONS

A. Blue Zones Project Monterey County Presentation

Action: Council received the presentation.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

3. COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)

A. Report on Closed Session by City Attorney

Conference with Real Property Negotiators (Government Code § 54956.8)
Property: 77 Asilomar, Pacific Grove (Pacific Grove Golf Links)
Agency Negotiator(s): Ben Harvey, City Manager and Tori Hannah, Administrative Services Director / Assistant City Manager
Negotiating Party(ies): Michael Sharp, PGA, CourseCo. President/CEO and Tom Bugbee, CourseCo. Chief Operating Officer
Under negotiation: *Price and terms of payment*

City Attorney Brian Pierik reported no reportable action taken.

- B. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**

General public comment was received from Vince Tuminello, Al Sacks, Alex White, Noah, Henry, Eleanor, Wyatt, Randy, Thomas, Milo, Vanessa, Kelly, Eli, Mia, Nico, Kelsea Richmond, Logan, Amber Acosta, Holly, Hannah Braymer, Samantha Perez, Carson, Hazel, Kristen Phelps, Debby Beck, Devon Keller, Kirby Garry, Tyler Rizo, Mike Wachs, Stephanie Driscoll, Kelly Sorensen, Elouise Shim, Kurt Conrad, Rodney Rodriguez, Amy, Tyler Ellis, John Hasselbauer, Andrew, Jordan Murdock, Nick Stahl, Misty Sherman and Inge Lorentzen Daumer.

CONSENT AGENDA

Action: Upon motion by Councilmember McAdams and seconded by Councilmember Smith, Council voted to approve the Consent Agenda.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Amelio, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**

- A. Minutes of the August 3, 2022 City Council Closed Session and Regular Meetings

Action: Approved minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

6. **RESOLUTIONS**

- A. Resolution Accepting Irrevocable Gift *Action required by August 17, 2022.*

Action: Adopted Resolution No. 22-043 accepting an irrevocable Gift from the Laws Family for the Library, and designate naming of the Library's Local History Room for the useful life of the Gift.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Affirming Support of Reproductive Freedom

Action: Adopted Resolution No. 22-044 Affirming Support of Reproductive Freedoms.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

7. **ORDINANCES**

8. **REPORTS – INFORMATION ONLY**

A. Check Register Report – July 2022

Action: Received the report.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. Core Revenue Report Status for July 2022

Action: Received the Core Revenue Status Report for July 2022.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

A. Ratification of New Local Emergency Actions

Action: Received report of emergency directives/modifications.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. Agreement Amendments – Time Extensions

Action: Authorized time extension amendments for the following agreements:

- George Washington Park Management Plan with Dudek
- Lovers Point Pier Assessment with GHD

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

A. Architectural Review Board Minutes: July 12, 2022

Action: Received minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. Diversity, Equity and Inclusion Task Force Minutes: July 11, 2022

Action: Received minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

C. Museum Board Minutes: February 8, 2022

Action: Received minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

D. Planning Commission Meeting Minutes: June 9, 2022

Action: Received minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- E. Traffic Safety Commission Meeting Minutes: June 28, 2022
Action: Received minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. PUBLIC HEARINGS

- A. Memorandum of Understanding between the City of Pacific Grove and the Police Officers Association (POA) **Action required by August 17, 2022.**
Public comment was received from POA President Wiley Griffin.

Action: Upon motion by Councilmember Smith and seconded by Mayor Pro Tem Amelio, Council voted to approve Resolution No. 22-045 approving the Memorandum of Understanding between the City of Pacific Grove and the Police Officers Association to cover the period of July 1, 2022, through June 30, 2024.

Motion carried 6-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Amelio, Councilmembers McAdams, Poduri, Smith, and Tomlinson.
NOES: Councilmember Coletti.
ABSENT: None.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Amend the City of Pacific Grove's Conflict of Interest Code **Action required by October 3, 2022.**
No public comment was received.

Action: Upon motion by Councilmember Smith and seconded by Councilmember McAdams, Council voted to introduce and hold first reading of an ordinance to amend Pacific Grove Municipal Code (PGMC) Chapter 2.40, Conflict of Interest, to account for the addition, deletion, and modification of positions listed as “designated employees”; determine that, for the purposes of the City of Pacific Grove’s (City) Conflict Code, the City is the “agency;” approve the updated Conflict Code; and direct that a summary of a proposed ordinance be published as approved by the City Attorney.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Amelio, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

12. **UNFINISHED AND ONGOING BUSINESS**

13. **NEW BUSINESS**

A. Focused General Plan Update

Public comment was received from Tony Ciani, Mark Chakwin, Andrew Kubica, Steven Lilley, and Inge Lorentzen Daumer.

Action: Upon motion by Mayor Pro Tem Amelio and seconded by Councilmember Smith, Council voted to receive a report on actions to prepare a focused General Plan update; direct City staff to initiate a focused General Plan update to the Land Use, Safety, and Transportation Elements of the City's General Plan to meet the minimum requirements triggered by the 2023-2031 Housing Element Update; and authorize staff to issue a Request for Proposals for professional services to prepare a focused General Plan update, Zoning Code and Map(s) update, objective design and development standards, and associated environmental review and document preparation.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Amelio, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

B. Roadwork Restrictions During Harbor Seal Pupping Season

Public comment was received from Nicole Rike, Debby Beck, Tony Ciani, Melanie Moreno, Lisa Ciani, Michelle Raine, Bill Kampe, Cari Rotoli, Lori McDonnell, Janet Cohen, Mark Chakwin, Carmelita Garcia, Suzanne Edwards, David Blaskovich, Michelle Knight, Inge Lorentzen Daumer, Kathy Nolet, Thom Akeman, and Kim Akeman.

Action: Upon motion by Councilmember Coletti and seconded by Councilmember McAdams, Council voted to direct the City Attorney to return with a draft ordinance to implement roadwork restrictions during harbor seal pupping season and use the PowerPoint as a template for that ordinance.

Motion carried 7-0, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Amelio, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson.
NOES: None.
ABSENT: None.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

- C. Automatic Access to Public Comments
Public comment was received from Sally Moore, Mike Wachs, Inge Lorentzen Daumer, Lisa Ciani, Tony Ciani, and Janet Cohen.

Action: Council held a conceptual discussion to provide automatic access to public comments received and provided direction to staff.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT

Council adjourned the regular meeting at 9:53 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____ Date _____

Attest by City Manager: _____ Date _____



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Sandra Kandell, City Clerk
MEETING DATE: September 7, 2022
SUBJECT: Amend the City of Pacific Grove's Conflict of Interest Code *Action required by October 3, 2022.*
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold second reading and adopt an ordinance to amend Pacific Grove Municipal Code (PGMC) Chapter 2.40, Conflict of Interest, to account for the addition, deletion, and modification of positions listed as "designated employees"; determine that, for the purposes of the City of Pacific Grove's (City) Conflict Code, the City is the "agency;" approve the updated Conflict Code; and direct that a summary of a proposed ordinance be published as approved by the City Attorney.

DISCUSSION

No changes were made between the first and second readings of this ordinance. The City Clerk caused a summary of this ordinance to be published on August 25, 2022.

The Political Reform Act of 1974 (Act) requires, among other things, that local governments adopt and maintain a Conflict of Interest Code, Gov. Code §87300. Agencies must designate all positions that make or participate in the making of governmental decisions, and assign specific disclosure categories to each position. The Fair Political Practices Commission (FPPC or Commission), created under the Act, assists state and local agencies in developing and enforcing conflict-of-interest codes. On December 20, 2006, by Resolution No. 06-032, the City Council adopted a Conflict of Interest Code.

The Act requires every agency that has adopted a Conflict Code to review its Code on at least a biennial basis (to be conducted each even numbered year) to ensure the Code reflects the organization's current staffing, and submit an amended Code, if necessary. *Id.*, § 87306.5. The Conflict Code was last amended in 2020. A review of the City's Conflicts Code revealed revisions are required due to the addition of positions not previously listed, and the deletion of positions that have been eliminated. The exhibits attached to the proposed Ordinance included with this report reflect these changes.

OPTIONS

N/A

FINANCIAL IMPACT:

There is no fiscal impact for this amendment.

GOAL ALIGNMENT: Transparency, Accountability and Communication: Implement programs, processes, revisions, and training to improve and advance the City's efforts.

Attachments

Draft Ordinance

Notice

ORDINANCE NO. 22-XXX

AN ORDINANCE OF THE CITY OF PACIFIC GROVE TO AMEND AND CODIFY THE CITY'S CONFLICT-OF-INTEREST CODE

WHEREAS, the City Council of the City of Pacific Grove (City) desires that elected and appointed officials be prohibited from making, participating in the making, or attempting to use their official positions to influence a governmental decision in which they know or have reason to know they have a financial interest; and

WHEREAS, the Political Reform Act (Act), set forth at Government Code section 81000 et seq, requires state and local government agencies to adopt and promulgate a Conflict of Interest Code (Conflict Code); and

WHEREAS, on December 20, 2006, the City Council adopted a Conflict Code; and

WHEREAS, the Act directs every local agency that has adopted a Conflict Code to review its Code on at least a biennial basis (to be conducted each even numbered year) to ensure the Code reflects the organization's current staffing, and submit an amended Code, if necessary; and

WHEREAS, the Council last amended the Conflict Code on September 2, 2020, by Ordinance No. 20-020; and

WHEREAS, upon biennial review by the City Attorney's office, it was determined that an amendment to the Conflict Code was required to reflect personnel changes that resulted in the creation of positions, and

WHEREAS, this Ordinance will supersede Ordinance No. 20-020, and will codify the current conflict-of-interest requirements, providing means to further promote disclosure of conflicts and set forth disqualification procedures.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The text set forth in existing Section 2.40.030 of the Pacific Grove Municipal Code, entitled "Disclosure Categories," shall be changed by the deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

2.40.030 Disclosure Categories

Designated officials are assigned to specific categories of financial disclosure.

(a) Designated Positions and Disclosure Categories.

(1) Category 1.

(A) Mayor;

(B) Councilmembers;

(C) City manager;

(D) City attorney;

(E) City clerk;

(F) City clerk/DEI coordinator;

(GF) Assistant city attorney;

(HG) Administrative services director

(I) Administrative services director / Assistant city manager;

(JH) Public works director;

(K) Public works director / Deputy city manager;

(L) Police chief;

~~(J) Community and economic development director;~~

(MK) Library director;

(NL) Community development director;

(OM) Human resources director;

(PN) Members of the planning commission;

(QΘ) Members of the architectural review board;

(RP) Members of the historic resources commission;

(SQ) Members of the economic development commission;

(TR) Consultant/new position.

(2) Category 2.

- (A) Administrative services manager;
- (B) Program manager;
- (C) Program manager, senior;
- (D) Police commander;
- (E) Environmental programs manager;
- (F) Public works superintendent;
- (G) Planner, senior;
- (H) Police administrative services manager;

(I) Police administrative services manager/Public information officer

- (~~J~~) Police records supervisor;
- (~~K~~) Human resources manager;
- (~~L~~) Management analyst;
- (~~M~~) Code compliance officer;
- (~~N~~) Senior librarian;
- (~~O~~) Construction project manager;
- (~~P~~) Members of the recreation board.

(b) Disclosure Categories.

(1) Category 1 must report all interests in real property investments, business positions and sources of income, including gifts, loans, and travel payments from any source located in, doing business in, or planning to do business within the jurisdiction of the city; and

(2) Category 2 must report all investments, business positions and sources of income, including gifts, loans, and travel payments from any source located in, doing business in, or planning to do business within the jurisdiction of the city.

(c) All other city employees and members of commissions, boards, committees or city-appointees to other local agency bodies with significant decision-making authority, even

if not listed in subsection (a) of this section, are also subject to disclosure requirements as their interests, holdings or sources of income relate to any decision that official makes. Each employee and member of commissions, boards, or committees must adhere to ethical principles at the time that a decision is made. [Ord. 20-020 § 2, 2020].

SECTION 3. Nos. 08-028, 13-010, 16-013, 18-011, 20-020, and all other actions in conflict with this Ordinance are hereby rescinded.

SECTION 4. If any provision, section, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall become effective on the thirtieth day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 7th day of September, 2022, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED:_____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney

2022 Local Agency Biennial Notice

Name of Agency: City of Pacific Grove
Mailing Address: 300 Forest Avenue
Contact Person: Sandra Kandell Phone No. 831-648-3181
Email: skandell@cityofpacificgrove.org Alternate Email: cityclerk@cityofpacificgrove.org

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

This agency has reviewed its conflict of interest code and has determined that (*check one BOX*):

☒ **An amendment is required. The following amendments are necessary:**

(*Check all that apply.*)

- ☒ Include new positions
- ☐ Revise disclosure categories
- ☐ Revise the titles of existing positions
- ☒ Delete titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions
- ☐ Other (*describe*) _____

☐ **The code is currently under review by the code reviewing body.**

☐ **No amendment is required.** (If your code is over five years old, amendments may be necessary.)

Verification (to be completed if no amendment is required)

This agency's code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure assigned to those positions accurately requires that all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions are reported. The code includes all other provisions required by Government Code Section 87302.

Signature of Chief Executive Officer

Date

All agencies must complete and return this notice regardless of how recently your code was approved or amended. Please return this notice no later than **October 3, 2022**, or by the date specified by your agency, if earlier, to:

(PLACE RETURN ADDRESS OF CODE REVIEWING BODY HERE)

PLEASE DO NOT RETURN THIS FORM TO THE FPPC.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Daniel Gho, Public Works Director / Deputy City Manager
MEETING DATE: September 7, 2022
SUBJECT: 2022 Sanctuary Annual Management Plan
CEQA: Categorical Exemption, CEQA Guidelines Section 15307, Class 7, Actions by Regulatory Agencies for Protection of Natural Resources

RECOMMENDATION

Receive report.

DISCUSSION

The City of Pacific Grove has worked in partnership with Creekside Center for Earth Observation for the consulting services for the Monarch Grove Sanctuary. On a yearly basis, Dr. Stuart B. Weiss, has worked with City staff to identify management activities that need to occur in the Monarch Grove Sanctuary and George Washington Park. Dr. Weiss reports highlights, recent history and current conditions, long term views, and recommendations. The City has made great strides in the Sanctuary over the last few years.

There are two major management actions that are recommended for this year:

- 1) Two tall dead Monterey pines pose a major risk to other trees and potentially to visitors should they fall uncontrolled. These trees are recommended for removal. They do not provide wind shelter or other habitat value and are a liability. Leaving the trunks as wildlife snags, with irregular tops (not “telephone poles”) can create a more natural appearance.
- 2) Thinning a group of Monterey Cypress (planted in the mid-2000’s) in the NW section MGS. Removing 2 trees in this group will allow for faster growth of the remaining trees without compromising wind shelter.

In addition to the major items noted above, other recommendations include:

1. A hiatus on major plantings until a full inventory and structural assessment is completed as part of a new management plan. (Staff is seeking grant funding for this effort.) There are plenty of new trees in the ground for now.
2. Boxed trees can be moved around as desired. However, trees should not be put into the ground until the new assessment is completed and planting sites selected.

3. The only exception is that one or two potted trees in the gap on the Hotel property can be planted. Avoiding overplanting is essential for individual tree health and rapid growth.
4. Initiate thinning the weakest crowded eucalyptus in the SE corner to allow for development of healthier trees. Some of these trees are nearly dead. Plan on removing a few trees each year until a suitable density (10' spacing) is achieved. The remaining trees should respond strongly to increased space and fill in the canopy rapidly.
5. The yellow Buddleia bushes be pruned to refresh growth and force flowering in the fall. Consultations with a master gardener or other horticultural expert is recommended.
6. Maintain and cage pine saplings in the interior.
7. The irrigation regime for new plantings be continued, but trees and shrubs should be weaned off irrigation after a few years once established.

The City of Pacific Grove is dedicated to preservation and the enhancement of the Monarch Sanctuary. Annually Dr. Stuart Weiss performs his walkthrough with City staff and prepares the management activities for implementation prior to the overwintering months, which are October 1 – April 30. Prior to the City performing the recommended maintenance activities, the annual management plan is brought forth to the Beautification and Natural Resources Commission and then sent to California Fish and Wildlife for their review. The management plan was presented to the BNRC at their July 2022 meeting. The management report is then sent to Fish and Wildlife because they hold the Conservation Easement which grants them oversight of the Sanctuary and all activities that occur within the sanctuary property. City staff hosted a California Fish and Wildlife representative on August 5, 2022, at the sanctuary to discuss this year's proposed activities.

Additionally, City staff hosted a walkthrough of the Monarch Sanctuary on August 26th and discussed the proposed maintenance activities within the Sanctuary for this year. 40 members of the public joined City staff and Dr. Stu Weiss to walk the sanctuary grounds.

City staff will now implement the recommended activities, and it is anticipated that all the tasks can be completed in a few days, with some general cleanup also occurring along the pathways. City staff will be performing these activities prior to the start of the overwintering season.

OPTIONS

Do nothing.

FINANCIAL IMPACT:

All proposed activities will be funded through Public Works operations budget.

GOAL ALIGNMENT: City Asset Stewardship: Repair, maintain and improve City assets, including streets, sidewalks, sewer systems, buildings, and parks and trails.

Attachments

2022 Management Plan Report



CREEKSIDE SCIENCE

P.O. BOX 1553, LOS GATOS, CA 95031

Stuart B. Weiss, Ph.D.

www.creeksidescience.com

stu@creeksidescience.com

650 269-2876

Assessment and proposed management activities Monarch Grove Sanctuary and George Washington Park for 2022



Monarch clusters in Monarch Grove Sanctuary November 23, 2021

Executive Summary

In 2021, the Western monarch butterfly migration made a great comeback from perilously low numbers in 2020. The California overwintering population was estimated at ~250,000 butterflies during the Thanksgiving Counts. The severe fluctuations are the result of multiple causes; in short, in 2020 nearly everything went wrong during the breeding and migration seasons, and in 2021, everything went right, at least in the southern part of the range. Brief narratives in this report will address potential causes of the declines and rebound.

Peak numbers at Monarch Grove Sanctuary (MGS) were estimated at 12,000-14,000 from early-November through mid-December. Numbers dropped to 9,500 in early January, following a series of intense storms in mid- and late-December. This 32% drop from December to January was similar to historical observations at MGS and many other sites. Mass emigration started in early February with the onset of warm weather.

After arriving in October, the butterflies clustered in sunny areas on the southern edge of the grove, primarily on Monterey cypress. By mid-November, they clustered in the interior of the grove on Monterey pines and largely remained there through the remainder of the season. Eucalyptus was hardly used at all in the 2021-22 overwintering season.

New plantings of Monterey cypress were installed in 2021 and the trees have established and are actively growing. Boxed trees were placed along the eastern edge of the Sanctuary, and on the western edge of the Hotel property.

The major management actions recommended for 2022 are:

- 1) Two tall dead Monterey pines pose a major risk to other trees and potentially to visitors should they fall uncontrolled. These trees are recommended for removal – they do not provide wind shelter or other habitat value and are a liability. Leaving the trunks as wildlife snags, with irregular tops (not “telephone poles”) can create a more natural appearance.
- 2) Thinning a group of Monterey cypress (planted in the mid-2000’s) in the NW section MGS Removing 2-3 trees in this group will allow for faster growth of the remaining trees without compromising wind shelter

The time is ripe for developing a new comprehensive site management plan that will guide activities well into the future. Funding is likely available via the Monterey County Resource Conservation District (as part of a large statewide program) and with the participation of California Department of Fish and Wildlife (which hold the conservation easement on MGS). The key elements of this management plan are discussed in some detail, including some examples of habitat mapping with LiDAR.

Introduction

The following recommendations and assessments are based on site visits and consultations with City Arborist Albert Weisfuss and Public Works Director Daniel Gho in Spring 2022. They are presented in the context of the 2011 Management Plan (Weiss 2011) and subsequent consultations with City staff and residents, including annual recommendations from 2014-2021 (Weiss 2014-2021). The recommendations are based on previous scientific work, professional judgment, input from stakeholders in Pacific Grove, and field assessments. They attempt to carefully balance monarch habitat needs, hazard reduction, and forest health, based on both short-term and long-term perspectives.

In 2020, City Arborist Albert Weisfuss completed a detailed report with his recommendations, and those were considered in the 2020 report (Weisfuss 2020). The assessments and recommendations (with a few noted exceptions) are a solid foundation for guiding management, and the input of a professional arborist is essential especially on matters of tree health and species suitability.

Background data on monarch numbers at Monarch Grove Sanctuary (Xerces Society Thanksgiving Counts and New Year's Counts) provide context of the entire California monarch population. Butterfly monitoring data from the Pacific Grove Museum since 2013 have documented monarch use patterns and habitat suitability relative to weather and time of season. This reporting on monarch abundance and distribution provides a long-term accessible record for the local community.

The major elements of this report are:

1. Explanation of potential causes of the western monarch population collapse in 2020, followed by a sharp recovery in 2021.
2. The monitoring data from the PG Museum on monarch numbers and distribution, and interpretation.
3. A graphical view and description of the output of the new Ambient Weather station in the Sanctuary, and a comparison to Monterey Airport data
4. A brief review of management actions completed in 2020 and 2021
5. Recommendations for management actions in summer 2022
6. Discussion of opportunities for a new management plan and the elements of that plan.
7. A repeat and update of the long-term management considerations from previous reports, where still relevant.
8. Photographs of monarchs and habitat with notes.
9. A supplemental document with some visualizations and analysis of LiDAR data from 2016, as a demonstration of the potential of this new technology.

Monarch Crash of 2018-2020

The overwhelming reality of the 2020-21 overwintering seasons in California was a population crash to less than 2,000 butterflies at the overwintering sites during the Thanksgiving Counts (Table 1). None were observed in Pacific Grove that year.

The causes of this crash, a 99+% decline from the most recent peak of ~300,000 monarchs in 2015 and 2016, are complicated and multifaceted. The following is an account of the declines, based on published information (see Literature Cited) and discussions with monarch experts. The exact mix of causes remains uncertain; the narrative here should be viewed as hypotheses rather than absolute fact.

The Western Monarch Population as a whole

The long-term decline from the 1980s and 1990s has been described and analyzed elsewhere (Crone et al. 2019, Crone and Schultz 2021, Espeset et al. 2016, James and Kappen 2021, Pelton et al. 2019, Schultz et al. 2017). The loss of breeding habitat in the Central Valley, changes in pesticide composition, weather fluctuations, and losses of overwintering sites are among the important causes. From 1999 to 2016, the California population fluctuated between ~60,000 and ~500,000, with a geometric mean size of 200,000 (Table 1). Notable lows included 86,000 in 2007, and 58,000 in 2009, coinciding with relative drought conditions across the West. But the population weathered the 2012-2015 drought, and recovered to ~300,000 in 2015 and 2016, and declined to 190,000 in 2017 (a very wet year). There are no simple relationships between annual precipitation in California and monarch numbers – causes are spread across the whole breeding range and season.

In 2018, the population declined sharply to ~30,000 butterflies, a record decline to date. A leading hypothesis for this decline was a record warm February 2018 with coastal high temperatures greater than 70°F, which stimulated monarchs to break diapause and leave the overwintering sites. The record warmth was followed by the return of winter with a vengeance in March (extended rains, some freezing nights, snow down to <1000 ft). Such winter weather immobilizes and can directly kill adult monarchs, especially away from the mild coastal zone, and cold also delays the emergence of milkweeds. The phenological gap between monarch emigration and milkweed emergence has been identified as a key bottleneck, and the temperature signal at the coast does not perfectly correlate with the temperature signal inland.

Much of the spring 2018 generation was lost, and the subsequent generations were not able to make it up the rest of the season. No monarchs made it to Washington State in 2018. Only 30,000 returned to California that fall.

In 2019, the overwintering population declined by ~30% to 22,000, a relative change well within the historical range of variability. But again, no monarchs reached the Pacific Northwest for breeding that year.

The 2020 season was a disaster – nearly everything that could go wrong did go wrong. February 2020 was warm and followed by a cool rainy March (but not as severe as 2018). August and September 2020 brought on record heat- monarch larvae cooked to death in the Santa Barbara area (115°F or higher, and hotter closer to the ground with little shade). The heat extended across nearly all the breeding range in California. An example of the record heat is the average temperature for Monterey County in August and September (Figure 2). Four million+ acres of fires directly took out some of the breeding habitat in the South Coast Ranges that produce many monarchs that migrate to Pacific Grove (Yang et al. 2016). The weeks of smoke, which is harmful to insects, came just as the monarchs were initiating the migration. Then there was a hard freeze in some inland areas, for example 22°F in Paso Robles in mid-November (Dan Meade pers. comm.). The monarchs had not yet flown to the coast because of warm temperatures in October. The extreme fluctuations in temperature and rainfall have been termed “weather whiplash,” and are a feature of the rapidly changing climate.

The mild fall and early winter weather also allowed breeding to continue - reproductive diapause is not completely hardwired in by photoperiod. Monarchs have been breeding year-round in SoCal for more than a decade, and in 2020 winter breeding was observed in the Bay Area and other mild coastal climates (Crone and Schultz 2021, James and Kappen 2021). Even the native milkweeds, especially showy milkweed, did not senesce and the widespread availability of tropical milkweed means that hostplant resources are available in urban areas throughout the winter. The presence of breeding resident monarchs in coastal areas could have intercepted migratory butterflies and short-circuited diapause.

In addition, the widespread use of mobile and persistent neonicotinoid pesticides has produced toxic host plants and nectar in the Central Valley, even in non-agricultural settings such as wildlife refuges (Fordyce et al. 2020). Much of the migration beyond the Coast Ranges needs to cross the Central Valley (and other heavily agricultural areas like the Salinas Valley) twice. These areas potentially act as population sinks.

In summary, the collapse of the migratory western monarch population in 2020 was likely driven by weather whiplash and record heat waves (both symptoms of climate change), exacerbated by continuing toxification of breeding habitat in agricultural regions. However, any assertions and conclusions are conditional on deeper analyses and consideration of the entire western monarch migration.

Recovery in 2021

Monarch observers were truly despondent after the 2020-2021 overwintering season with only 2,000 butterflies at the overwintering sites. But in 2021, the monarchs exhibited a remarkable recovery to ~250,000 overwintering butterflies, observed in the November-December 2021. How could this 100-fold increase happen?

First, the awesome reproductive potential of monarch butterflies (each female produces ~400 eggs) can be expressed if conditions on the breeding grounds are good. Four-fold increases per generation are well within the range observed in monarch populations – over 4 generations such increases multiply out to 256-fold increase ($4 \times 4 \times 4 \times 4 = 256$).

As opposed to 2020, nearly everything went right in 2021, at least in the southern portion of the monarch range. Spring weather following the emigration from the overwintering sites was mild. No megafires occurred in the South Coast Ranges, which produce many of the overwintering butterflies and provide for short migrations that avoid the toxic Central Valley. Resprouting milkweeds in the 2020 fire scars may have provided high quality larval food. The record heatwaves of 2020 did not recur. And a near record Southwest Monsoon season (July-September) provided excellent breeding conditions in Arizona with lush milkweed growth all summer long (Southwest Monarch Project, pers. comm.). Most late summer Arizona monarchs migrate to Southern and Central California- sites in Ventura, Los Angeles, and Orange Counties had more monarchs in 2021 than since the early 2000s, and numerous sites on the Central Coast, including Pacific Grove, were occupied by numbers not seen for many years.

There was not a spectacular recovery north of Pacific Grove. The Santa Cruz sites showed moderately increased numbers from 2020, but not to the degree further south. East Bay and Marin sites supported only a few hundred monarchs in 2021. Several megafires occurred in the northern breeding ranges, including the record Dixie Fire (>1,000,000 acres), Caldor Fire, and a series of fires in NW California. Smoke lingered in Northern California through the September-October migration season.

While we will never know for sure the exact contributions of these factors in the decline and recovery, the western monarch population has given us a second chance and it is incumbent on all of us to improve the breeding and overwintering habitats.

Pacific Grove in California Context

The numbers of monarchs at Pacific Grove primarily reflect the ups and downs of the overall California population ($r^2 = 0.82$), with some variations among years (Table 1). MGS has served as one of the major overwintering sites in California, accounting for an average of 7% (range 1% to 14%) of the Thanksgiving Counts since 1999. Its rank among all CA sites ranged from 1st (2006) to 17th (2009), and MGS is almost always in the top 10 sites. For Monterey County (from 2001 on), MGS accounted for an average of 37% (range 17% to 58%) of the county population.

Seasonal Monarch Behavior

In general, monarchs seek wind-sheltered but sunny sites within forest groves along the coast. They “crowdsource the microclimate” - taking flight when conditions are too warm or too cool, too sunny, or too shady, and especially too windy. They tend to land where other monarchs are clustered, because the best indicator of good conditions for monarchs is the presence of other butterflies. The butterfly clusters move around

according to the weather and time of year; lack of wind shelter is often the proximal cause of shifts. They often cluster just outside MGS to the south; and they use a mixture of tree species (eucalyptus, pine, and cypress) that varies from week to week and year to year.

The seasonal course of monarch numbers at MGS for 2013-2022 is shown in Figure 3. Monarchs arrive in October, and typically reach peak numbers in late-November – December. Butterflies move around MGS, often associated with wind events – they often start the season along the sunny southern boundary and move into the interior following southerly storm winds. Emigration and mortality (Monarch Photo 4) reduce numbers for the remainder of the season, with a final exodus by mid-February into early-March. The details of recent seasons (2013-2019) are described in previous reports.

In 2022 (thick black line in Figure 3), monarchs arrived in October and numbers reached 13,700 by early November. After a plateau through mid-December, numbers dropped to 9,500 by January 7 and ~8,000 by January 22 - February 3. The mass emigration occurred in the weeks after Feb 3, and the last significant numbers were observed on March 10.

Most monarch overwintering sites exhibit a decrease in numbers following a peak in November (Table 2). The decrease from December to January followed a series of intense storms in the second half of December, with high winds (Figure 4). Over the period 2017-2021, the decrease in numbers from November (Thanksgiving Counts) to January (New Year's Count) has been similar or less than the decreases observed at other sites in Monterey and Santa Cruz Counties. This observation indicates that monarchs find the habitat suitable for the entire season. The only time that MGS has been totally abandoned mid-season was in December 1995, when a record windstorm swept through coastal California with hurricane force winds.

Monarchs clustered on a variety of tree species and shift through the season (Figure 3b). In 2021-22, monarchs started on eucalyptus, primarily along the southern edge. By late October, after storms and high winds, they moved to nearly 100% Monterey pines (Cover photo, Monarch Photos 5 and 6) in the interior and remained there through January. In February, as weather warmed, they broke diapause and started mating (all the butterflies observed on February 12 were flying). They spread out again, and clustered on a mix of pines, cypress, and eucalyptus.

The preference for pines for most of the season is the result of the wind-sheltered interior being dominated by pines, not an intrinsic preference for that species. In previous years, monarchs have used eucalyptus much more frequently during the bulk of the season.

Weather 2021-2022

A weather station was installed on the southern fence within the historical cluster area in that zone. Weather data were recorded every 5 minutes. This microsite is often occupied early in the overwintering season, or during long periods of calm weather in the middle of the season. 2021-2022 provided the first opportunity to use the weather station data in conjunction with monarch movements.

Temperatures

Temperatures were typically mild at MGS. A notable heat wave (80°F) occurred in mid-October, and 75°F days occurred in late November and early December. December was generally cool (maximum temperatures of 50-60°F). During the stormy periods in late December, diurnal ranges were low. January had many days above 60°. Mid-February saw another warm period (70+°), which likely contributed to the final emigration from overwintering.

Minimum temperatures never were less than 41°, so there was no freeze danger in 2021-2022.

Wind

Wind drives short-term monarch movements within overwintering sites more than any other weather factor. The PGMS station is in a relatively well-sheltered spot. Average 5-minute winds (Figure 4A, second graph) only exceeded 5 mph for short periods in October and December. Gusts would exceed 5 mph much more often (third graph) and maximum daily gusts (fourth graph) reached 10 mph during the stormy periods in October and December. These windspeeds often drive monarchs from local microsites (Leong 1991).

Monterey Airport (KMRY) winds were substantially higher, as expected for an exposed site with anemometer at 10 m height (Figure 4B). The periods of high winds are the same as at PGMS. KMRY serves as an indicator of high regional wind events that can be tied to historical monarch movements within MGS.

The high winds in October drove the monarchs off the eucalyptus on south boundary, into the pines in the interior of the grove. The December storms and winds were the most notable stress on the monarchs in 2021-2022, and nearly all the monarchs remained on the pines in the interior. Mild conditions returned in January and February.

Wind direction at the weather station were predominantly between S and W, especially higher winds, and gusts (Figure 4C). This observation is not surprising given the location of the station, with relatively open southern exposure and more sheltered northern exposure.

Nectar

Monarchs will visit many species of flowers for nectar. Early season nectar helps keep monarchs at MGS, where they can attract other monarchs arriving from the breeding grounds. Nectar provides energy for flight, and the high availability at many California overwintering sites allows monarchs to conserve fat reserves and maintain body mass.

The major species used at MGS are tree daisy (Monarch Photo 1), bottlebrush (2), and English Ivy (3). Yellow butterfly bush (Buddleia) is also frequently used, but the bushes are overgrown and need some cutting back to freshen flower production and force flowering during the critical October-November period. Blue gum eucalyptus come into flower in January and provide copious nectar for the latter part of the season. The flowering red gum (*E. filicifolia*) sometimes blooms in the fall and is visited frequently during warm weather. Monarchs will avoid shade when air temperatures are cool, so the sunny areas near the nectar beds are crucial and should be used to the fullest.

Current state of Monarch Grove Sanctuary

Monarch Grove Sanctuary continues to provide high quality overwintering habitat. Large numbers of monarchs persisted through a very stormy period in December, indicating that there is sufficient wind shelter and dappled light in the interior. Most hazard trees and branches have been removed over time, but two large dead trees remain. The new plantings are established and will fill in some wind gaps, as well as provide cluster sites in favorable microsites.

Habitat photos, with documentation of location and photo orientation, of various parts of MGS are presented below with brief descriptions.

Management Actions in 2020 and 2021

Many of the minor actions recommended for 2020 were carried out. Mainly, some small dead trees were removed.

The major action in fall 2020 was plantings of boxed Monterey cypress that had been brought into MGS in 2019. Several cypress trees were planted in the open area south of the main entrance and kiosk, where 1 or 2 trees were recommended as cluster trees. More cypresses were planted south of the main trail. Cypresses were also planted to the east of the nectar beds. Some bottlebrush and eucalyptus trees were also planted (Photos 1-4). Some toyon and ceanothus were planted and caged.

The irrigation scheduling has worked, as there has been a tendency to overwater in past years.

The recommendation that new low-growing native nectar plants be established along the trail through the nectar beds has not been implemented. Suggested management of the existing nectar plants by selective pruning was not observed by June 2022.

The new tree plantings have not been mapped as of 2022, pending a new mapping effort for all trees, so a complete inventory is not available. A new map of MGS is a central element of a new management plan, as discussed below.

2022 Recommendations

The specific 2022 recommendation include:

1. A hiatus on major plantings until a full inventory and structural assessment is completed as part of a new management plan (see below). There are plenty of new trees in the ground for now.
2. Boxed trees (Habitat Photo 1) can be moved around as desired. ***However, trees should not be put into the ground until the new assessment is completed, and planting sites selected.***
3. The only exception is that ***one or two*** potted trees in the gap on the Hotel property can be planted (Habitat Photo 2). Avoiding overplanting is essential for individual tree health and rapid growth.
4. Remove two large standing dead trees, one toward the NW corner, and one just east of the nectar beds (Habitat Photos 9 and 10). These trees pose large hazards primarily to other trees.
5. Thinning the cypress stand toward the NW corner (Habitat Photo 7) with removal of two trees to be selected in the field, to allow for more room for the remaining trees while maintaining wind shelter.
6. Initiate thinning the weakest crowded eucalyptus in the SE corner to allow for development of healthier trees (Habitat Photo 4). Some of these trees are nearly dead. Plan on removing a few trees each year until a suitable density (10' spacing) is achieved. The remaining trees should respond strongly to increased space and fill in the canopy rapidly.
7. The yellow Buddleia bushes be pruned to refresh growth and force flowering in the fall. Consultations with a master gardener or other horticultural expert is recommended.
8. Maintain and cage pine saplings in the interior (Habitat Photo 14).
9. The irrigation regime for new plantings be continued, but trees and shrubs should be weaned off irrigation after a few years once established.

History of Habitat Management

This section provides a brief history of management plans and actions over the past 25 years. More complete accounts can be found in the 2011 Assessment and Management plan and in subsequent annual reports.

In the 1990s and 2000's, monarchs primarily clustered along the southern boundary, often on the neighbor's pine tree. They would move into the Sanctuary proper to escape southerly storm winds, but returned to the southern boundary when winds swung around to the NW. Based on the 1998 assessment and management plan (Weiss 1998), a shelterbelt of blue gum eucalyptus was planted in 1999 to protect the site against NW winds.

Following the planting of the shelterbelt, little was done in the grove. Attempts to plant a second row of eucalyptus to reinforce the southern boundary, as recommended in the 1998 plan, failed because trees were pulled up. The many dead and dying pines (from old age and pitch canker) were not removed, despite a recommendation in the same report. In 2005, a dead branch fell and killed a woman, and the grove was closed to the public for the remainder of the season. Following the overwintering season, the dead trees were taken down, and many wildlife snags were retained. Several more hazard trees were removed in 2007-2008 following additional consultations.

In fall 2009, several large branches on the southern boundary were cut, without consultation, because a branch had fallen into the neighbor's yard, and other branches posed hazards to the neighbors. These branches included favored monarch cluster sites. This action coincided with the (then) record low point of the California population, and only 900 monarchs overwintered in Pacific Grove. The situation stimulated the development of a new management plan, completed in 2011.

In fall 2011, potted trees were brought into the grove and placed in the SE corner near where the branches had been cut, to create some temporary wind shelter. Based on the new management plan, in 2012 several of these trees were planted in an additional row of eucalyptus just north of the southern boundary trees, at 10-15 ft spacing.

By 2012, the 1999 shelterbelt trees had grown tall enough (50-60') to provide wind shelter in conjunction with nearby pines and cypress, and monarchs moved into the interior of the grove and remained there for the remainder of the season, clustering on pines and cypress trees that receive more insolation than surrounding branches (see below for a discussion of shading).

In spring 2013, potted trees that had been brought into the grove as a temporary wind shelter were planted in the ground, creating a dense stand of small trees in the southeast corner of the grove. It was a period of conflicts over grove management.

In recent years, most hazard trees have been removed, and management actions have been relatively minor.

A New Site Management Plan

The 2011 Assessment and Management plan is now 11 years old. Conditions have changed enough that development of an updated plan is necessary. The annual funding that covers this annual report is not sufficient to develop a comprehensive plan using the latest assessment tools, as well as addressing the institutional issues that have arisen over the nearly three decades since Monarch Grove Sanctuary was established.

Funding is likely available via the Monterey County Resource Conservation District (RCD), as part of national and statewide initiatives to recover the western monarch population. Discussions among the City, the RCD, and monarch scientists are ongoing, and once RCD funding is secured the process can start.

Some key elements of a new assessment and management plan, first are suggested in the 2021 review, include:

Produce a New Base Map of Monarch Grove Sanctuary

Managing MGS is an exercise in landscape architecture, with the goal of maintaining wind shelter from all directions, but allowing sufficient light in the interior so that monarchs can choose a mix of sunny, dappled, and shaded spots within the forest. Also, management of hazard trees and tracking of new plantings and subsequent growth are desirable so that a record of actions is maintained, and precise plans for each year can be laid out and executed as planned.

The foundation of a long-term management plan is an accurate map of the Sanctuary, including property boundaries, tree locations, tree species, tree diameter at breast height (DBH), tree height, and tree health. In addition, new plantings, understory plants, trails, and other features should be added on an annual basis.

In 2010, a working map of MGS was produced for the 2011 Assessment and Management Plan (Figures 5 and 6). The 2011 map used triangulation with tapes to lay down a 10 m grid, and trees were mapped out within those grids to within 1-2 meters. Hemispherical photographs were taken at each 10 x 10m point. Attempts to tie the grid to surveyed property lines were stymied by poor GPS accuracy within the forest, and distortions of horizontal distances by topography. Therefore, the working map is not georeferenced and has its own local coordinate system. This map has served adequately since 2011 for management, but is now out of date because of tree mortality and new plantings.

Rather than update the current map, it is recommended that a new map be produced with surveying equipment such as a Total Station, and be tied into the parcel map, digital elevation model (DEM), and other base data for Pacific Grove. GPS is not accurate enough within the denser parts of the grove.

Remapping all the trees is an opportunity to reassess their health, requiring the city arborist to be involved. Although the soaking rains of October and December 2021 alleviated some drought stress, the dry winter and spring of 2022 once again herald drought stress. Special note should be made of drought symptoms where visible.

Repeat hemispherical photography

Nearly exact relocation of photopoints is possible through triangulation from the SE fence corner, even without a formally surveyed base map. Some photographs were

reshot in 2018 but never fully analyzed. Repeat photos should be taken so that the change in conditions from 2011 and 2018 can be quantified.

Methods for interpolating wind and light have improved since the 1998 and 2011 reports, and can be redone in such a manner as to directly compare sites through time and understand the effects of canopy changes through time.

LiDAR

LiDAR (Light Detection and Ranging) is a state-of-the-art method for quantifying the 3-dimensional structure of vegetation at fine scales. A laser scanner is used from either above (airborne) or below (ground-based). The reflections are timed to calculate distance, and a “point cloud” of reflections is produced. There are software packages, including ARCGIS Pro, that can analyze and display the point cloud and describe vertical structures in detail.

Projects at other monarch sites (in Sonoma County) has developed some methods for quantifying wind and solar radiation at the outer canopy surface, using ARCGIS Pro and Wind Ninja software.

LiDAR data can be collected from airplanes, drones, or from ground-based scanners. A LiDAR flight over Pacific Grove was completed in 2018, with resolution of 5.68 pts/square meter and is available at:

https://portal.opentopography.org/usgsDataset?dsid=CA_FEMA_Z4_B1_2018

Example images and analyses from this LiDAR product are presented and discussed in the supplemental report “Examples of LiDAR for Assessment of Monarch Butterfly Habitat in Pacific Grove.” The point density (5.68 pts/square meter) is lower than that used in Sonoma County (9-12 points/square meter) but is sufficient to capture many canopy features. But it is not adequate to fully map the middlestory and understory. One advantage is that it is possible to map the surrounding urban forest and assess wind shelter from a broader area.

It is possible to contract for drone LiDAR that can produce a map of several acres at high point densities (>100 points/square meter). Laguna Drones in Los Gatos, or other vendors, can provide services for \$5-10,000 depending on the amount of processing. A drone flight would produce the best up to date map and capture nearly full understory structure.

Many innovative LiDAR analyses are being developed at Ellwood Mesa in Goleta, where a drone flight acquired 200 pts/m². It is now feasible to simulate hemispherical photographs at any height above the ground, hence quantifying light and wind exposure exactly where the monarchs choose cluster sites

Ground-based LiDAR is feasible, but requires accurate ground locations, and would be difficult to deploy on private property outside MGS. No vendors are known at this time.

Airborne LiDAR could also cover George Washington Park (GWP) and provide base data for a management plan there. GWP images are included in the LiDAR document

Wind mapping

Kingston Leong (1990, 1991) has developed a method for mapping wind on a grid using hand-held wind meters. The meters are held for a short period (2 minutes or more) and the mean, max, and min windspeed recorded. These measurements are done under a variety of wind directions, and can be correlated with monarch occupancy at fine scales. Monarchs tend to leave sites when ground-level winds exceed ~5 mph (2 m/s). Leong used this method in his 1990's report on MGS.

This wind mapping procedure could be executed by volunteers or students under supervision. The wind attenuation from outside conditions can be correlated with Wind Site Factors (WSF) from hemispherical photography, which would allow for better inference of wind exposure. A well calibrated wind attenuation model would be of great use across all monarch sites. LiDAR data could also be correlated with measured wind.

A fluid dynamic wind modeling program called Eddy3D has been used in Santa Barbara County to model wind at fine scales within monarch sites and assess management options. The LiDAR point cloud provides the 3-D structure as model input.

Weather Stations

The initial trial runs with the Ambient Weather station proved to be successful. The full season of data presented here is informative on monarch response to weather, especially wind. Several questions need to be answered for future deployment:

1. *Is the station in the optimal location for understanding conditions in the grove?*
The current site on the south fence within the historical cluster zone is a good initial choice. It captures the wind exposure from the south an especially important aspect of the grove and surrounding area. It was not possible to correlate the weather with monarch movements in 2020-21, but in 2021-22 the high winds in October along the southern boundary that drove the monarchs into the interior were captured.
2. *Can the results be extrapolated to the rest of the grove?* Temperature varies with height, minimum temperatures are coolest at the ground, and increase with height – some vertical movements of monarchs are associated with avoiding cold temperatures low in the canopy. There are simple models of temperature with height, which could be calibrated with small temperature sensors. Absolute humidity is more consistent across a forest grove, but relative humidity is a function of air temperature. Wind and insolation vary strongly from point to point according to fine scale canopy structure, which is captured with

hemispherical photography and calibrated via the wind mapping protocol described above.

3. *Would additional stations be useful?* More sites in complex environments are generally better. But costs escalate rapidly when full stations are considered. Temperature can be mapped using small data loggers (iButton Thermochrons or HOBOs) placed in a network to capture important gradients. A network of recording anemometers would be useful, as an adjunct to the wind mapping. Exactly where one or more additional stations would be placed for maximal efficiency is a question that requires some considerable thought. A weather station in an open field at the Adult School could be a useful “outside the grove” baseline. A substantial amount of micrometeorological equipment – temperature, humidity, light, and wind sensors - is available from Francis Villablanca (Cal Poly SLO) and USFWS and has been offered to California monarch researchers and managers.
4. *Is there a good “base station” that captures the general weather in the open for long timer periods?* There are many weather stations in Pacific Grove and surrounding areas. But the wind at any station in the urban matrix will be very site-specific with obstructions like trees and buildings – official wind measurements are taken on 10 m tall towers in open areas to avoid ground effects. The Monterey Airport has the longest record, but the wind there is influenced by the local topography, so wind direction is modified, but wind speed is still a useful parameter (see previous reports) that identifies large scale synoptic (storm front) events. Hopkins Marine Station has a weather station right at the water’s edge, which would be good for regional wind, but temperatures will be much more buffered than at MGS. A thorough investigation of available weather stations would be a critical step.
5. *Can weather in MGS be correlated with regional conditions?* Yes, methods exist to create a model that transfers conditions from a base station to a local station. The key is to have a calibration period (one year or more) where a wide variety of conditions are experienced.

A combination of short-term spatially distributed measurements and longer-term base station(s) is an optimal way to understand the microclimate withing MGS. Quantitatively correlating measurable forest structures to microclimate is key to assessing management options.

Assessing New Plantings

The numerous newly planted cypress and eucalyptus will eventually greatly change the canopy structure and microclimate in the grove. While providing additional wind shelter is an important goal, it is important to remember that it is possible to have too dense a canopy that does not let in enough light for monarchs. This careful balance must be maintained (see below).

It is standard practice to overplant trees to account for mortality, and eventually thin them to a density that encourages individual tree health (Habitat Photo 7). The overplanted eucalyptus in the SE corner (Habitat Photo 4) are an example. The spreading structure of Monterey cypress can deeply shade a site for decades, until the lower branches drop and open the understory.

At this point, it is important to evaluate the eventual growth of these new trees and plan accordingly so that they do provide additional wind shelter, but are not overcrowded and competing with one another, and do not provide excessive shade in key parts of the grove.

Tree health

As mentioned above, the health of each tree and prospects should be documented. In 2021-2022, the continuing drought conditions make it imperative that drought stress symptoms be carefully noted.

In particular, the redwoods along the western boundary have not been performing well, especially during droughts. The weakest of these trees should be removed in phases and replaced with cypress or pines to maintain wind shelter. Some of the older tall pines are in poor shape, and may pose hazards to people, structures, and other trees. Prompt attention to hazard trees with “targets” should they fall is an essential annual activity.

Evaluation of Shade Limitations

While wind shelter is paramount, monarchs often seek sunny or dappled light habitats for clustering. The consistent use of the sunny southern boundary trees and adjacent trees to the south reflect this preference. But the high southerly wind exposure in those sites means that monarchs move north into the more protected interior of the grove. Such a move occurred in October 2022 following an intense early season storm, and this behavior has been noted in many years.

But, in the wind-sheltered interior of the grove, shade may be limiting use by monarchs. The large eucalyptus on the southern boundary cast shade deep into the grove, and additional pines and cypress north of the path add to the shading. Maintaining some open habitat in this area is essential (Habitat Photos 17 and 18).

The 2011 Assessment and Management Plan has insolation maps that are copied here (Figure 7). These maps show that there are some higher insolation sites in the interior – note the small halos within the deep blue areas near the center of the grove - which are where monarchs tend to cluster on pines (see Monarch Photos 5 and 6) when they move into the interior. Repeat photography of these sites would establish if the canopy has grown and filled enough to cast more shade.

Shade can also limit access to nectar. The nectar beds are just west and north of the outline of the former building (removed in 2011). The southern portions of the nectar

beds are deeply shaded for much of the winter, and are inaccessible except when high air temperatures allow monarch flight in shady habitat. The northern section of the nectar bed area is the best area for season-long nectar access. In the longer term, the growth of trees to the south and west of the nectar beds could increase shade limitations. Again, reshooting hemispherical photographs could quantify any differences in shade patterns.

A thorough evaluation of shade limitations, and potential ameliorations through selective pruning or even removal of trees to decrease deep shade should be conducted. Of course, maintaining wind shelter is essential. Modification of hemispherical photographs can provide a first order estimate of effects on both sunlight and wind. If LiDAR is available, then a similar modification of the canopy can be simulated by deleting portions of the point cloud.

Any such modification of the canopy by opening will require rigorous documentation and a cautious approach, given the sensitivity of the site and the Pacific Grove community.

Long-term Management Considerations to be Incorporated Into the New Management Plan

Management of Monarch Grove Sanctuary is a long-term process. This section looks ahead to anticipated changes and issues over the next decades, so that current management recommendations can be put into context. Much of this section is reiterated from previous reports, with a few updates.

- 1) **NW Windbreak:** The 1999 blue gum plantings are now 60-80' tall and provide critical NW wind shelter and allow monarchs to remain in the interior of the grove following storms that drive them from the wind-exposed southern boundary. *These eucalyptus trees are the anchor of a multi-species windbreak and are absolutely necessary to maintain long-term windbreak functions* because pines may succumb to pitch canker and cypress will lose lower branches. The mid-story of pines and cypress currently contributes to windbreak function, as the foliage on the blue gums is concentrated in the upper canopy.
- 2) **Eucalyptus threat?:** The ground along narrow zone below the NW windbreak eucalyptus is being affected by leaf and litter fall, but less than 0.1 acres are affected. The comments on page 2 in the 2020 arborist report ("potential catastrophic effects") greatly exaggerate the threat to native forest, especially since the eucalyptus will not be allowed to spread, and the litter deposits can be occasionally raked up. The remainder of the interior and northern reaches is available for native forest management.
- 3) **Southern Boundary:** The 2011 blue gum plantings inside the southern boundary, authorized by the City, have grown to heights of 25-30' and are beginning to provide additional wind shelter. Monarchs clustered on some of these trees in November and December 2019, with a peak of 53 (~15% of the population) on

- December 5 (see 2020 report). As these trees continue to grow, eventually monarchs can cluster in a wind sheltered dappled light environment as envisioned in the 2011 Assessment and Management plan. These trees will provide redundancy for the large southern windbreak trees, and will eventually replace them decades from now. These trees are in a difficult environment for rapid growth, with shade and root competition from the large southern boundary trees, so they will continue to grow relatively slowly, but will be healthy. Planting some additional trees, *Callistemon viminalis* and *Eucalyptus ficifolia* as recommended by the arborist report in key locations would fill gaps, diversify the windbreak, and provide a multi-age structure.
- 4) **SE Corner:** The densely planted blue gums (2013) in the SE corner are showing signs of overcrowding (some were planted 3' apart), with poor growth relative to more widely spaced trees. There has been a consistent recommendation over the years to thin these trees back to a more appropriate density, but it has never been implemented. The Weisfuss 2020 arborist report also recommends thinning these trees. Thinning will increase the health of the remaining trees, and their canopies will expand to fill in the available space. Several of them are now dead, and should be removed. These trees will continue to grow poorly in crowded conditions and eventually self-thin, and they are competing with several of the authorized plantings from 2011.
 - 5) **Wind gaps:** Farther west on the southern boundary, there are several larger gaps that should be filled. The arborist report recommends *Callistemon viminalis* and *Eucalyptus ficifolia* to diversify the windbreak and provide mid-story and low windbreaks. Cypressess are not recommended along the southern boundary because of sprawling growth form. Trees were planted in this gap in 2020.
 - 6) **Pines:** Pines continue to succumb to pitch canker, and despite some wet years in 2017 and 2019, drought effects are still being expressed in some trees. The dry year in 2020 and very dry year in 2021 produced more drought stress. The soaking rains of October and December 2021 provided some relief with deep soil recharge, but the dry winter and spring 2022 means that trees will remain drought stressed. Continued plantings to maintain a substantial pine component in the grove is important, but pines still cannot be counted upon to provide long-term overstory. Pine plantings need to be protected from browsing and getting knocked over by deer. Removal of pines heavily infested with pitch canker can slow, but not stop the spread of this disease.
 - 7) **Previous cypress plantings:** Many of the cypress planted over the last two decades are in their period of rapid growth and will provide significant wind shelter in coming years and decades. The cypress along with blue gums will provide the backbone of the grove, given the uncertainties of pine survival in the long run. Some densely planted cypress stands have been thinned in recent years to encourage more rapid growth of remaining trees, and continued selective thinning is recommended in several spots.
 - 8) **New Plantings 2020** More than 20 potted Monterey cypress were brought into the Sanctuary as temporary windbreaks in 2019. These trees have been planted

- in several parts of the grove (Habitat Photos 3 and 12). *The locations of these trees should be recorded on the new base map.* The cypresses are overplanted as discussed above, and eventually should be thinned once it is apparent which trees are strongest. If they are not appropriately thinned, the individual trees will be stressed and grow poorly. The spreading canopy of Monterey cypress can become too dense for monarchs, especially when tree crowns interlock. Special care should be taken to balance wind shelter and shade.
- 9) **Oaks:** Understory live oaks are scattered among the pines and cypress, and more plantings could fill in understory in select parts of the grove and provide good native habitat. Oaks can eventually provide low and mid-story windbreaks. Planting of acorns, with protection by tree tubes is an efficient method for oak plantings that allow roots to penetrate deep on their own. Planting plugs may appear more efficient, but the constricted roots of oak plugs often lead to long-term failure.
 - 10) **Native forest management:** Overall, there are many sections of the Sanctuary where management for native forest is appropriate, with an emphasis on overstory pines. The northern reaches, beyond the NW windbreak is a prime example. The old pines have died or fallen, leaving wildlife snags and an open canopy. In addition to oaks, native shrubs (toyon and ceanothus are present, but a large palette of native shrubs is available) can contribute to understory structure. Non-native cover like the calla lilies can be removed in phases, and native forest floor forbs could be introduced in parts of the Sanctuary. All native plantings need to be protected from deer browsing. Some control of the dense annual grass cover is needed while understory is establishing, and annual grasses will always be a component of the forest floor. Some mowing of annual grasses is desirable for fire safety.
 - 11) **Irrigation:** Maintaining the irrigation system for tree establishment and for watering during droughts, as well as developing a rigorous irrigation management plan overseen by City staff and implemented by volunteers, is critical. But irrigation should only be provided for the first year or two (unless severe drought occurs). The irrigation management has greatly improved in recent years, according to volunteers Habitat (Habitat Photos 19 and 20).
 - 12) **Nectar:** Attractive fall blooming nectar plants help to retain arriving butterflies early in October and November. *Nectar plants in sunny areas can be used far more frequently than those in the shade and sunny areas are at a premium.* Yellow Buddleia and tree daisy are the most attractive species in the beds, and replacement of some of the other species in the beds (i.e., the mallow) should be considered. The sunny edges along the trail are perfect for planting native nectar species for fall nectar. Away from the nectar beds, butterflies nectar on the flowering red gum when it occasionally blooms in the fall. Use of bottlebrush was noted every year. Later in the season, early blooming *Prunus* has provided winter-spring nectar in addition to the blooming blue gums. As mentioned above, a thorough evaluation of present and future shade limitations is desirable.

- 13) **The neighbors:** While there are some policies and ordinances with respect to the activities within a buffer zone around the Sanctuary, the truth is that the City has little control over tree removal and maintenance, and even may have obligations to protect the neighbors. Activities in recent years at the Hotel – tree trimming and removal - have had impacts on MGS, and the same can be said about the southern neighbors at a lesser scale. A clear policy and lines of communications about tree work will avoid some of the worst outcomes, but unless there is a strict ordinance that mandates consultations such actions will continue to have impacts. On a positive side, cooperation with the neighbors could enhance MGS.

An Adaptive Management Framework

In the 2011 Assessment and Management Plan, there is a section that discusses how to have an annual cycle in which decisions are considered and acted upon. This section is excerpted into the Appendix of this report. *Adaptive management* requires data, open minds, and a process. Some additional thoughts as of 2021 are warranted.

1. *An official management plan is the key document and foundation of adaptive management.* Having everything possible written and ordered in a living document creates a common platform for decision making. The elements of a management plan are discussed above
2. *A regular annual scheduled cycle of reporting, comments, and consultations is desirable.* Starting in 2013, such a cycle was established and was a quantum leap from the ad hoc decision-making process prior to that. In some years, the presentation to BNRC and the public tour were later than optimal. A more formal schedule would keep the timing on track and allow for unhurried actions prior to the October 1 restriction.

George Washington Park

George Washington Park (GWP) is ready for a more detailed site restoration and management plan, which should be part of the proposed new management plan. Observations and recommendations to be incorporated (largely repeated from previous years) include:

- 1) This is a unique site for California monarchs; it is one of the few remaining Monterey pine/live oak habitats for monarchs.
- 2) GWP has been used intermittently by monarchs, a few individuals can be found there every year at some point, but major clusters were observed only in 2003, 2004, and 2006 (Table 1). In 2006, there were more than 10,000 monarchs at GWP and very few at Monarch Grove Sanctuary. Since then, there has been only one year (2011 with 61 observed) with monarchs at Thanksgiving, none were observed from 2012 to 2019. Individual monarchs have been observed here during other times of the overwintering season.
- 3) The historic cluster sites in GWP are losing sufficient wind shelter for monarchs, and additional senescence of mature trees threatens this important component

- of habitat suitability. In particular, the largest pine at the historical overwintering site died several years ago, but there are several mid-story pines that are in positions to replace this tree over coming decades. Losses of forest cover to the south and west through overstory tree mortality is reducing wind shelter.
- 4) Removal of dead standing trees is recommended where they have stationary targets, especially around the edge of GWP. Dead trees that may fall across trails in the interior should be evaluated on a case-by-case basis. Trees can be left as safe wildlife snags where appropriate, but a more naturalistic topping should be considered.
 - 5) Reduction of accumulated deadfall by CALFIRE in 2014, 2015, and 2016 removed large piles of downed tree debris. This is important preparation for eventual site restoration. Some branch and log piles have been retained and downed logs are used to redirect foot traffic to fewer trails. Selective removal of large debris piles is recommended, with some piles retained for wildlife habitat.
 - 6) Natural pine recruits, most common in disturbed areas, should be protected.
 - 7) Less frequent deep irrigation of pines is preferable to frequent shallow irrigation. A water trailer can be provided by the City for such a purpose
 - 8) Plantings of pine seedlings has proven successful and should continue (Habitat Photos 21 and 22). Eventual thinning is required of establishment rates are high.
 - 9) Live oak plantings can provide the under- and middle-story necessary for wind shelter in a mature pine forest.
 - 10) Similarly, ceanothus and toyon can provide understory structure.
 - 11) Operations on the perimeter of the park are the priority, to maintain safety from falling dead trees on adjacent roads, and to create a fire buffer.
 - 12) The full impact of the recent and ongoing drought will continue to be expressed. Trees may take one or two years to die after major drought stress and high rainfall season like 2016-2017 and 2018-2019 may not allow for recovery once drought stress has weakened trees.
 - 13) Establishment of a designated trail system and decommissioning of meandering paths impacting root systems of the trees is occurring. Ingrowth of poison oak is effectively shutting some social trails.
 - 14) Now that there have been reductions in downed trees and debris, and the full impact of the drought on mature trees will become apparent, the long-term suitability of George Washington Park for monarchs should be assessed, using a combination of hemispherical photography, LiDAR and other suggested methods.
 - 15) An assessment of pitch canker and tree health is especially important in GWP.
 - 16) Once assessments are done, a long-term planting scheme (pines, oaks, and native understory shrubs) should be developed and implemented. The key elements of such a planting scheme should be to provide eventual replacements for canopy trees, create and maintain a mid-story of oaks and pines, and maintain wind shelter from all directions around defined canopy gaps.

Literature cited

Crone, E.E., Pelton, E.M., Brown, L.M., Thomas, C.C. and Schultz, C.B., 2019. Why are monarch butterflies declining in the West? Understanding the importance of multiple correlated drivers. *Ecological Applications*, 29(7), p.e01975.

Crone, E. and Schultz, C., 2021. Resilience or Catastrophe? A possible state change for monarch butterflies in the West. *Ecology Letters*, 24(8), pp.1533-1538.

Espeset, A.E., Harrison, J.G., Shapiro, A.M., Nice, C.C., Thorne, J.H., Waetjen, D.P., Fordyce, J.A. and Forister, M.L., 2016. Understanding a migratory species in a changing world: climatic effects and demographic declines in the western monarch revealed by four decades of intensive monitoring. *Oecologia*, 181(3), pp.819-830.

Fordyce, J.A., Baert, N. and Forister, M.L., 2020. Pesticide Contamination of Milkweeds Across the Agricultural, Urban, and Open Spaces of Low-Elevation Northern California. *Frontiers in Ecology and Evolution*, 8, p.162.

James, D.G., 2019. A neonicotinoid insecticide at a rate found in nectar reduces longevity but not oogenesis in monarch butterflies, *Danaus plexippus* (L.).(Lepidoptera: Nymphalidae). *Insects*, 10(9), p.276.

James, D.G. and Kappen, L., 2021. Further insights on the migration biology of monarch butterflies, *Danaus plexippus* (Lepidoptera: Nymphalidae) from the Pacific Northwest. *Insects*, 12(2), p.161.

Leong, K.L.H. 1990. Microenvironmental factors associated with the winter habitat of the monarch butterfly (Lepidoptera:Danaidae) in central California. *Annals of the Entomological Society of America* 83:906-910

Leong, K.L.H. 1991. Use of multivariate analyses to characterize the monarch butterfly (Lepidoptera:Danaidae) winter habitat. *Annals of the Entomological Society of America* 84:263-267.

Pelton, E.M., Schultz, C.B., Jepsen, S.J., Black, S.H. and Crone, E.E., 2019. Western monarch population plummets: status, probable causes, and recommended conservation actions. *Frontiers in Ecology and Evolution*, 7, p.258.

Schultz, C.B., Brown, L.M., Pelton, E. and Crone, E.E., 2017. Citizen science monitoring demonstrates dramatic declines of monarch butterflies in western North America. *Biological Conservation*, 214, pp.343-346.

Weisfuss, A. 2020. Monarch Grove Sanctuary. An Assessment with Recommendations. Arborist report to the City of Pacific Grove.

Weiss, S.B. 1998. Habitat Suitability, Restoration, and Vegetation Management at Monarch Grove Sanctuary, Pacific Grove, California. Report to the City of Pacific Grove.

Weiss, S.B. 2011. Management Plan for Monarch Grove Sanctuary: Site Assessment and Initial Recommendations. Report to the City of Pacific Grove.

Weiss, S.B. 2013-2020. Proposed management activities Monarch Grove Sanctuary and George Washington Park. Annual memorandum/report to the City of Pacific Grove.

Yang, L.H., Ostrovsky, D., Rogers, M.C. and Welker, J.M., 2016. Intra-population variation in the natal origins and wing morphology of overwintering western monarch butterflies *Danaus plexippus*. *Ecography*, 39(10), pp.998-1007.

**Table 1. Monarch Butterfly Thanksgiving Counts Xerces Society
Monarch Grove Sanctuary (MGS) George Washington Park (GWP), Monterey County,
and California Totals. *MGS was the only site counted that year.**

Year	MGS	GWP	CA Total	Monterey Co.	MGS % CA	MGS % Monterey	MGS CA Rank
1997	45,000		1,235,490	45,000	4%	100%*	10 (tie)
1998	35,000		564,349	41,000	6%	85%	5
1999	25,000		267,574	25,000	9%	100%*	3 (tie)
2000	20,000	0	390,057	20,000	5%	100%*	6 (tie)
2001	14,960		209,570	31,203	7%	48%	4
2002	4,700		99,353	11,593	5%	41%	5 (tie)
2003	22,802	2,750	254,378	68,979	9%	33%	2
2004	10,867	4,325	205,085	54,481	5%	20%	4 (tie)
2005	12,199	2	218,679	37,540	6%	32%	4
2006	28,746	11,795	221,058	59,957	13%	48%	1
2007	8,181	2	86,437	15,426	9%	53%	3
2008	17,866	0	131,889	31,063	14%	58%	2
2009	793	0	58,468	4,735	1%	17%	17
2010	4,968	0	143,204	8,634	3%	58%	4
2011	12,265	61	222,525	27,788	6%	44%	4
2012	10,790	0	144,812	29,048	7%	37%	4 (tie)
2013	13,420	1	211,275	35,772	6%	38%	3 (tie)
2014	18,128	0	234,731	55,879	8%	32%	3
2015	11,472	0	292,888	27,787	4%	41%	3 (tie)
2016	17,100	0	298,464	64,804	6%	26%	3
2017	7,350	0	192,629	35,657	4%	21%	8
2018	705	0	28,429	2,758	2.5%	26%	15
2019	642	0	21,944	2,792	2.9%	25%	8
2020	0	0	1,914	58	0	0	--
2021	13,608	0	247,237	26,502	5.5%	51%	5

Table 2. Comparisons of Thanksgiving (NOV) with New Year's (JAN) counts at Monterey County and Santa Cruz County sites that had butterflies at Thanksgiving Counts.

SITE NAME	NOV 2021	JAN 2022	Ratio 2021	NOV 2019	JAN 2020	Ratio 2020	NOV 2018	JAN 2019	Ratio 2019
Lighthouse Field, Santa Cruz	410	637	155%	3402	2600	76%	1802	1933	107%
Natural Bridges State Beach	2,100	1,700	66%	1997	25	1%	1120	765	68%
Private Property near Big Sur	11,200	10,100	90%	1750	50	3%	819	29	4%
Butterfly Grove Sanctuary	13,608	10,055	74%	642	316	49%	705	685	97%
Moran Lake, Moran Lake	1,100	725	66%	400	30	8%	1373	346	25%
CH1 Private Site	1,193	2,623	220%	-----	-----	-----	-----	-----	-----
Seascape Golf Course	700	32	5%	-----	-----	-----	-----	-----	-----

Figure 1. Relationship between total California monarch numbers and MGS numbers, Xerces Thanksgiving Counts

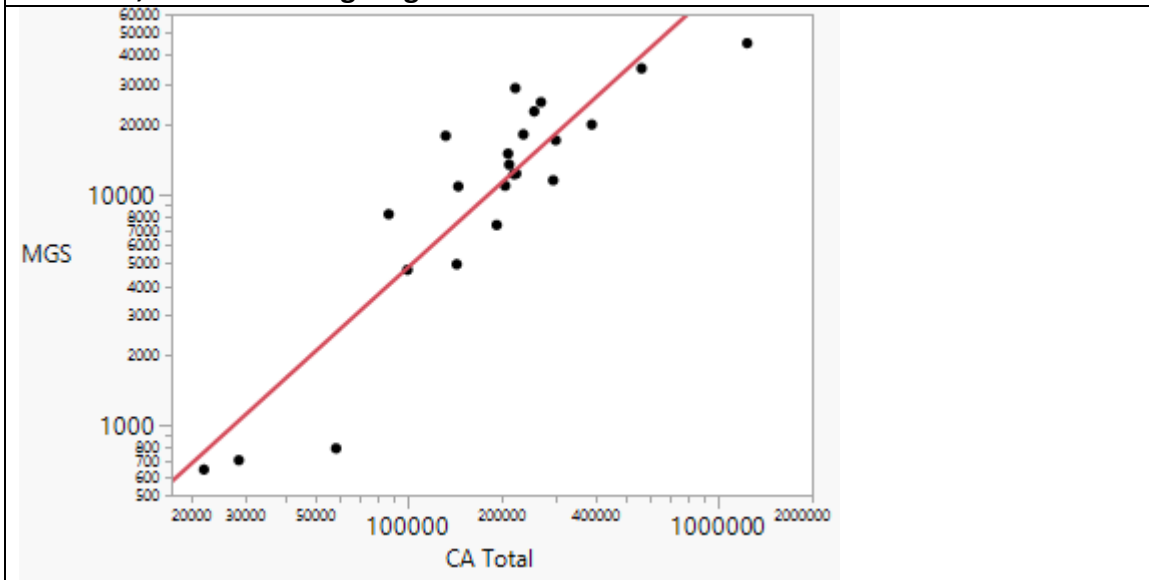


Figure 2. Monthly Mean Temperature for Monterey County, August-November 2020. From Westmap (https://cefa.dri.edu/Westmap/Westmap_home.php)

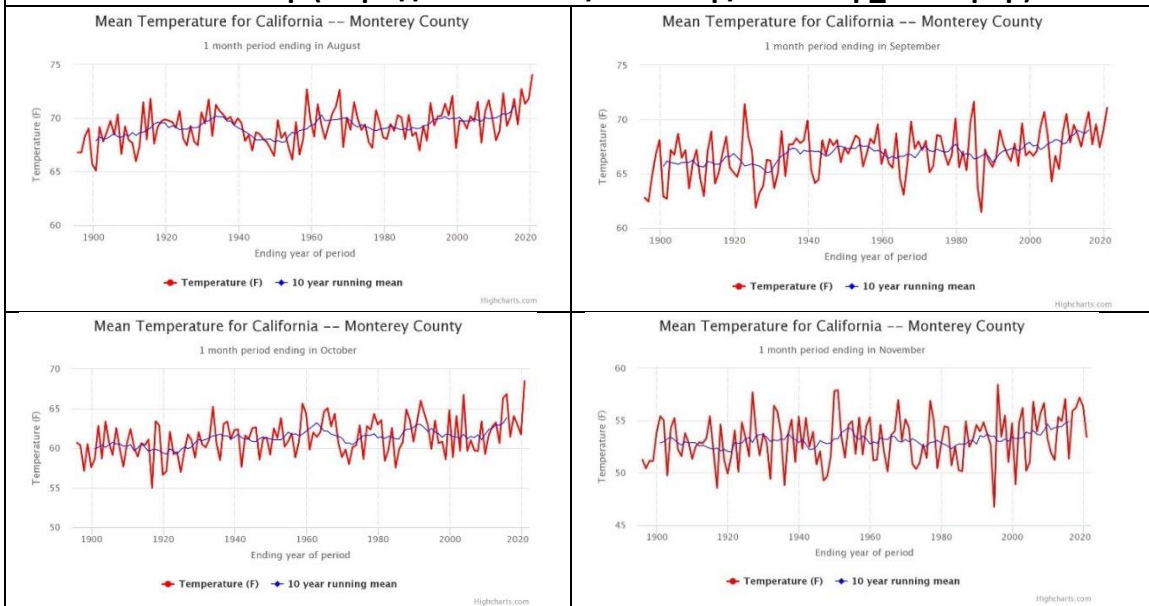


Figure 3a. Monarch numbers through seasons. Data from Pacific Grove Museum

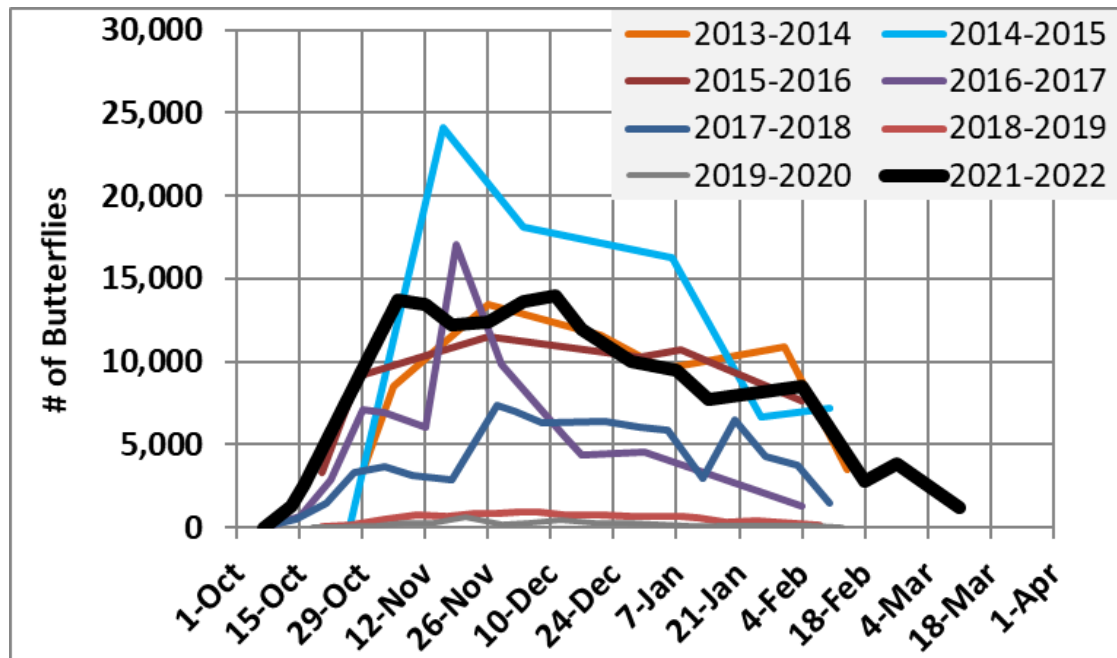


Figure 3b. Monarch Tree Preference

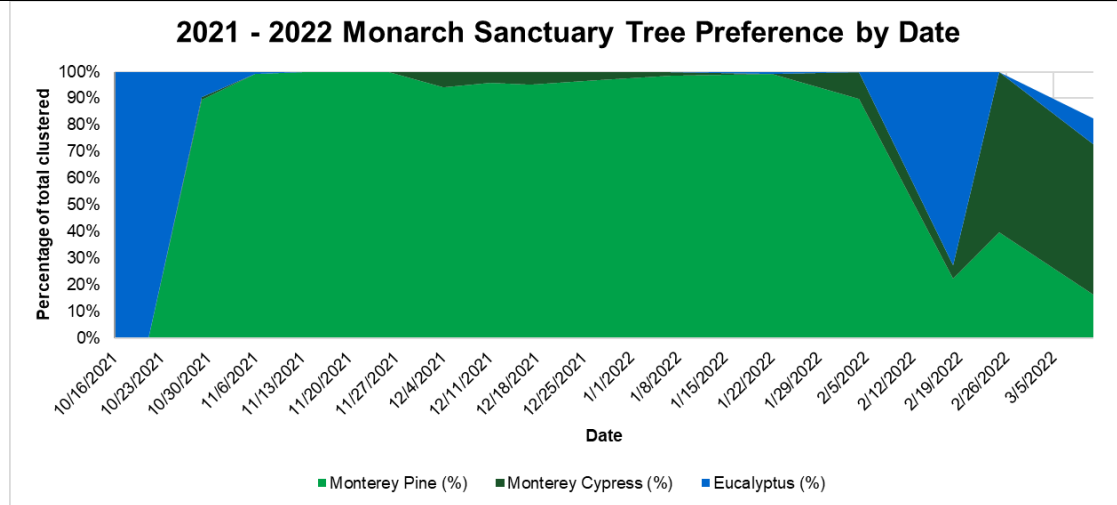


Figure 4a. Temperature and Wind Speed at PGMS Weather Station

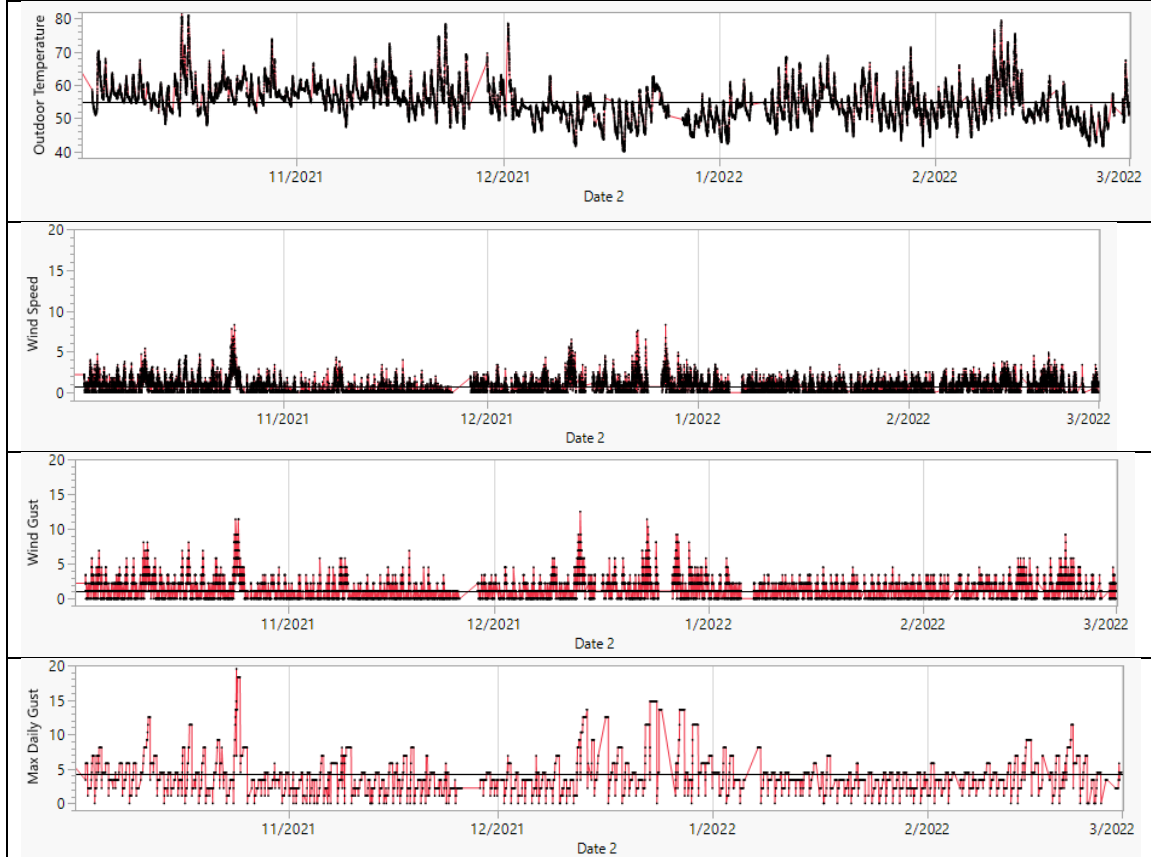


Figure 4b. Wind Speed at KMRY (Monterey Airport)

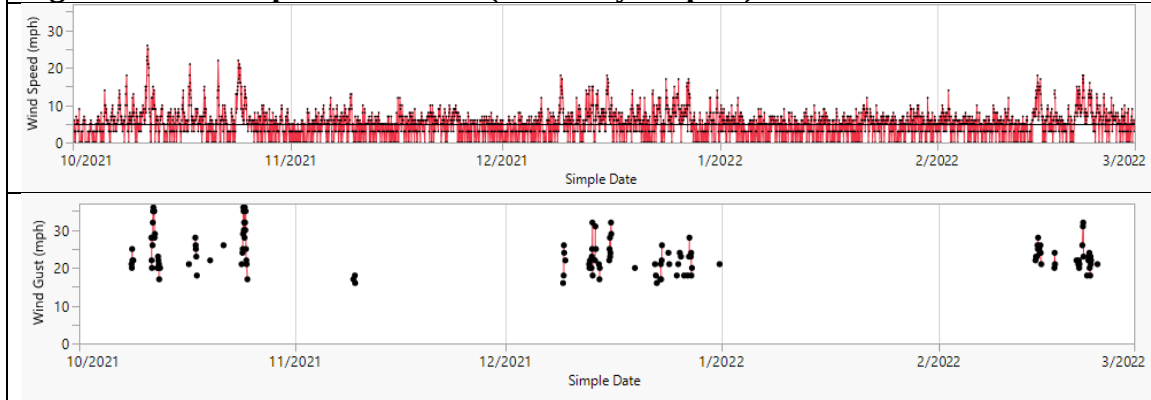


Figure 4C. Wind Speed and Direction PGMS October 2021-February 2022. The density of points is indicated by the color ramp (red and yellow = higher density). Wind gusts were ~ 30% higher than 5-minute wind speeds, although intermittent gusts could be more than twice the 5-minute wind speed.

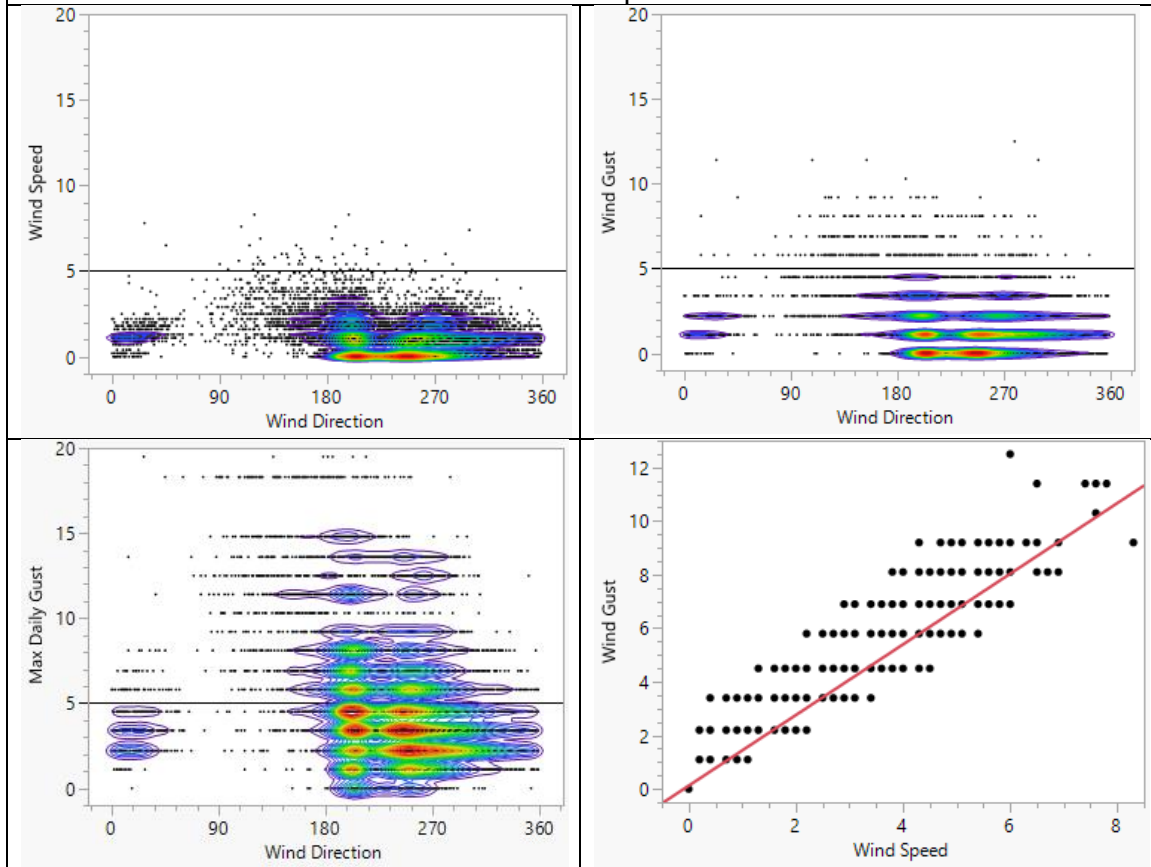


Figure 5. Monarch Occupied Trees (Green Triangles) and cluster zones, Grid in meters

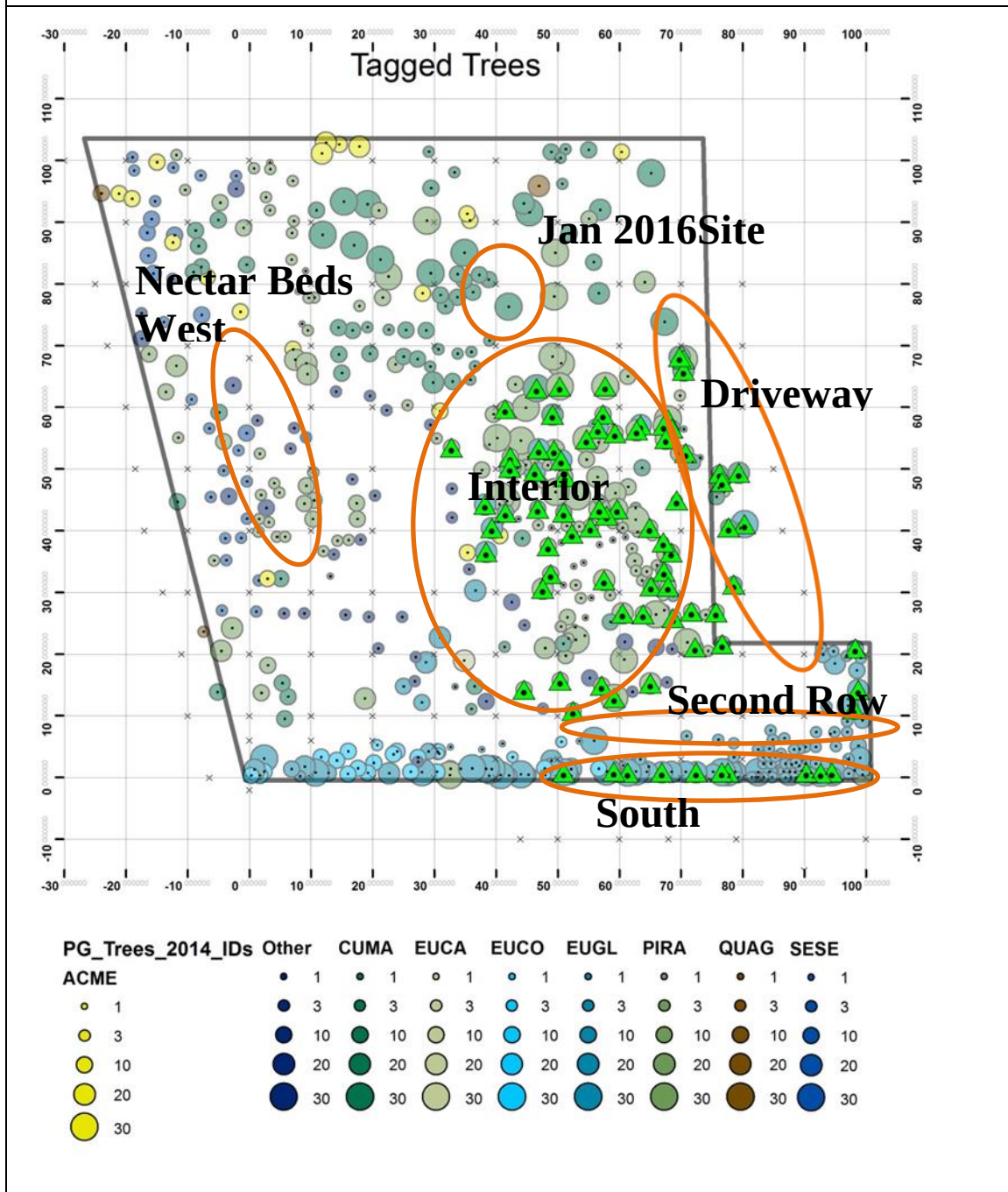


Figure 6. Management Zones. Grid in Meters

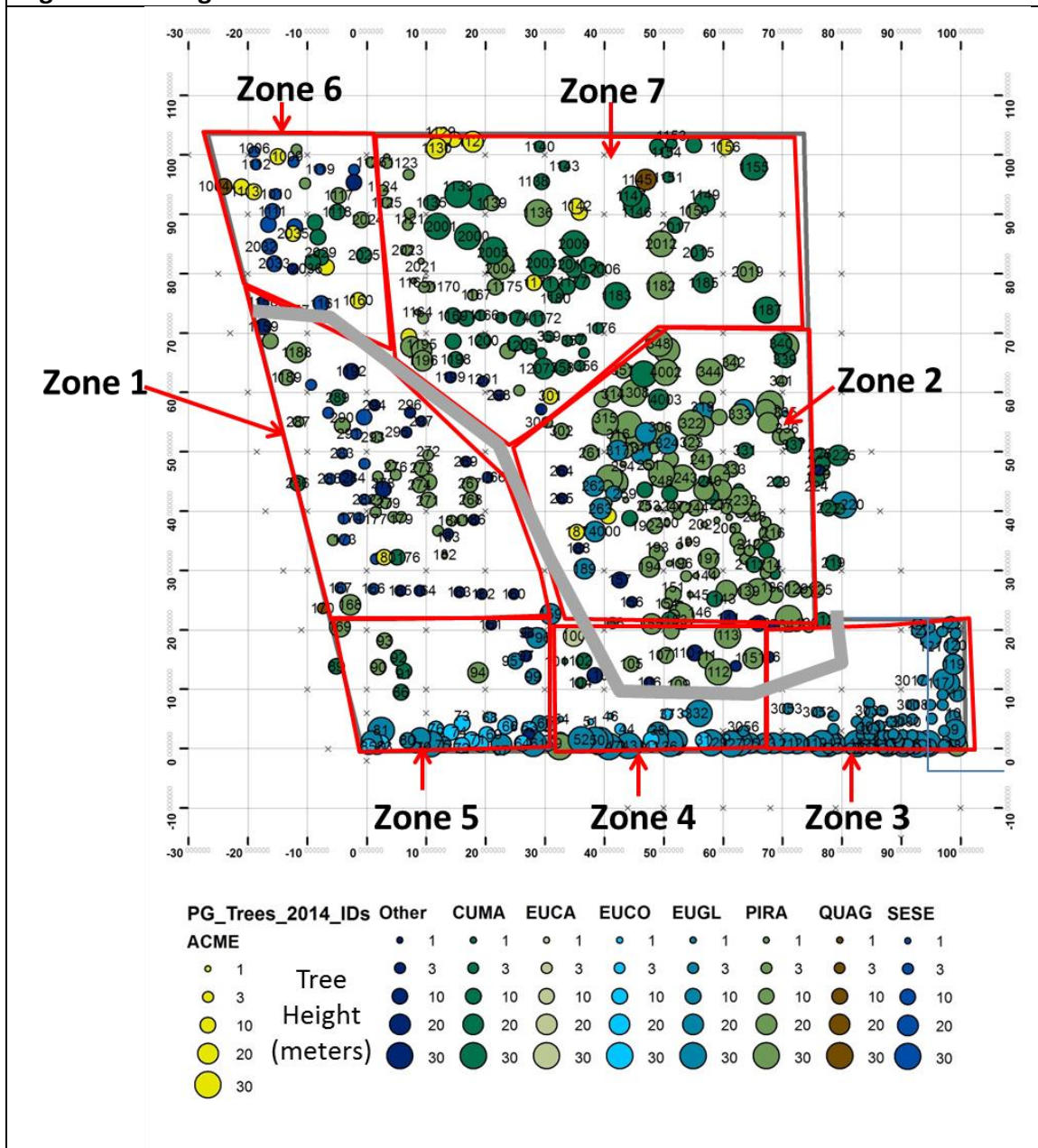
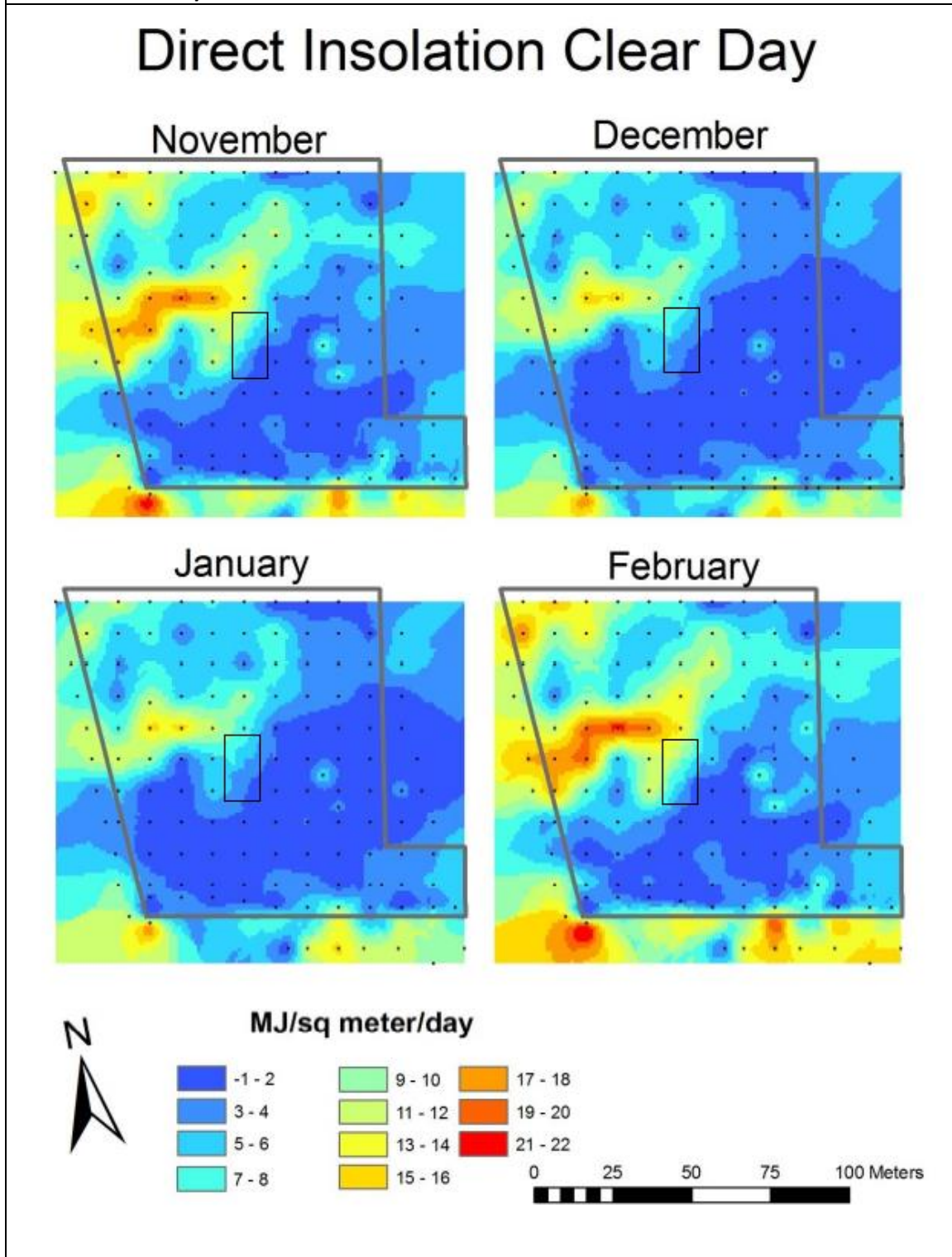


Figure 7. Insolation maps from 2011 report. Note the small halos in the interior east of the outline of the old building footprint; which is the interior cluster zone. The high insolation areas NW of the old building are where nectar (primarily tree daisy and bottlebrush) is available the entire season



Monarch photos November 23, 2021

1. Monarchs nectaring on tree daisy	2. Monarchs nectaring on bottlebrush
	
3. Monarchs nectaring on English ivy	4. Monarch wings on forest floor, with abdomens eaten.
	
5. Monarch clusters in interior pine, from hotel driveway	6. Dense clusters in interior pine, from trail
	

Habitat Photos

Photo 1. Eastern boundary with boxed eucalyptus trees. At their current size, these trees provide marginally increased wind shelter above that provided by the houses to the east.

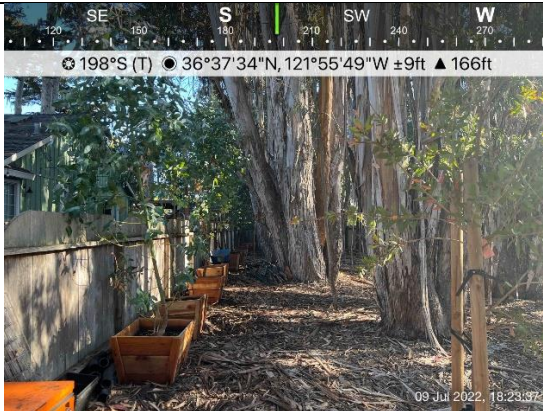


Photo 2. Potted trees placed in a gap on the hotel property. Originally, these trees were planted in the ground, but were dug up after consultation with city staff. Planting two trees at most in this gap would be the best way to fill this gap with a healthy trees



Photo 3. Two cypress planted in the open area of the SE corner of MGS. These trees may develop into cluster trees in a wind-sheltered area with dappled light



Photo 4. SE corner. These eucalyptuses were planted too dense in 2013 (3-5' apart) and are growing poorly and in poor shape. The well-spaced trees (10-15' apart) that were officially authorized in 2012 are much healthier and taller.



Photo 5. Eucalyptus planted in 2012 at appropriate spacing (10-15') are now 25+ ft tall and are establishing a second row north of the main eucalyptus row. Monarchs have clustered on these trees early in the season.

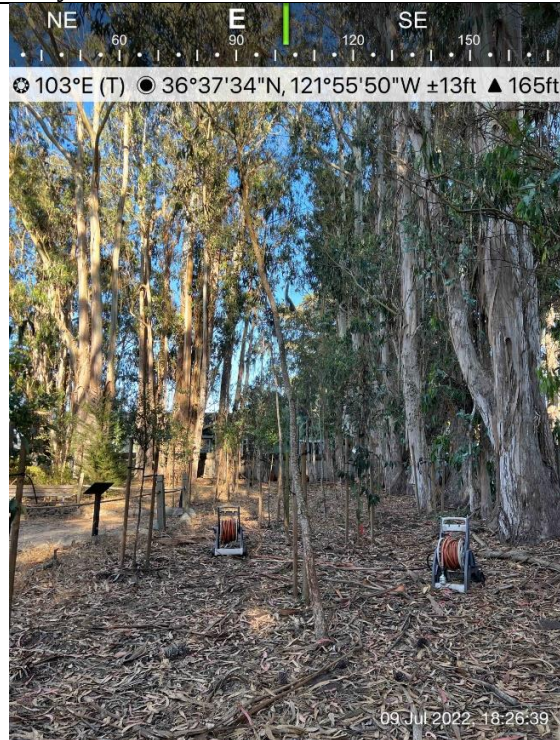


Photo 6. Second row of eucalyptus planted in 2021, to fill in gaps in the southern boundary.

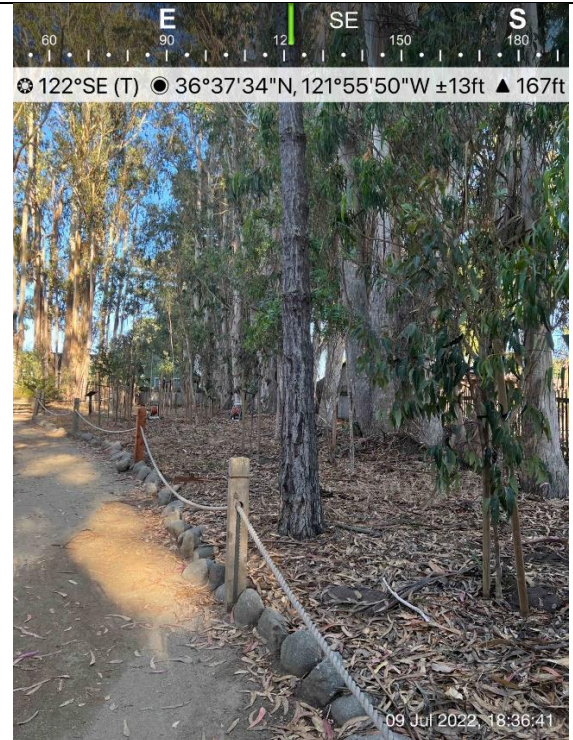


Photo 7. Group of cypress planted in mid-2000s, ready to be thinned by removing two trees to allow for more rapid growth and health of remaining trees. Wind shelter will not be compromised, and the remaining trees will fill in.



Photo 8. The NW-side of the eucalyptus windbreak planted in 1999. This mixed species shelterbelt provided critical NW wind protection for the interior of the grove where monarchs clustered in 2021-2022 (and other years).



Photo 9. Dead standing pine east of nectar beds. This tree threatens numerous important trees and should be removed before it falls on its own.

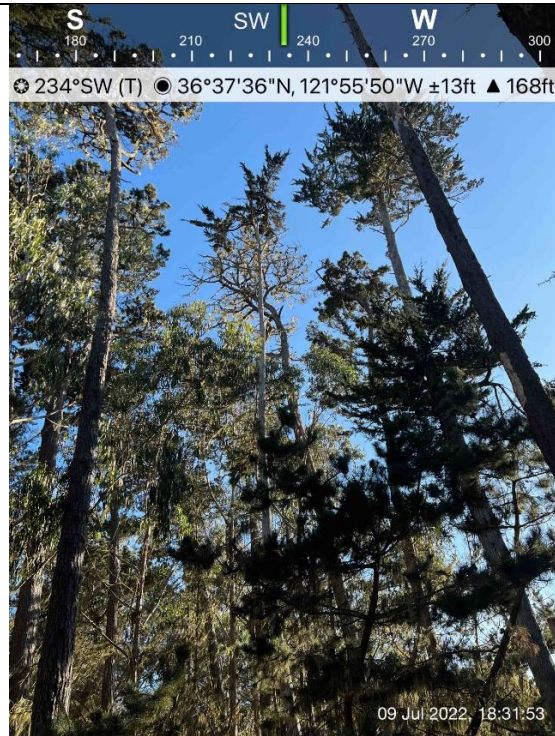


Photo 10. Dead pine near NW corner. Even though this tree is leaning away from the trail, it threatens important windbreak trees and should be removed. An irregular-topped snag can be left behind.

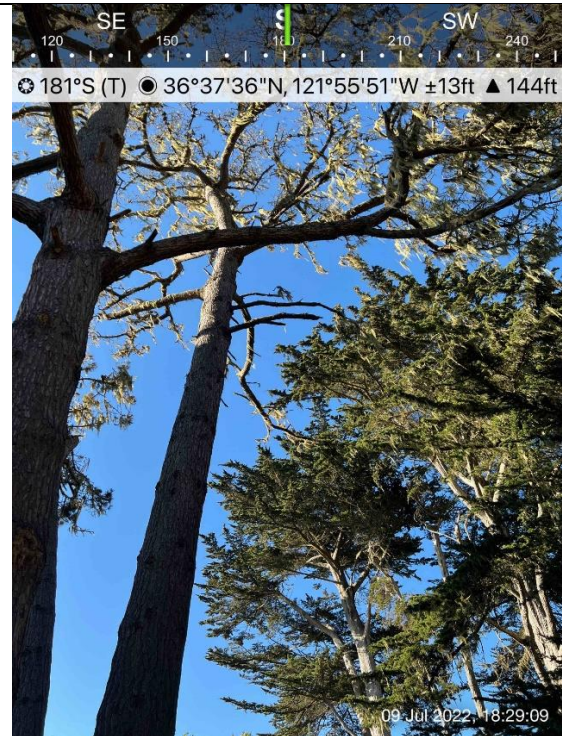


Photo 11. View from interior to east showing the hotel, which acts as a windbreak from this direction. The view N is blocked by an array of pines, eucalyptus, and cypress. The gap to the SE is where potted trees were placed.



Photo 12. Newly planted cypress east of nectar beds, part of a double row of trees planted to seal up this edge and protect the interior cluster zone.



Photo 13. View to SSW from trail, rapidly growing cypress between trail and Grove Acre Ave.



Photo 14. Pine saplings planted in interior.



Photo 15. Nearly dead pine in interior. This relatively small tree does not threaten other trees and can be retained for now, the lichen provides some wind shelter function



Photo 16. Dense eucalyptus plantings along southern fence. Thinning one or two trees here would allow for better growth of remaining trees. The trees right up against the fence will eventually impinge on the fence.



Photo 17. View into interior cluster zone of pines. Maintaining some relatively open habitat with dappled light in this area is important for monarchs.



Photo 18. Cypress sapling near bend in the trail, with 1999 eucalyptus shelterbelt in background and relatively open interior to east.



Photo 19. Irrigation Zones

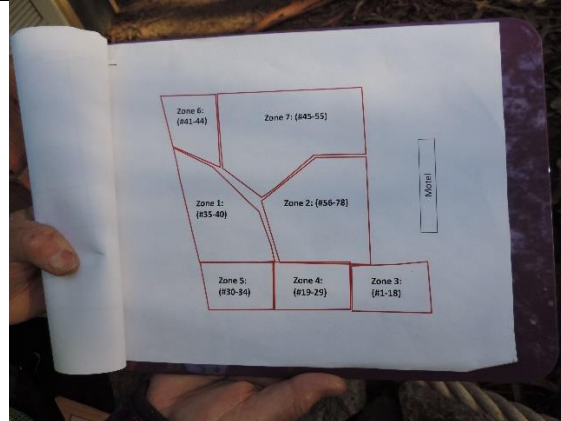


Photo 20. Irrigation documentation

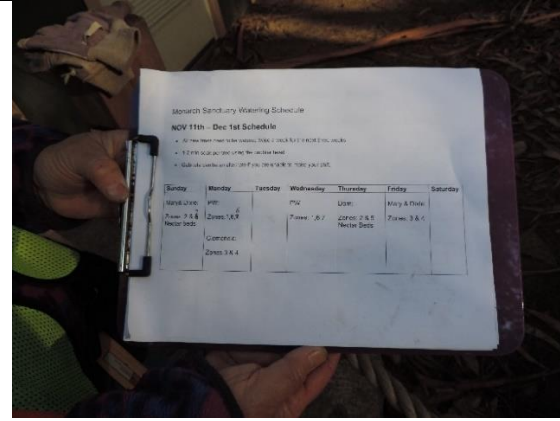


Photo 21. Pine plantings in George Washington Park



Photo 22. Pine plantings in George Washington Park



Appendix (From 2011 Assessment and Monitoring Plan)

Principles

The key principles for the adaptive management plan include *resiliency*, *redundancy*, *dynamic ecosystems*, *proactive adaptive management*, and *decision making in the field*.

Resiliency provides a range of conditions that buffer environmental variability. In the case of the Sanctuary, the key variables are wind, sunlight, and temperature. Ambient conditions outside the grove are filtered by the forest canopy, creating a complex fine-grained environment where microclimates change meter by meter through the site, and hour by hour through the season. As the varied combinations of wind shelter and light exposure change through the day and season, and monarch butterflies move about on fine-scales within grove, and broader scales among groves, as they attempt track their preferred environmental envelope, and avoid extremes. In particular, extreme windstorms can drive monarchs from sites.

Redundancy within the habitat means multiple lines of “defense” – two rows of trees, rather than one row, wind shelter from multiple directions, areas of full sunlight, dappled sunlight, and shade, multiple openings where appropriate, and other features. The loss of branches, individual trees, groups of trees, or species of tree should not fully degrade habitat. Locally complex habitat may provide more opportunities within smaller areas.

Dynamic ecosystems – trees grow and die over years and decades, and even centuries, leading to incremental and even catastrophic changes in microclimate. On a smaller scale, branches naturally fall and may be removed for public safety. Decisions made today have repercussions for decades to come.

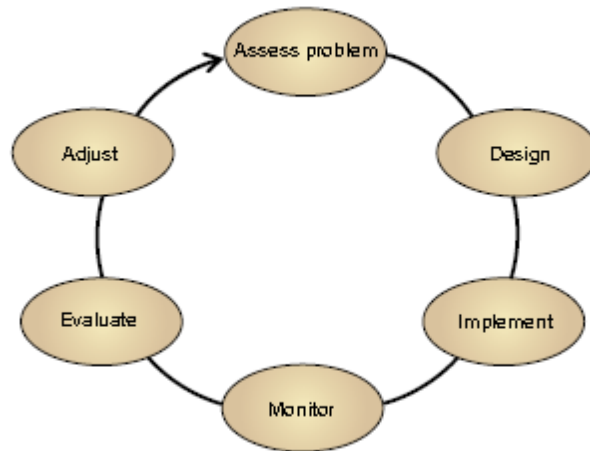
Proactive adaptive management means that changes are anticipated well in advance, and appropriate management carried out at a deliberate and measured pace. This requires a systematic adaptive management process among institutions and stakeholders to evaluate, plan, execute, assess, and re-evaluate, on an annual cycle in synchrony with the resource. Continued and refined monitoring of the distribution and abundance of monarchs over the season at the Sanctuary is an essential component of adaptive management.

Decision making and supervision in the field – All final decisions regarding tree management should be made in conjunction with a field visit, so that exact instructions can be communicated. Management activities – planting and trimming - should be monitored by qualified and interested individuals when possible.

Adaptive Management Plan

Resource management to protect and enhance Monarch Grove Sanctuary, or any monarch site, should be undertaken within the adaptive management model. Under this model, problems are assessed using existing information. Management regimes are designed and implemented in order to achieve stated objectives. Results are assessed through monitoring, and information gained is used to assess and adjust the management regime. Through each iteration of the cycle, information is gained that further refines the optimal management regime (Figure 4).

The adaptive management process.



Stated Objectives

- 1) Implement forest and tree management to create a mosaic of microclimates that allow monarchs to locally adjust their distribution in response to variable weather, including extreme wind storms.
- 2) Maintain public safety by timely treatments of hazard trees and branches without compromising monarch habitat.
- 3) Establish and maintain diverse and abundant nectar resources in and near the Sanctuary to provide early and season-long nectar for the butterflies.
- 4) Establish and institutionalize the annual adaptive management cycle.
- 5) Reduce conflict and increase cooperation among the City and stakeholders.
- 6) Maintain the site for decades to come as the forest inevitably changes.

If these actions are successful, then monitoring of the local distribution and abundance of the population will indicate success at:

- 1) Attracting monarch butterflies each fall.
- 2) Maintaining persistent monarch butterfly aggregations through the overwintering season
- 3) Establishing use of new/modified/old trees and branches as the forest changes through time.

Quantitative goals can eventually be developed from detailed analysis of monarch monitoring data over past years, the relative proportions at different sites south and north of the Sanctuary. These analyses are beyond the scope of this report.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Ben Harvey, City Manager
MEETING DATE: September 7, 2022
SUBJECT: Ratification of New Local Emergency Actions
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive report of emergency directives/modifications.

DISCUSSION

The City Manager during this Local Emergency is authorized to directly mitigate effects of the Local Emergency to protect life or property.

This report apprises the City Council of emergency directives taken under the continuing local emergency proclaimed by Resolution 20-007. This report fulfills the City Council’s review obligation under that Resolution and Government Code 8630. This agenda item also enables ratification of select actions taken since the City Council’s last review.

City expenditures for legal services related to COVID-19 issues (specifically to related to COVID 19-COM (Communications); COVID 19-TRN (Training); COVID 19-LAW (Legal Support); and COVID-19 (Other)) are eligible for State and Federal Emergency Service reimbursement, including but not limited to FEMA or other emergency grant funding.

Actions not subject to Ratification. Since the time of the revised Monterey County Shelter in Place Order issued Friday, April 3, 2020, the City Manager has taken the following new or modified actions pursuant to the Emergency Proclamation:

- None to report at this time.

No action is necessary with respect to the above new or modified measures, as each is responsive to requirements of the revised Monterey County Shelter in Place Order falling within the regular management discretion of the City Manager.

Actions subject to Ratification. Certain mitigation measures that have been enacted by the City Manager in response to the Monterey County Shelter in Place Order issued Friday, May 8, 2020, and in accord with Council’s Local Emergency under Article 19, subparagraph I, of the Pacific Grove City Charter, and Chapter 3.20 of the Pacific Grove Municipal Code (PGMC), are subject to ratification. Any mitigation measures that qualify are subject to ratification as required by Government Code 8630

and City Council Resolution 20-007, and are listed below:

1. None to report at this time.

Discussion of Circumstances Needing Emergency Response. The discussion part of this item allows comment on circumstances which may benefit from further or different emergency responses. Matters identified will be referred to the City Manager for appropriate consideration in accord with the Emergency Management System protocols set by PGMC Chapter 3.20. These delegate exclusive emergency management response authority to the City Manager.

CEQA Exemption. Actions taken to prevent or mitigate an emergency are exempt from CEQA pursuant to section 15260 of the CEQA Guidelines.

OPTIONS

Actions not subject to ratification are reported for information only.

FINANCIAL IMPACT:

There is no financial impact in receiving the report.

GOAL ALIGNMENT: Not Applicable.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Daniel Gho, Public Works Director/Deputy City Manager
MEETING DATE: September 7, 2022
SUBJECT: Beautification and Natural Resources Committee Minutes: July 19, 2022
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

July 2022 Minutes

Subject: BNRC July 19th, 2022 Minutes

RECOMMENDATION

Approve the meeting minutes

1. **CALL TO ORDER 4:00pm**

Wooten, Green, McKenna, Ingram, Pineda Tibbs, absent Myers and Vierneisel (tardy)

2. **APPROVAL OF AGENDA**

McKenna moved to accept the agenda, Ingram 2nd, vote approved 5-0

3. **COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)**

- **Gho-** Introduced George Fuerst as the new Environmental Programs Mgr. He has been with the City 4 weeks. He has already met with members of subcommittees and we welcome George. **Fuerst** responded that he is happy to be here.
- **Wooten-** announced and welcomed new commissioner, Claudia Pineda Tibbs. They are employed by MBA as the Sustainability Programs Manager
- **Wooten** noted that Claudia Vierneisel has joined the meeting.

4. **COUNCIL LIAISON ANNOUNCEMENTS –**

- **Councilmember Coletti-**made 2 announcements. There will be an item on council August 17th agenda that will deal with restrictions on city issue permits for any roadwork on Oceanview Blvd during pupping season. This would restrict work permits during pupping season. Also bringing forth in September a wildlife commission report on forming the wildlife commission. It will be to set up the framework for that.

5. **GENERAL PUBLIC COMMENT**

Public comments:

- **Dominic Sinicropi-** Objects to the way that BNRC addresses the issue of maintenance of the Monarch Sanctuary. The agenda contains only Weiss' annual report and the commission shows a bias to only consider proposed maintenance from a single source. Stated that he has submitted reports with no comments or acknowledgements from the commission. The second microclimate report supports the recommendations of the first report and the commission has made not comment. Refers to the Dr. Leon report of 20 years ago recommending an interior cluster of trees be planted. Recommends a public meeting to consider all recommendations.
- **Lisa Ciani-** Welcomed Claudia Pineda Tibbs on the BNRC as Claudia is passionate about environmental issues, and George Fuerst as EP Mgr., supports Sinicropi's views and hopes they will get attention now, excited about Coletti's comments and work to protect the wildlife.

Written comments-June (4): Joyce Halibi- Updated BNRC on CIP and ARPA projects, **Charles Cha-** of the Monterey Bay Chinese Assoc. requesting a Chinese Pavilion be built on the PG coast, **Councilmember Coletti** notified BNRC of George Fuerst appointed as Env. Programs Mgr., **Patricia Hamilton** (email chain) on the need for a sustainable storefront beautification with plants.

Written comments-July (4): Inge Lorentzen Daumer noted absence of May minutes in the agenda packet & correction of Dewey Ave 7e, **Jim Herbert** (forwarded from council) on potential donating the leasing of his metal shark sculpture to PG, **Lisa Ciani** on 7e tree planting to urge use of LCP and 2015 Tree Inventory Report, **Dominic Sinicropi** shared the 2nd annual report on the microclimate of PG Monarch Butterfly Sanctuary that supports establishing an interior tree cluster as previously recommended.

6. **APPROVAL OF THE MAY MINUTES -added as errata sheet to agenda
Vierneisel motion to approve, McKenna 2nd, approved 6,0**

7. REGULAR AGENDA

A. Chinese Pavilion Project

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive report and form a subcommittee to evaluate the concept

Public Comments:

- **Dixie Laine** reminded commission that the Japanese community led by Mr. Oto wanted to have a Japanese tea house on the coast that was fully funded but the City did not want to obstruct the coastline. So if this project is accepted, you would have to go back and revisit others that were denied,
- **Lisa Ciani-** Thinks it's a lovely idea but the Walkway of Remembrance is too but doesn't obstruct the public view and should be under the prevue of the Coastal Commission, there is issue with where do you draw the line, our coast is unique, please be aware of the LCP and the CC when subcommittee considers this, would like the Walkway of Remembrance to be considered, with boulder plaques telling the story along the trail.
- **Thom Akeman:** Wasn't sure about the idea of the pavilion but if it's a construction it could be a problem. The area around Hopkins is limited and toward the mural is erosion area. A structure is problematic, if there is a memorial bench that could be considered.

Commissioner Comments:

- **Green-** Agree with Dixie and Thom concerning the location around Hopkins to the mural. If it were in grassy areas around Berwick or Lovers Point where there are gathering areas with no erosion issues or no seal pupping nearby.
- **Vierneisel-** like the idea but echoed not sure where along the coast, maybe closer to the city or Berwick Park away from the erosion. We need more investigating on locations.
- **Wooten** stated that she agrees with problems with a structure along the coastline would be difficult to do and it isn't practical. Also other proposals for memorials- where do you draw the line and how inclusive can you be. We could have a subcommittee come back with alternatives as well as the possibility of not agreeing to this, or some kind of other memorial that would be more inclusive. We do have the mural that is in need of repair.
- **McKenna** stated that this could be a continuation of the mural project as a CIP, knowing it didn't get funded, maybe there is a broader discussion on what is going to happen with the mural and how this might relate to it. We need to contact Mr. Cha for more discussion on location. Agree with subcommittee
- **Wooten** asked what was thought of other proposals that have been denied. That is an issue
- **Ingram** asked if it would depend on the history of the request for a memorial. Stated she is not informed on the Japanese history here because we haven't had such an issue come to the forefront as we have with the Chinese community. Thinks this would have some weight in the decision and that it isn't open for everyone- it's open for historical purposes.

RECOMMENDED: Art subcommittee will discuss

B. Lovers Point Art Project, Dumpster Design

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive Report and ask art subcommittee for artwork approval

Public Comments:

- **Lisa Ciani**- did not recall an artist being selected and would like a review of that process, concerned about the translation of the artwork onto the dumpster

Commissioner Comments:

- **Ingram**- Wanted to clarify that the original plan of this project had to be adjusted due to the timing and missing off season preparation. The barrels would be the phase where artists will be submitting work and the community outreach will be done. With an artist managing the project, the two dumpsters will be painted with her supervision. The artist rendering is not exact.

ACTION: Ingram motioned to approve art rendition as an example of how the dumpsters will be painted, McKenna 2nd, approved 6-0.

C. AB 1276 Single-Use Foodware Accessories and Condiments

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive report and provide direction

Public Comments:

- None

Commissioner Comments:

- **Ingram** shared that the plastics subcommittee met with Fuerst to discuss AB1276 and the PG Plastics ordinance as well as met with Jenny MacMurdo of the Chamber. She was aware of the bill and is ready to work with the BNRC and is ready to go forward. Also food service platforms like Door Dash have a selection to opt out of having foodware, the public will now have to opt in with this bill, so now you will have to choose that you want it instead of declining foodware.

NO ACTION:

D. Monarch Sanctuary Annual Report

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive the report

Public Comments:

- **Dominic Sinicropi** -has had negative view of the annual reports and this is no exception. Methodology is important in scientific study. Weiss only visits the sanctuary a couple of times a year and depends on computationally predicted data. It's fake data instead of actual data, he predicts wind based on data from the Monterey Airport that were not corroborated with actual data from last 2 years. Urges not to thin the trees that were used by overwintering monarchs this year, and requests a community meeting to discuss and review recommendations made in this report before they are approved.
- **Dixie Layne**- Stated she is one of the 6 volunteers that works in the sanctuary every week. Assumes there will be more opportunities to discuss these recommendations at another time and at the walk through, would like to clarify some parts of the executive summary- the pop drop due to storms: we did not have a lot of storms, we just had a few. More standard winter weather would have wiped them out – they could find no protection. The statement that monarchs clustered in the cypress trees was not true- Stephanie's report – they were in the eucalyptus in zones 3&4, and pines in zone 2. Weiss did not consult any of the 6 volunteers that spend the most time in the sanctuary. These volunteers were not given a voice. The nectar plants that are there were selected by a master gardener. Natives that were beneficial were removed, many now are not native....10 foot space needed for eucalyptus? They only need 12"-24" space.

Commissioner Comments:

- **Vierneisel-** stated there seems to be many discrepancies and that she is looking forward to the walk through.
- **Gho-** the City will be embarking on a whole management plan that encompasses in and outside of the sanctuary, and we are currently pursuing a grant and if successful we will be redoing the original management plan but this will take some time but it will be the next step. Due to lack of funds, we are tied to this management plan. Stu looks at the long term while we struggle with the short term. Regional plan that will make management across the region uniform. The City has earmarked \$25K as a match for state funding.
- **Ingram-** asked for clarification that there is not a set timeline for the new plan and **Fuerst** affirmed. The funding will go through the county regional conservation district and the funding is coming from the wildlife conservation board.
- **Wooten-** asked if this is a 5 year wait or a 6 month wait until we know about the funding. **Gho** replied 6 months is a reasonable timeframe, but we need to move forward on acting to show we are managing the sanctuary for Fish and Wildlife.
- **Wooten-** asked if we will be able to choose our own consultants and **Gho** affirmed.
- **McKenna-** thanked Gho for timeline clarification and asked if the horticulturist consultant can review some of the concerns shared in public comment concerning native planting. **Gho** confirmed that this was happening.

E. BNRC Tree Planting Recommendations

Reference: Daniel Gho, Public Works Director / Deputy City Manager

Recommended Action: Receive report and provide direction

Public Comments:

- **Thom Akeman-** thanked the commission for bringing this forward. Discussed the lack of follow through to the need to replenish the canopy loss of the last 25 years. This is a start and that's good. GWP now has about 270 new Monterey Pines and shared about 10 were purchased at wholesale \$70 each delivered so this money won't go far but it's a start.
- **Lisa Ciani-** Pleased that tree planting and watering are being addressed and asked for focus on replacing lost trees around town and plant near aging/dying trees that will need to be replaced, please follow guidelines in PG's LCP policy focusing on native trees in our coastal zone. Private views are not protected, but it's important not to block public views of the coastline as outlined in LCP policies, and hopes the public will be polled as they are aware of needs in their area. Oaks at the corner of Short and Alder need to be replaced.
- **Kim Akeman-** thanked the commission, and appreciates that the whole city is being considered, has seen tourists cluster under one big cypress for shade. With extreme heat, our trees will be more important.
- **Inge Lorentzen Daumer-** planting trees is fabulous, agreed with Lisa the stretch Dewey Avenue to 9th St. is a delicate area and the LCP is specific about certain things. Hopes that choices will be in compliance.

Commissioner Comments:

- **Wooten-** thanked the subcommittee for the work done here.
- **Green-** this chart is a starting point and made by observation, and stated concerns with LCP guidelines will be taken into consideration
- **Wooten-** asked PW to speak to the concern about maintaining newly planted trees. **Gho** answered PW is struggling to water our landscaping in the drought and asked that newly planted trees be placed in areas easy to irrigate, possibly hold off until winter to plant in hopes of rains to establish them. Continued that in the last year, 1200 work orders that came through PW were fulfilled -staff time along with regular

duties, we may need to look into the adopt a tree program, asking close neighbors if they would help water the tree, etc. He will be talking with city mgmt./council for approval of staff to irrigate trees.

- **Wooten-** agreed waiting for fall/winter is a good idea, asked about downtown trees and others that need replacing. **Gho** responded with detailing the labor requirements to water, etc.
- **Wooten-** asked what the BNRC could do to help facilitate the hiring of the needed staffing requirements of the project. **Gho** responded that as an advisory board, the BNRC could reach out to council members when Public Works requests this needed staffing for support, but understands the constraints associated with more staff that council needs to address.
- **Wooten-** asked if contractors could suffice and **Gho** answered that it has been considered.
- **Vierneisel-**suggested polling/ door knocking to see if an adopt a tree program would be of interest to the public, perhaps using Nextdoor, etc. This would take some strategic planning. GWP has 17 people volunteering.
- **Wooten-** suggested the tree subcommittee look into these ideas.
- **Gho-** reiterated that we need to find ways to motivate the public to plant trees on their property. PW has the \$28K that could be used to purchase trees for people to plant on their property and maintain. Some of the \$35K will be needed for downtown. We need help to get this going. In the meantime, PW and city arborist Weifuss will continue to plant trees in recommended areas and report them to the tree subcommittee.
- **Vierneisel-**asked if the BNRC could reach out directly to the public to ask if they would plant trees and **Gho** responded that he would check with staff to be sure
- **Ingram-** mentioned that education on how to care for the trees is a component of the adopt a tree to consider, also asked about underground streams that are around the city, it would be nice to have a map of this water source so that we could take advantage of it when planting.
- **Tibbs-** mentioned that water being precious in CA there may be an opportunity to see what other cities are doing, for example Palo Alto launched a rain barrel program to encourage residents to collect water, if that could be funded in a budget for a barrel to be placed near a needed watering area. The volunteers and tree adopters could access this water.
- **Gho –** responded that nurse tanks have been discussed and GWP was a potential site which we could fill with our recycled water source. It is an option.
- **Vierniesel-** shared that she went to Garden Show in Santa Cruz/Capitola house tour and all of the homes had rain barrels, and every gutter down spout.
- **Ingram-** mentioned the City has some good resources for this sort of thing, and will look for it and share later.

8. **NEXT MEETING- August 16th, 2022 at 4pm**

9. **ADJOURNMENT: 5:38pm -Ingram motioned, Green 2nd, approved 6-0**

Colleen Ingram, Secretary



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Kerry Lindstrom, Deputy City Clerk
MEETING DATE: September 7, 2022
SUBJECT: Economic Development Commission Minutes: June 9, 2022 and July 14, 2022
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes

Attachments

June Minutes

July Minutes



MEETING MINUTES

CITY OF PACIFIC GROVE ECONOMIC DEVELOPMENT COMMISSION REGULAR MEETING AGENDA

Thursday, June 9, 2022, 4:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

CALL TO ORDER

EDC Commissioner Attendees: Nicholas Mourlam, David Markowitz, Arielle Zina, Kelsea Richmond, Erik Uppman, Jenny MacMurdo, Jenny McAdams,

Other panelists: Ben Harvey, Laurel O'Halloran, Kirstin Hinds, and Barry Foster

1. APPROVAL OF AGENDA

Motion to approve agenda made by Vice Chair Uppman, Seconded by Commissioner Markowitz; unanimous approval.

2. COMMISSION AND STAFF ANNOUNCEMENTS (City-Related Items Only)

Chair Mourlam and Secretary Zina requested clarity on what is allowed, required, and expected when receiving a correspondence from the public to the EDC meeting.

City Manager noted that he will be hosting office hours.

3. COUNCIL LIAISON ANNOUNCEMENTS

Mayor Pro Tem provided the following overview: last night the City Council held a meeting to discuss the Continued Budget, and approved the initial budget reading, including allocation of ARPA funding. This funded 10 projects from the unfunded capital improvement list and 3 other projects, including a skate park, recycled water project, and sidewalks.

\$38,500 allotted to the EDC. A separate \$25,000 was allotted to an additional façade improvement program. The second reading of the budget is next Wednesday, July 15th. Budget is a living, breathing document and can be amended. Encourage the EDC to come if/as new budget requests arise.

4. GENERAL PUBLIC COMMENT

No public comment was made.

5. APPROVAL OF THE MINUTES

A. Economic Development Commission Minutes: May 5, 2022

Reference: Arielle Zina, Secretary

Motion to approve the minutes was unanimous, with a clarity to correct the spelling on commissioner Richmond's name.

REGULAR AGENDA

6. Electronic Survey of Business Owners
Reference: Nicholas Mourlam, Chair

A motion to conduct an electronic survey of our Pacific Grove business owners on how the Economic Development Commission can support them in the coming fiscal year, was made by Chair Mourlam, with the following amendments to the proposed questions:

- Include two additional questions and a cover letter.
 - The additional questions would include whether the business owns or leased the property where their business operated and a blank question allowing for an open response.
 - The cover letter would include details on the EDC, including our meeting information and information related to the EDC and its programming.

The motion was seconded by Commissioner Markowitz. The motion passed unanimously.

7. Minority and Women-owned Business Grants
Reference: Erik Uppman, Commissioner

Motion made by Commissioner Markowitz, seconded by Secretary Zina. Approved unanimously

8. Early Childcare Support Subcommittee Update
Reference: Nicholas Mourlam, Chair

Chair Mourlam provided an update on the Subcommittee.

9. Facade Improvement Program Update
Reference: Laurel O'Halloran, City Business Ombudsperson

Laurel O'Halloran provided an update on the program, including a high number served

10. UNFINISHED AND ONGOING BUSINESS

Secretary Zina and Commissioner MacMurdo provided an update on the Vacant Storefront Subcommittee, which will bring a formal program for consideration for July

ADJOURNMENT

Commission adjourned the special meeting at 5:56pm.

Respectfully Submitted,

DocuSigned by:

Arielle Zina

77C7E930BDF74EC...

Arielle Zina

Secretary

MEETING MINUTES
CITY OF PACIFIC GROVE
ECONOMIC DEVELOPMENT COMMISSION
REGULAR MEETING AGENDA
Thursday, July 14, 2022, 4:00PM
Virtual Meeting

CALL TO ORDER

4:03PM by Chair Mourlam

EDC Commissioners Present: Chair Nicholas Mourlam, David Markowitz, Kelsea Richmond, Ex-Officio Jenny MacMurdo

Other Panelists Present: Laurel O'Halloran, Kirstin Hinds, Council Liaison Jenny McAdams

EDC Commissioners Absent: Arielle Zina, Erik Uppman

1. APPROVAL OF AGENDA
 - a. Motion to approve agenda made by Commissioner Markowitz, Seconded by Commissioner Richmond; passed by unanimous approval.
2. COMMISSION AND STAFF ANNOUNCEMENTS (City-related items only)
 - a. Economic Development Coordinator O'Halloran announced a Parklet Program Community Outreach meeting on July 27th at noon in City Council Chambers.
 - b. O'Halloran reported that she, the City Manager and City Finance Manager have a scheduled meeting next week to work on the launch of the Women & Minority Owned Business Grant Program previously approved by the EDC at their June 2022 meeting.
3. COUNCIL LIAISON ANNOUNCEMENTS
 - a. Council Member McAdams announced that the Election process begins on Monday, July 18th and that there are 3 council seats and the Mayoral seat open for those interested in running for elected office.
4. GENERAL PUBLIC COMMENT
 - a. Dixie Layne announced the return of Butterfly Days Friday, September 30 – October 2, 2022. Many event activities planned throughout the City. Layne also notified the EDC that she'll be providing a formal request for funding (\$5,000) at the August meeting.
5. APPROVAL OF THE MINUTES
 - a. Economic Development Commission Minutes: June 9, 2022
 - A. Motion to approve minutes as amended, *removing Council Liaison from list of EDC Commissioner Attendees present*, made by Commissioner Markowitz, Seconded by Commissioner Richmond; passed by unanimous approval.

REGULAR AGENDA

- A. Review of 2020 PG Re-brand
 - a. Ex-Officio Commissioner MacMurdo gave review of 2020 PG Chamber re-brand for informational purposes
 - i. Public Comments
 - 1. Inge Lorentsen Daumer
 - ii. General Discussion by Commissioners
 - B. Request for Information for Parties Interested in Potential “Makers Space: or “Craftsman Collective” Retail Space
 - a. Hinds gave report on the RFI proposal
 - b. Commissioners requested additional items for the subcommittee to include:
 - i. Add timeline for responses (at least one month – option to extend depending on response rate)
 - ii. Address confusion around farmers market versus artisan market versus “mall”
 - iii. Also promote to local arts and entrepreneur community
 - iv. Bring back to subcommittee for official vote at August meeting
6. UNFINISHED AND ONGOING BUSINESS
- a. Early Childcare Support Subcommittee Update
 - A. Chair Mourlam presented the recommendation from the subcommittee for the EDC to finalize the survey questions, then elevate the topic to either the City Council or the creation of a Taskforce
 - B. Public Comments
 - 1. Inge Lorentsen Daumer
 - 2. Debby Beck
 - C. Chair Mourlam reported that this initiative is not representative of the Countywide tax ballot measure “Safe, Affordable Quality Child Care Act”
 - D. Motion made by Commissioner Richmond, Seconded by Commissioner Markowitz and approved unanimously, to approve the survey with the addition of one question: *Does the lack of local affordable and available childcare services prevent your family from expanding?*
 - E. Recommendation made to return this initiative to the subcommittee for finalizing and next steps.

ADJOURNMENT

4:58PM by Chair Mourlam

Minutes Respectfully submitted by Jenny MacMurdo

Next EDC Meeting – Thursday, Aug 11, 2022





CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Vincent Garcia, Administrative Technician
MEETING DATE: September 7, 2022
SUBJECT: Traffic Safety Commission Meeting Minutes: May 28, 2022, and July 26, 2022
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Receive minutes.

Attachments

TSC 052422

TSC 072622



CITY OF PACIFIC GROVE
300 FOREST AVENUE
PACIFIC GROVE, CALIFORNIA 93950
TELEPHONE (831) 648-3100 • FAX (831) 375-9863

NOTICE OF REGULAR MEETING

TRAFFIC SAFETY COMMISSION

DATE & TIME: May 24, 2022: 4:00 p.m.

LOCATION:

THIS MEETING WILL BE HELD VIRTUALLY AND IS COMPLIANT WITH THE GOVERNOR'S EXECUTIVE ORDERS ALLOWING FOR A DEVIATION OF TELECONFERENCE RULES REQUIRED BY THE BROWN ACT.

JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:

<https://us02web.zoom.us/j/88367707748>

To participate telephonically, call any number below:

877 853 5247 (Toll Free)

888 788 0099 (Toll Free)

669 900 9128 (US)

Webinar ID: 883 6770 7748

MEETING AGENDA

- 1. CALL TO ORDER AND ROLL CALL** *In attendance were Commissioners Kubica, Prock, Munoz-Flores, Greening, Murray, Brown. Also in attendance were PG City Rep Jocelyn Francis and Public Works Director Gho.*
- 2. APPROVAL OF THE AGENDA** *Approved Unanimously*

3. APPROVAL OF MINUTES

A. Approval of Minutes of Prior Meetings

Minutes of the Traffic Safety Commission Meeting of 26 April ,2022 minutes were prepared by Kari Murray Traffic Safety Commission Secretary

Recommended Action: **Approve Minutes, Approved Unanimously**

4. PUBLIC COMMENT

A. Written Communications *Emails received, included in packet.*

Email from:

- Lisa Ciani – Construction issues on Ocean View Blvd Construction
- Molly Laughlin- Subject is “Serious Traffic Hazard Concern”
- Brian Sands - Subject is Lighthouse Avenue Concerns

B. Oral Communications *(Comments must deal with matters subject to the jurisdiction of the Traffic Commission and will be limited to three minutes. Comments from the audience will not receive Traffic Safety Commission action at this meeting. Whenever possible, letters should be submitted to the Commission in advance of the meeting.)*

- Lisa Ciani – provided oral comments by reading a letter sent earlier in the day, too late to be added to the May agenda. *Letter will be added to June Agenda.*
- Molly Laughlin – commented to expand on her email regarding pedestrian and motorist safety on Patterson Avenue. Comments included personal experiences as a pedestrian on the road with no crosswalk, distracted drivers. Request consideration and support to make the area safer. Requested the City take responsibility to calm traffic in the area. *Commissioner Kubica noted the item would be put under consideration.*

5. COMMISSIONER AND STAFF ANNOUNCEMENTS (City Related Items Only)

A. Announcements

- Minutes for this meeting are scheduled to be prepared by Kari Murray Traffic Safety Commission Secretary.

B. Staff and Commissioner's meeting attendance and items of interest to this Commission

- Comments from City Council Liaison: Mr. Amelio *Not present, no comments.*
- Report from TAMC Bike and Pedestrian committee, Open / Jung Hwa Kim: *Commissioner Kubica announced that representative Popovich has resigned from this liaison position and requested a TSC member apply*

and volunteer. Mr. Brown volunteered. Ms. Kim is the backup but was not present for today's meeting. Commissioner Kubica provided the report.

- *Status of EV-Charger installation (Malfunctioning charger) Public Works Director Gho reported the charges are in use, although two are not operational. A jumper cable is ordered. City is reimbursed thirty-seven cents/kwh*

- *Status of Ocean View Blvd work including rookeries Director Gho provided report.*

Comments from public:

- *Inge Lorentzen Daumer: There are four rookeries, there is one on the east side of Hopkins.*
- *Lisa Ciani: Provided her commentary in the initial opening oral comments and expanded that she hopes we will hear more about how this kind of poor scheduling will be avoided in the future.*
- *Kim Akeman: One at Fisher Beach near Aquarium; One at West Hopkins Beach, third one is 5th to 8th which is one whole rookery, although it is called "5th street"*

Commission discussion:

- *Commissioner Kubica thanked Director Gho for bringing iron up to level to give PG flat streets. This is a process where the valve controls and sewer covers are brought up to new pavement level after paving to insure level driving over newly paved streets.*
- *Commissioner Brown asked about expense to put signs up at the Rookeries notifying public (and potential work) about protected area.*
- *Director Gho responded that this is a regulatory item that would go through City council, first by BNRC to create an ordinance. An ordinance describing the regulation must exist for a violation of a code. Director Gho suggested an educational sign could be considered*
- *Commissioner Kubica stated that construction usually must go through public works in order to begin.*
- *Commissioner Brown wanted it there as a reminder for people. There are state and federal laws that could be referenced in a sign.*
- *Ms. Francis affirmed that are state and federal laws and will work with state parks – not sure about the regs re: noise.*
- *Commissioner Brown asked how this is implemented, what about public vs private construction.*
- *Commissioner Kubica stated Permits are required for any work public or private*
- *Commissioner Brown requested that the rule/regulation be brought to the next meetings*
- *Commissioner Kubica stated it would be considered.*

- Return to in-person meetings vs. zoom meetings. Resources are not available to TSC to do hybrid meetings.
 - Votes: In person: Greening.
 - Zoom: Brown, Kim, Kubica.
 - Neutral > all others.
 - Commissioner Kubica noted Zoom offers more public input. Meetings to continue in Zoom platform.

6. REGULAR AGENDA:

A. PUBLIC HEARINGS:

1. None.

B. UNFINISHED BUSINESS:

1. None

C. NEW BUSINESS:

1. Ocean View Blvd parking overnight. Police Department presentation. Receive report, discuss, and make recommendations as appropriate.

*Report presented by Ms. Francis (report provided in Agenda Packet)
After receiving public comment, study was performed over one week period:*

Section 1: Eardly to Sea Palm (Unrestricted Parking)

Section 2: Sea Palm to Sunset (No parking Midnight – 5 AM)

Commission Discussion & Recommendations:

- Commissioner Greening commented about nightly sleeping in campervans along the stretch. Police are called, and they are moved. Is it possible to extend the No Parking section to include from Early to Sea Palm?
- Ms. Francis noted that through the approval of parking meters around the ATC, we are not able to restrict parking from First St to Fountain. Any changes would require Coastal Development Permits. we cannot regulate parking in that section of our coastline. The city does not allow oversized vehicles to park from 10 pm to 5 am no large vehicles overnight in city is a problem. This includes the Oceanview Blvd. (22 Feet)
- Commissioner Greening asked if we could go back to the CC to change, this?
- Commissioner Kubica noted that although possible, police are coming and asking people to move on.
- Commissioner Munoz Flores commented that PG is noted as great place for camping on the internet. Has experienced 7-8 vehicles parked overnight, also some with extensions onto bike path parked for multiple days in a row. Would like the TSC recommend to the council that we put in some requests for regulations.

- Commissioner Greening noted campers use the tidal zone as a bathroom.
- Commissioner Kubica asked about process and direction from Mr. Gho and Ms. Francis
- Ms. Francis stated she is working for a parking management plan – to incorporate a plan to address parking in all areas. She noted CC views restrictions such as parking limits as restricting access to coastline.
- The parking plan is not a CIP budget item.
- Commissioner Brown asked about the regulations re: overnight parking for 22 ft or longer vehicles.
- Ms. Francis responded with examples and exceptions.
- Commissioner Brown asked about the 22 ft vehicles vs smaller
- Ms. Francis explained determination of the term “Recreational Vehicle” vs something that takes up more than a parking space.
- Commissioner Florez recommends revaluation, shorten length and if used for sleeping purposes to look at it in a contemporary way, and also asks if campers’ use of area as bathroom is a health and safety issue?
- Commissioner Kubica says we need to have a detailed, recommendation with background.
- Ms. Francis recommends that since there is a plan to review parking in general, wait for a full methodical approach.
- Commissioner Kubica notes that the reported counts do not consider the size, type, and use of the vehicles.
- Commissioner Brown asks can we get a better feel for the type of vehicles and where they are from.
- Ms. Francis stated vehicle information cannot be collected without cause.
- Commissioner Brown asked if it is possible to provide a place where people can Park. What can we do in the interim?
- Ms. Francis noted traffic violations may not deter Overnight parking.
- Commissioner Greening asked if it is it possible to raise the violation fee.
- Ms. Francis said she will look into it.
- Commissioner Kubica asked for some more info, to education us – review the ordinance including her plan on the parking plan and put this on next agenda.
- Ms. Francis will bring back current ordinances to July meeting (due to travel plans.)

2. Public Works presentation of road repairs for FY22/23. Public Works. Receive report, discuss, and make recommendations as appropriate.

Projects presented by Mr. Gho.

No public comments.

Commission Discussion & Recommendations:

- Commissioner Kubica asks where the sidewalk will be located

- Mr. Gho. says it will meander near Higgins Park
- Commissioner Kubica inquires if we need a cross walk on David?
- Mr. Gho. Answers it is TBD. Would not recommend an uncontrolled cross walk (where there is no traffic system in place.)
- Commissioner Kubica asks if a wigwag light counts as "controlled"
- Mr. Gho. Responds, no if traffic is not required to stop.
- Commissioner Kubica asks if they will they be paving into 68?
- Mr. Gho: Says his understanding it is the entire corridor into the city-to-city limit lines through Sunset.

3. CIP for Sunset/Cedar/Congress. Public works presentation.

Receive report, discuss, and make recommendations as appropriate.

Project plan presented by Mr. Gho.

No public comments.

Commission Discussion & Recommendations:

- Commissioner Kubica asks if TSC needs to make a recommendation.
- Mr. Gho. Replies that he believes has been approved for the budget
- Commissioner Kubica asks, is it possible to not have the money?
- Mr. Gho. States the first step is the funding agreement which will secure the funds
- Commissioner Brown asks if the roundabout is the final plan?
- Mr. Gho explains the Intersection Control Evaluation (ICE) will consider options (e.g., roundabout, stoplight, nothing.)
- Commissioner Brown requested study about roundabout safety
- Mr. Gho. will be on vacation during June meeting

D. REPORTS FROM SUB-COMMITTEES:

1. Monthly status reports (as available) None

7. ADJOURNMENT

This meeting is open to the public and all interested persons are welcome to attend. The City of Pacific Grove does not discriminate against individuals with disabilities and meetings are held in accessible facilities

Respectfully Submitted: Kari Murray, Traffic Safety Commission


Andrew Kubica (Aug 24, 2022 10:37 PDT)

Andrew Kubica - Chairman

Approved by Commission on 8/23/2022



Date: Aug 24, 2022

Chief Cathy Madalone - City Staff

CITY of PACIFIC GROVE – TRAFFIC SAFETY COMMISSION – MEETING MINUTES

CALL TO ORDER AND ROLL CALL - The meeting was called to order at 4:00 pm. on 7/26/2022. Commissioners present: Kubica, Chair; Kim, Prock, Munoz-Flores, Greening, Murray, and Brown (arriving late.) Also in attendance were Councilman Joe Amelio; PGPD Chief Madalone; Commander Santos; Police Administrative Services Director Jocelyn Francis; Associate Planner, Laurel O'Halloran; City Traffic Engineer, Rich Deal; and Contract Building Official, John Kuehl. The meeting was held virtually in compliance the Governor's executive orders allowing for a deviation of teleconference rules required by the Brown Act.

1. Approval of Agenda: Passed unanimously. (6-0-1) (Brown absent).
2. Approval of Minutes
 - A. Approval of Minutes of Prior Meetings: Minutes of the Traffic Safety Commission Meeting of June 28, 2022, minutes will be reviewed for approval. Approved by changing Public Comment item 3A "rockery" to "rookery". Passed unanimously. (6-0-1) (Brown absent).
3. Public Comment
 - A. Written Communication
Email from:
 - Colin Miller – Vision Zero. *Received*
 - Glynis & Tony Greening – Parking on Pacific Grove Shoreline. *Received*
 - Hideko Graves – Parking in Middle of Lighthouse Ave. *Received*
 - Michelle Bailey – Speeding on Eardley Avenue. *Received*
 - Noah Rappahahn - Hopeful for Crosswalks at Sinex Avenue and 17 Mile Drive. *Received*
 - 2 items that arrived after the agenda was set, and Lisa Ciani emails will be posted for next meeting.
 - B. Oral Communication
Lisa Ciani- emailed to point out that the last meeting she had provided an email on June 28 answering Com Brown's questions, but the letter is not on this agenda, and would like it to be in the record on the next agenda so it is available to council for their next meeting.
4. Commissioner and Staff Announcements (City Related Items only)
 - A. Announcements
 1. Minutes for this meeting are prepared by Kari Murray Traffic Safety Commission Secretary.
 - B. Staff and Commissioner's meeting attendance and items of interest to this Commission
 1. Comments from City Council Liaison: Mr. Amelio briefed on approvals from last council meeting.
 2. Report from TAMC Bike and Pedestrian Committee: No meeting.
 3. Status of EV-Charger installation (Malfunctioning charger): Public Works Gho briefed that the City is working with Charge Point on warranty issue.
 4. Speeding on 17 Mile Drive between Lighthouse and Jewell: Commander Santos reported Traffic trailer has been moved for two weeks to get numbers and additional staff is monitoring traffic.

CITY of PACIFIC GROVE – TRAFFIC SAFETY COMMISSION – MEETING MINUTES

5. Regular Agenda:

A. Public Hearings

1. None

B. Unfinished Business

1. Overnight Parking Presentation. Ms. Francis provided a report via power point describing PGMCM Parking codes, modification requirements, considerations, and recommendations.
 - a. Public Comment: Inge Daumer suggested public document their complaints to the Coastal Commission.
 - b. Commission Discussion with Ms. Francis included questions and comments regarding the timeline, amendments to the ordinance to reflect current size of recreational mini vans, timing of historic certifications with coastal commission, and safe parking options for the homeless. Ms. Francis stated she would need to submit an RFP for the parking plan, possibly within one year, depending on public input. Chief Madalone noted that there have been other city departments who have worked with the Coastal Commission. Ms. Francis added the local coastal program was certified in March 2020. Ms. Francis clarified the Safe Parking Program is managed by One Starfish.

C. New Business

1. Downtown Lighthouse parking and striping plan modification for the placement of parklets. John Kuehl presented history of Parklet Program, City Council Direction, and Staff Recommendations asking for direction or alternatives. Rich Deal presented the challenges and proposed change options.
 - a. Public Comment: Inge Daumer commented that the parklets are unsafe and Carmel eliminated them; Katie Stern noted Los Altos shut down a street to increase safety, add bike parking, walkability.
 - b. Commission Discussion with the presenters included questions and comments regarding the Santa Rosa model, how parklet design impacts visibility and what can be done to improve safety, placement and size of buffer zones, size of current and proposed spaces, parallel parking challenges, traffic calming plans, encouraging parking in public lots, accessibility concerns, removing crosswalks, removing median parking entirely for bicycle, motor and pedestrian accommodations, balance between safety and business needs, additional traffic studies, trial time and duration, and that other corridors may require different permits. TSC passed the recommendation for a third option that removes parking in the center median between Fountain and Grand Avenues be presented to the Planning Commission. Motion made by Commissioner Brown, seconded by Commissioner Flores. (4-3) (Brown, Flores, Green, Kim: YES; Kubica, Murray, Prock: NO.)

D. Reports from Subcommittees (Monthly Status reports as available)

1. None.

6. Adjournment. Meeting adjourned at 5:30 Pm.

CITY of PACIFIC GROVE – TRAFFIC SAFETY COMMISSION – MEETING MINUTES

Respectfully Submitted: Kari Murray, Traffic Safety Commission


Andrew Kubica (Aug 24, 2022 10:37 PDT)

Approved by Commission on 8/23/2022

Andrew Kubica - Chairman



Date: Aug 24, 2022

Chief Cathy Madalone - City Staff



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Bill Peake, Mayor
MEETING DATE: September 7, 2022
SUBJECT: LULAC District Elections Letter
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Direct the City Attorney to advise Council on a response to the League of United Latin American Citizens’ (LULAC) demand for district elections and authorize the Mayor to sign a legal services agreement with the law firm of Nielsen Merksamer Parrinello Gross and Leoni, LLP to provide legal advice to the City Council in regard to the issues of the California Voting Rights Act (“CVRA”).

DISCUSSION

LULAC sent a letter via email on 8/25/22 to the City regarding district elections (Attachment 1).

The CVRA specifies conditions for local at-large and district elections. A Voting Rights Act Status Review was presented to Council on 12/1/21 (Attachment 2)

City Charter Article 6 ‘Officers and Employees’ states “The Mayor and the members of the Council shall be elected from the City at large.”

Marguerite Leoni is a partner in the law firm of Nielsen Merksamer Parrinello Gross and Leoni, LLP. A copy of the resume of the Nielsen firm is attached (Attachment 3) and at page 23 is a description of the experience of Ms. Leoni which notes that Ms. Leoni has represented numerous state agencies, municipalities, counties, school districts and other special districts on districting, redistricting, voting rights and electoral matters, including unique expertise in the California Voting Rights Act.

Given these circumstances, it is wise to have legal review by the City Attorney and the Nielsen firm before providing any response to the letter from LULAC.

OPTIONS

N/A

FINANCIAL IMPACT:

Cost not to exceed \$100,000 unless approved by Council.

GOAL ALIGNMENT: Not Applicable.

Attachments

LULAC Letter
Voting Rights Act PPT
Resume of NMPGL, LLP



LULAC District 12
Andrew Sandoval, District Director
joseandrewsandoval@gmail.com

Dear City of Pacific Grove

I am writing on behalf of LULAC District 12. We are interested in improving the accountability and responsiveness of future elected officials as well as the election system of the City of Pacific Grove as a whole. As the City of Pacific Grove continues to grow, it must adopt positive stateside trends in voting and elections in order to prevent voters from losing the ability to meaningfully engage in elections and community policy-making. At our LULAC District 12 meeting, our District Board voted unanimously to request the City of Pacific Grove move toward District elections.

One of the growing trends in California is district elections. District elections have been shown to improve voter turnout and help governments respond to community concerns. Districts are the cornerstone of our state and federal systems. Accordingly, they have been adopted by numerous cities, community college districts, and school districts. Recently the City of Soledad, Gonzales, Greenfield, and Monterey has passed resolutions of intent and some have adopted maps. Chualar, Santa Rita, Salinas City, Pacific Grove, Alisal, and other school districts have also moved towards district elections.

With regard to the City of Pacific Grove elections, we believe that the City of Pacific Grove would benefit from moving towards district elections. This would prevent the City of Pacific Grove from being in violation of the California Elections Code sections 14025 et. seq., known as the California Voting Rights Act of 2001 (CVRA). A change mandated in the election system to prevent occurrences of voting patterns that impair the ability of voters to elect candidates of their choice or impair their rights to influence the outcome of an election, particularly as a result of the dilution or abridgment of its rights and privileges under state and federal law.

We therefore respectfully demand that the City of Pacific Grove change its at-large voting system to a district-based voting system that affords all voters and protected groups the equal opportunity to choose elected officials to the City of Pacific Grove and, thereby, bring the system into compliance with the CVRA.

The reality is that all public agencies that have litigated this issue have lost. The costs to litigate a CVRA challenge can be tremendously high since an agency must pay the plaintiff's legal fees if the city is unsuccessful. In other cases, the plaintiff's legal fees have ranged from \$385,000 to \$4.5 million.

Additionally, if the court finds a CVRA violation, the court has the authority to impose district-based elections and to determine district boundaries with input solely from the plaintiff's attorney and consultants, effectively removing this authority from the School District and the community.

Finally, even if the public agency successfully defends a CVRA lawsuit, that success does not bar a subsequent challenge under the CVRA by a different plaintiff.

A few cities have decided to defend against these actions, but none have prevailed on the merits. In addition to the low threshold for establishing a valid claim under the CVRA, the law also requires the city to pay a plaintiff's attorney's fees and costs if the plaintiff prevails. Plaintiffs' attorneys' fees and costs in CVRA cases often amount to millions of dollars.

Please respond to this correspondence and include the City of Pacific Grove's plans to calendar a resolution and outline the steps it will take to facilitate the transition along with an estimated timeline. If the City of Pacific Grove fails to take action within the statutory timeline to effect change in its election process, we may seek judicial assistance to enforce our remedies at law. Per the CVRA, we will seek equitable relief and other forms of relief, including attorneys fees.

We understand there is a pandemic and are aware of the need to maintain safe distances and exercise precautions. We have seen an increase in participation in public meetings with the many options currently available. Zoom, Google Meets, and YouTube along with in-person are excellent ways to engage the community. Having interpretation available at all engagement meetings will allow all stakeholders to play a meaningful role in the process of moving towards district elections and drawing maps. We hope to see the City of Pacific Grove be inclusive of all stakeholders.

We are hopeful that you will be able to work with us to achieve a timely transition in order to bring the City of Pacific Grove into compliance with the CVRA. We have attached a comprehensive study done by the Pacific Grove School District that will help provide more information and evidence as you make this decision.

Thank you



Andrew Sandoval
LULAC District 12 Director

Robert Goodman

ATTORNEY AT LAW
1114 STATE STREET, SUITE 312
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 965-9869
FACSIMILE (805) 965-8669

August 9, 2021

Dr. Ralph G. Porras, Superintendent
Pacific Grove Unified School District
435 Hillcrest Ave.
Pacific Grove, CA 93950

Re: Notice of Violation of California Voting Rights Act

Dear Dr. Porras:

First, we would like to acknowledge and thank you for your work, and the work of the Board of Education and staff, on behalf of the Pacific Grove Unified School District.

On behalf of Olivia Hernandez, a member of a protected class and a registered voter in the Pacific Grove Unified School District, this letter and the enclosed report assert that the Pacific Grove Unified School District's method of conducting elections is in violation of the California Voting Rights Act. Pursuant to state law, the Board of Education of the Pacific Grove Unified School District has 45 days from receipt of this letter to adopt a resolution outlining its intention to transition from at-large to district elections, detailing specific steps it will take to facilitate this transition, and estimating the time-frame for this transition. If the Board of Education does not adopt a resolution to this effect, then a legal action will be commenced in Monterey County Superior Court. The lawsuit would seek a court order requiring the Pacific Grove Unified School District to establish district elections pursuant to the California Voting Rights Act.

District elections are sweeping California. As far as this office is aware, no government agency in California has successfully defended a complaint alleging a violation of the California Voting Rights Act. For this reason, we recommend a collaborative settlement which would cap costs to the Pacific Grove Unified School District and enable more participation by the Board of Education in the transition to district elections than would be the case through a court action.

Advantages of a pre-litigation settlement include that implementation of district elections in the Pacific Grove Unified School District could be deferred until November 2022 or November 2024, also deferring the hearings to draw district lines. This approach has proved successful in a number of other government jurisdictions in California.

Letter to Dr. Porras

August 9, 2021

Page 2

We appreciate that for a government agency that has not planned to institute district elections, the November 2022 deadline could be difficult, particularly since all census data are not yet available. Government jurisdictions elsewhere have asked for a settlement process whereby more time would be available for implementation, and a settlement agreement can achieve this result. Under any circumstances, reimbursement costs are capped at \$30,000, provided the Board of Education adopts a resolution of intent to implement district elections. The terms of existing Board members would not be affected by the move to district elections.

District elections elsewhere have been tied to more than greater representation -- these elections lead to more candidates seeking election to boards and councils and to greater participation and interest by the community in local government agencies and elections. There are many benefits that public agencies derive from district elections, including higher voter turn-out and more community participation, as described in the enclosed report. A number of government agencies in Monterey county, as elsewhere, have enacted district elections successfully.

Thank you for your consideration and attention to this matter. We look forward to working with you to establish district elections in the Pacific Grove Unified School District. We believe the Pacific Grove Unified School District will be an even better school district with district elections -- more representative of the people and in compliance with state law.

Sincerely yours,



Robert Goodman

RG/ph

Encl

Cc: California Voting Rights Project

Establishing District
Elections in the
Pacific Grove Unified
School District

pursuant to the

California Voting
Rights Act

California Voting Rights Project
July 2021

Contents

Introduction	3
1. Benefits of District Elections	5
2. United States Voting Rights Act	8
3. California Voting Rights Act	9
4. Abridgment of Voting Rights in the Pacific Grove Unified School District	12
5. Methods of Instituting District Elections in the Pacific Grove Unified School District	21
6. Advantages of a Settlement Agreement	23
Conclusion	26
Endnotes	28
Exhibits	30

Establishing District Elections in the Pacific Grove Unified School District Pursuant to the California Voting Rights Act

Introduction

There is a strong case for establishing district elections in the Pacific Grove Unified School District. Hundreds of California school districts, cities, and special districts have instituted district elections in recent years pursuant to the California Voting Rights Act. District elections bring government closer to the people and increase representation, result in higher turn-out in local elections, and lead more candidates to run for local office.

Although about two-fifths of the enrollment in the Pacific Grove Unified School District is comprised of members of protected classes, no members of protected classes currently serve on the Board of Education of the Pacific Grove Unified School District or have been elected to the Board in many years.

There are many examples of polarized voting in the Pacific Grove Unified School District on state and local ballot measures. There are also significant differences between members of different groups in socioeconomic characteristics pertaining to education, employment, and health and in performance in the Pacific Grove Unified School District. At least 19 government agencies in Monterey County utilize district elections.

Abridgment of voting rights of members of protected classes is proscribed by the California Voting Rights Act. The United States Voting Rights Act and, especially, the California Voting Rights Act provide strong and explicit protections to challenge at-large forms of election to government bodies and to replace them with district elections.

To date, no government jurisdiction in California has prevailed in a challenge to its electoral system on the basis of the California Voting Rights Act.¹ The current, at-large method of election to the Pacific Grove Unified School

District Board of Education impairs the ability of members of protected classes to elect candidates of their choice and their ability to influence the outcomes of elections. Therefore, district elections must be established in the Pacific Grove Unified School District.

1. Benefits of District Elections

There are many benefits of district elections which have been experienced in jurisdictions throughout California. These include greater voter turn-out and participation, and more candidates running for office. In some places, turn-out in some voting precincts has increased by as much as one-quarter after district elections were implemented, and the number of candidates seeking election has more than doubled.

District elections bring government closer to the people. They result in representatives who are more knowledgeable of neighborhood problems and concerns. Candidates learn about their electoral district when running for office. Voters have a member of the Board of Education to whom they can turn on issues, and Board members become more knowledgeable about area-specific issues. There is a wider spectrum of views on the Board of Education and more representation from all neighborhoods and the entire community. District elections empower neighborhoods. District elections have been accompanied by greater diversity of all sorts on elective boards.

District elections result in less expensive political campaigns. It is easier for younger and lower socioeconomic candidates to run for office if they do not have to raise as much money. This results in less influence by special interests. By walking door to door and other inexpensive means, candidates can be elected who would not be elected in at-large elections.

The Pacific Grove Unified School District will be an even better school district with district elections--more representative of the people and in compliance with state law. District elections will make elections to the Board of Education fairer and more inclusive, and will increase representation and participation. The universal experience with district elections in California is that school districts and other government jurisdictions have found them to be a superior form of representation, irrespective of the legal requirement.

Benefits of district elections are described in "The Politics of Latino Education: The Biases of At-Large Elections," by David Leal, Valerie Martinez-Ebers, and Kenneth Meier, published in the *Journal of Politics*, a publication of

the Southern Political Science Association, included here as Exhibit E and incorporated herein. This article contains much important information:

Representation is an integral part of the political system.

Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts. Boards, therefore, shoulder much responsibility for the quality of public education in America.

The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement.

Latino representation on school boards was associated with better educational conditions. In school districts with more Latino representation, Latino students experienced greater access to equal education ... There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.

Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students.

Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with district elections than with at-large elections. Our findings show that at-large election systems usually

disadvantage Latinos; the obvious recommendation is that at-large systems should be replaced by single-member systems.²

As members of protected classes are elected to governing boards, there tends also to be more members of protected classes who become employed by government agencies. In addition, because candidates for higher elective office are overwhelmingly elected first to local office, district elections lead in time to greater representation at all levels of elective office.

2. United States Voting Rights Act

The United States Voting Rights Act is landmark federal legislation that prohibits racial discrimination in voting. Passed in 1965 in the wake of the suppression of civil and voting rights, the United States Voting Rights Act is intended to enforce the voting rights guaranteed by the 14th and 15th Amendments to the United States Constitution, in particular the provisions of the 15th Amendment: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race ... [or] color".

According to the federal Voting Rights Act: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color ... A violation ... is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens ... in that its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. The extent to which members of a protected class have been elected to office in the ... political subdivision is one circumstance which may be considered" (52 U.S. Code Sec. 10301).

The United States Supreme Court has "long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of protected classes (*Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). Although legal actions against government jurisdictions in California to require district elections have been brought since 2002 pursuant to the California Voting Rights Act (rather than the U.S. Voting Rights Act), the federal Voting Rights Act also provides explicit and strong protection for the voting rights of members of protected classes.

3. California Voting Rights Act

Building upon the United States Voting Rights Act, the California Voting Rights Act was passed by the California legislature in 2001 and signed into law in 2002 to allow legal challenges to government jurisdictions in California with at-large methods of election to require them to institute district elections. According to the Rose Institute of State and Local Government at Claremont McKenna College (the state leader in gathering information on the transition from at-large to district elections): “The California Voting Rights Act was written to promote the use of by-district elections to encourage the election of candidates preferred by previously ‘underrepresented’ voters such as Latinos.”³ A copy of the California Voting Rights Act is included here as Exhibit B and incorporated herein.

The core provision of the California Voting Rights Act (CVRA) is:

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or abridgment of the rights of voters who are members of a protected class.

The CVRA is clear: at-large methods of election are against California law when they impair the ability of protected classes to elect candidates of their choice or to influence the outcomes of elections as a result of dilution of the vote or abridgment of the rights of voters who are members of a protected class. Upon showing vote dilution or abridgment of the rights of voters of protected classes, at-large methods of election must be discontinued in favor of district elections.

According to Section 14028 of the CVRA: “A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” In addition: “Other factors such as ... the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the

political process, ... are probative ... factors to establish a violation" of the CVRA (Sec. 14028(e)).

The CVRA is also clear with respect to what the remedy for illegal, at-large elections is: "Upon a finding of a violation ..., the court shall implement appropriate remedies, **including the imposition of district-based elections**, that are tailored to remedy the violation" (Sec. 14029, emphasis added). Though a remedy for a violation of the CVRA other than district elections might be here contemplated, in fact no remedy has been ordered by a California court for violation of the California Voting Rights Act other than district elections.

When, as in the Pacific Grove Unified School District, a political subdivision utilizes an illegal, at-large method of election, district elections must be implemented.

To date, dozens of legal actions have been brought against school districts, cities, special districts, and other government agencies in California for violation of the California Voting Rights Act. Every action has been successful. The replacement of at-large elections by district elections is sweeping the state as a result of the CVRA. The Rose Institute also states: "Another significant effect of the California Voting Rights Act is the financial cost it has imposed ...--many challenges so far have resulted in settlements or legal awards over one million dollars."⁴

The California Voting Rights Act was ruled constitutional by a California Court of Appeal in 2007. The decision held: "The CVRA is race neutral. It does not favor any race over others or allocate burdens or benefits to any groups on the basis of race. It simply gives a cause of action to members of any racial or ethnic group that can establish that its members' votes are diluted."⁵ The court further held: "Curing vote dilution is a legitimate government interest"; and: "To prove a violation, plaintiffs ... do not need to show that members of a protected class live in a geographically compact area."⁶

The CVRA also states: "Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required" (Sec.

14028(d)) to sustain a legal action brought pursuant to the California Voting Rights Act.

**B. Board of Education Candidates and the Votes They Received in
Pacific Grove School District Elections, 2018 and 2020**

<u>Year</u>	<u>Candidate</u>	<u>Votes</u>
2018	Dawson	5,063
	Paff	4,127
	Walton	4,073
	Sahenkoske	3,267
2020	C. Swanson	6,783
	B. Swanson	4,262
	Miller	3,482

No candidates who are members of protected classes have sought election or been elected to the Pacific Grove Unified School District Board of Education in its most recently contested elections. The next table presents the total number of candidates and the number of candidates elected in these elections:

**C. Pacific Grove Unified School District Board of Education
Elections in 2018 and 2020, Total and Elected Candidates**

<u>Year</u>	<u>Total Cand.s</u>	<u>Elected Cand.s</u>
2018	4	3
2020	<u>3</u>	<u>2</u>
Total:	7	5

As can be seen, of 7 total candidates for the Pacific Grove Unified School District Board of Education and 5 elected candidates in 2018 and 2020, none has been a member of a protected class. The next table on the following page shows the number of total votes in each of these elections:

**D. Pacific Grove Unified School District Board of
Education Elections in 2018 and 2020, Total Votes**

<u>Year</u>	<u>Total Votes</u>
2018	16,530
2020	<u>14,527</u>
Total:	31,057

As can be seen, of more than 30,000 total votes cast for the Pacific Grove Unified School District Board of Education in 2018 and 2020, none was for a member of a protected class.

That the Pacific Grove Unified School District is more diverse than those who have sought election and been elected to the Board of Education is not intended to detract from the service that existing and past trustees provide and have provided to the community. The concern is with respect to the at-large method of election utilized by the Pacific Grove Unified School District.

As previously indicated, one of the strongest arguments for district elections in the Pacific Grove Unified School District is that it would lead to more contested elections for the Board of Education, as well as provide representation from all neighborhoods of the Pacific Grove Unified School District on the Board of Education. Although a number of elections to the Pacific Grove Unified School District Board of Education have not been contested, this does not relieve the requirements of the California Voting Rights Act to establish district elections.

Pursuant to the California Voting Rights Act, it is not necessary that abridgment of voting rights be demonstrated only in elections to the political subdivision's governing board. Rather, voting issues with respect to which the CVRA becomes applicable "means voting in which there is a difference ... in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate" (Sec. 14026(e))--irrespective of whether the difference in voting occurs for the governing board of the government jurisdiction in which district elections is sought or in other electoral choices.

This is made clear by legal specialists in districting, electoral issues, and voting rights Marguerite Leoni and Christopher Skinnell. They write in “The California Voting Rights Act,” published by the *Public Law Journal* (vol. 32, Spring 2009), an official publication of the State Bar of California Public Law Section:

No Minority Candidates.

The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code Sec.s 14028(a) & (b).) Some particularly obvious examples ... might include Proposition 187 (denying services to undocumented immigrants), [and] Proposition 209 (preventing state agencies from adopting affirmative action programs) ... But other local measures may also serve the same purpose.⁸

This article also states that the California Voting Rights Act “makes fundamental changes to minority voting rights law in California”; the CVRA “alters established paradigms of proof and defenses ..., thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices”; the CVRA “prescribe[s] an extremely light burden ... to establish a violation”; the CVRA “eliminate[s] the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district”; the CVRA “eliminates the requirement that plaintiffs prove discrimination”; the CVRA “mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs”; the CVRA “denies not only attorneys fees but also the costs of litigation to prevailing defendants”; the “sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction”; and “Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the

elected representatives ... to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the [government jurisdiction] is in the CVRA safe harbor.”⁹ A copy of this article is included here as Exhibit D and incorporated by this reference.

There are many examples of racially polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School District on state ballot measures in even the two most recent elections, where electoral precincts within the District with different proportions of members of protected classes have expressed different preferences on measures, including:

**E. Polarized Voting on State Ballot Measures in
Pacific Grove Unified School District, 2018 and 2020**

<u>Year</u>	<u>State Ballot Measure</u>
2018	Proposition 1, housing programs
2018	Proposition 3, water bonds
2018	Proposition 8, dialysis payment restructuring
2018	Proposition 10, local rent control
2020	Proposition 15, funding for public schools
2020	Proposition 16, repeal Proposition 209
2020	Proposition 18, allow 17-, 18-year olds to vote
2020	Proposition 19, change property tax rules
2020	Proposition 25, require money bail

Further, there are also many instances of racially polarized voting in the Pacific Grove Unified School District on local ballot measures, including:

**F. Polarized Voting on Local Ballot Measures in
Pacific Grove Unified School District, 2009 to 2020**

<u>Year</u>	<u>Local Ballot Measure</u>
2009	Measure J, City of Pacific Grove Library Parcel Tax
2010	Measure Q, City of Pacific Grove Library Parcel Tax
2011	Measure V, Pacific Grove Unified School District Parcel Tax
2012	Measure A, Pacific Grove Unified School District Parcel Tax
2014	Measure A, Pacific Grove Unified School District Facilities Bond
2020	Measure V, Monterey Peninsula Com. Cllg Dist. Facilities Bond

The analysis here presents examples of polarization only to the year 2009. If this presentation were continued to the year 2000, incorporating state and local ballot measures and state and local candidates for office, it would be possible to demonstrate as many as 40 or more instances of polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School District since this time.

Pursuant to the CVRA, as previously cited: "A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in *elections incorporating other electoral choices by the voters of the political subdivision*" (Sec. 14028(a)). The emphasized passage was specifically incorporated into the CVRA to provide for challenges to government jurisdictions in which very few or no members of protected classes had run for their elected boards. Pursuant to the California Voting Rights Act, district elections must be established in the Pacific Grove Unified School District.

The California Voting Rights Act also states: “Other factors such as ... denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, ... are probative, but not necessary factors to establish a violation” (Sec. 14028(e)). As well as the examples of abridgment of voting rights and polarized voting previously outlined, there is significant evidence of the extent to which members of protected classes in the Pacific Grove Unified School District bear the effects of past conditions in areas such as education, employment, and health.

The next table presents comparisons between the white and Latino populations in Pacific Grove on various socioeconomic characteristics pertaining to education, employment, and health in the 2019 United States Census Bureau American Community Survey estimate:

**G. Comparison Between White and Latino Populations
In City of Pacific Grove on
Various Socioeconomic Characteristics, 2019**

	<u>White Population</u>	<u>Latino Population</u>
<i>Education</i>		
Adults with high school degree	99.0%	74.5%
Adults with bachelor's degree	56.9%	19.7%
<i>Employment</i>		
Average per capita income	\$55,162	\$35,334
Households receiving food stamps	2.0%	5.0%
<i>Health</i>		
Individuals without health insurance	2.9%	6.5%

Furthermore, the California Assessment of Student Performance and Progress (CAASPP) is the main state assessment system for students in California schools. The CAASPP provides educational performance measures in

a variety of areas. The following tables present achievement for students tested in the Pacific Grove Unified School District in 2018-19 in English Language Arts/Literacy and Mathematics, disaggregated by white and Latino students:

**H. Pacific Grove Unified School District 2018-19 CAASPP
English Language Arts/Literacy Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	50.16%	32.45%
3 -- Meets Standard	31.05%	34.57%
2 -- Nearly Meets Standard	12.90%	21.81%
1 -- Standard Not Met	5.89%	11.17%

**I. Pacific Grove Unified School District 2018-19 CAASPP
Mathematics Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	41.24%	20.86%
3 -- Meets Standard	28.50%	24.06%
2 -- Nearly Meets Standard	19.27%	38.36%
1 -- Standard Not Met	10.99%	18.72%

Approximately one in five students in the Pacific Grove Unified School District, disproportionately Latino, qualifies for free or reduced price meals.

In addition, the Pacific Grove Unified School District is a “basic aid” school district, whereby local property tax revenues exceed the amount of revenue received by “revenue limit” school districts, which typically receive thousands of dollars less per student than basic aid districts. Although no challenge to the funding of basic aid school districts is currently active, enactment of district elections could help to protect the funding of the Pacific Grove Unified School District from future challenges to funding formulas.

Clear and compelling evidence exists that the Pacific Grove Unified School District's current, at-large method of election to its Board of Education does not meet the requirements of the California Voting Rights Act. It is very likely that the Pacific Grove Unified School District would be ordered by a court to implement district elections. In the event that the Pacific Grove Unified School District is not willing to institute district elections voluntarily, attached hereto and incorporated herein as Exhibit A is a draft complaint against the Pacific Grove Unified School District to require its implementation of district elections pursuant to the California Voting Rights Act.

5. Methods of Instituting District Elections In the Pacific Grove Unified School District

There are two basic methods by which district elections may be instituted in the Pacific Grove Unified School District: a) a pre-litigation settlement agreement by the Pacific Grove Unified School District Board of Education outlining the District's intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition; or b) litigation.

If the Pacific Grove Unified School District Board of Education chooses a pre-litigation settlement, then, pursuant to Section 10010 of the California Elections Code, the process the Pacific Grove Unified School District will follow when district elections are implemented, as determined by the settlement agreement, is:

1) Within 45 days of receipt of the certified letter notifying the Pacific Grove Unified School District that its method of conducting elections violates the CVRA, the Pacific Grove Unified School District Board of Education will adopt a resolution outlining the District's intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition.

2) If the Pacific Grove Unified School District Board of Education passes a resolution to this effect, a legal action may not be commenced for another 90 days after the resolution's passage, or as modified by the settlement agreement.

3) Before district lines are drawn, the Pacific Grove Unified School District Board of Education holds two public hearings at which the public is invited to provide input concerning the composition of districts. In advance of these hearings, the Pacific Grove Unified School District should conduct outreach to the public, including to non-English speaking communities, explaining the districting process and encouraging participation. According to the United States Census Bureau, approximately 16 percent of residents in Pacific Grove speak a language other than English in the home.

4) Following these two hearings, the Pacific Grove Unified School District publishes and makes available for release at least one draft map and the proposed sequence of elections to new districts. The Pacific Grove Unified School District then holds two more public hearings at which the public is invited to provide input on the draft map or maps and proposed sequence of elections.

5) In determining the sequence of elections, the Pacific Grove Unified School District is required to give special consideration to the purposes of the California Voting Rights Act. For this reason, it is likely that among the first districts in which district elections will be held will be districts including significant proportions of individuals from protected classes.

6) After adopting the resolution of intention to transition from at-large to district elections and holding the hearings, the Pacific Grove Unified School District Board of Education adopts a map of districts and a sequence of elections.

If the Pacific Grove Unified School District establishes district elections according to the above process as modified by the settlement agreement, no litigation is required.

Upon adopting the resolution of intention to transition from at-large to district elections, the Pacific Grove Unified School District may seek a waiver from the California State Board of Education, as permitted by California Education Code Sections 33050-33053, of the requirement of voter approval for the transition to district elections, reducing the cost of the transition to district elections. Such waivers are routinely granted.

6. Advantages of a Settlement Agreement

A pre-litigation settlement agreement is the best way to ensure the most expeditious, least expensive, and most cooperative process to establish district elections in the Pacific Grove Unified School District. There are many advantages of a pre-litigation settlement agreement rather than litigation to institute district elections. Most importantly, the Pacific Grove Unified School District Board of Education retains a greater role in and more control over the transition process to district elections and legal costs are capped.

A greater role by the Board of Education and more control over the transition to district elections could manifest itself in a number of ways through a settlement agreement, including:

1) Participation in timing of the first district elections. If this matter were to become the subject of litigation, a court could require that a special election be held. As a result of a pre-litigation settlement agreement, the first district elections could be held in November 2022 or November 2024, also delaying the hearings to draw district lines. Elsewhere in California, agreements have been reached to hold first district elections in 2022 or 2024, following the availability of all 2020 census data, as a result of pre-litigation settlement agreements.

2) The Pacific Grove Unified School District would retain the ability to draw the lines of voting districts both now and in the future. As a result of litigation, the court could draw the lines for voting districts through a court-determined process.

3) Saving of plaintiffs' attorney fees and costs, and its own legal expenses, by the Pacific Grove Unified School District, potentially saving hundreds of thousands or even more dollars. Pursuant to the CVRA: "In any action to enforce [the California Voting Rights Act] the court shall allow the prevailing plaintiff party ... a reasonable attorney's fee ... and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs" (Sec. 14030). In addition: "Prevailing defendant parties shall not recover any costs" (id.).

In recent years, many jurisdictions have had to pay hundreds of thousands and even millions of dollars in attorneys' fees to prevailing plaintiff parties. Moreover, jurisdictions are responsible for their own legal costs, which can also be hundreds of thousands of dollars. The following table presents some settlements in California Voting Rights Act cases:

J. Settlements in CVRA Litigation (partial list)

<u>Jurisdiction</u>	<u>Settlement</u>
City of Palmdale	\$4,500,000
City of Modesto	\$3,000,000
City of Anaheim	\$1,200,000
City of Whittier	\$1,000,000
Santa Clarita Community College Dist.	\$850,000
San Mateo County	\$650,000
Tulare Healthcare District	\$500,000
City of Escondido	\$385,000
City of Garden Grove	\$290,000
City of Bellflower	\$250,000

As a result of the potentially significant costs of litigation, the **California Voting Rights Project strongly recommends that government jurisdictions reach settlement in the 45-day statutory pre-litigation stage.** In this case, pursuant to Assembly Bill 350 signed into legislation in 2016, costs to government jurisdictions are capped at \$30,000 plus annual CPI adjustment (now, \$32,377) for demographic and legal services.¹⁰

It should be emphasized that Assembly Bill 350 applies only to the pre-litigation phase of cases brought pursuant to the CVRA. If a CVRA action becomes the subject of litigation through a complaint being filed, there is no limit on attorneys' fees and costs other than as stated in the CVRA.

In addition, because Assembly Bill 350 would “impose additional duties on local agencies, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state ... This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for these costs shall be made pursuant to ... statutory provisions” (Legislative Counsel’s Digest of Assembly Bill 350). Accordingly, it may be possible for the Pacific Grove Unified School District to receive reimbursement from the state for a pre-litigation settlement. A copy of Assembly Bill 350 is included here as Exhibit C and incorporated by this reference.

The preceding are only some of the advantages of a pre-litigation settlement agreement. As an example of a settlement agreement in another school district, a copy of the resolution and settlement agreement establishing district elections in the Goleta Union School District is included here as Exhibit G and incorporated by this reference.

Conclusion

The Pacific Grove Unified School District will be an even better school district with district elections. District elections will increase participation and representation and bring the Pacific Grove Unified School District into compliance with the California Voting Rights Act. More candidates will seek election to office and the community will become even more involved in the District and its schools.

For further information on the likelihood of district elections being instituted by a court, see the February 21, 2017, Council Agenda Report in the City of Santa Maria, which is included here as Attachment F and incorporated by this reference. According to this report: "After much analysis and in-depth conversations with those most familiar with these types of litigation matters, staff is recommending that the City Council adopt a resolution declaring its intention to transition from at-large to district-based elections ... Staff makes this recommendation due to the extraordinary costs to successfully defend against a CVRA lawsuit and the fact that no apparent city has successfully prevailed against a CVRA lawsuit, and that the public interest would best be served by transitioning to a district-based election system."¹¹

At least 19 government jurisdictions in Monterey county already utilize district elections, including:

K. Monterey County Government Jurisdictions Utilizing District Elections

Board of Supervisors
County Board of Education
Hartnell Community College District
Monterey Peninsula Community College District
Alisal Union School District
Chular Union Elementary School District
Monterey Peninsula Unified School District
North Monterey County Unified School District

**Monterey County Government
Jurisdictions Utilizing District Elections (cont.d)**

Pajaro Valley Unified School District
Salinas City Elementary School District
Salinas Union High School District
San Antonio Union School District
Soledad Unified School District
City of King
City of Marina
City of Salinas
Monterey Peninsula Airport District
Monterey Peninsula Water Management District
Salinas Valley Memorial Healthcare System

Abridgment of voting rights has no place in the Pacific Grove Unified School District or anywhere else. The Mission Statement of the Pacific Grove Unified School District states that the District is in “partnership with the community,” has a “focus on equity,” and will “meet the diverse needs of all students.” District elections will--to the District’s benefit--assist the Pacific Grove Unified School District to meet the goals of its Mission Statement and of the California Voting Rights Act, result in more participation and involvement by the community, and bring the District into compliance with the law.

Clear and compelling evidence of abridgment of voting rights would sustain a legal action brought pursuant to the California Voting Rights Act to institute district elections in the Pacific Grove Unified School District. A pre-litigation settlement agreement by the Pacific Grove Unified School District Board of Education provides the best opportunity to implement district elections in a manner that retains participation by the Board of Education and Pacific Grove Unified School District in the transition process to district elections and is cost-effective.

Endnotes

¹ See “CVRA Settlement Agreement / Resolution of Intention,” Council Agenda Staff Report, City of Carpinteria (August 14, 2017): “The City Attorney’s Office has surveyed the reported case law concerning litigation based on a violation of the CVRA. There is no reported case in which the defendant public agency has prevailed on the merits by proving that a violation of the CVRA did not occur” (p. 3).

² David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, “The Politics of Latino Education: The Biases of At-Large Elections,” *Journal of Politics* (Vol. 66, No. 4, November 2004; included here as Exhibit E).

³ Justin Levitt et al., “Quiet Revolution in California Local Government Gains Momentum” (Claremont McKenna College: Rose Institute of State and Local Government, November 3, 2016), p. 1. The Rose Institute remarks on the switch from at-large to district elections in California: “This quiet tectonic shift in local government is accelerating” (id.).

⁴ Id., p. 2.

⁵ *Sanchez v. City of Modesto*, Court of Appeal, Fifth District, California, No. F048277 (December 6, 2006).

⁶ Id.

⁷ Asian enrollment includes Filipinos.

⁸ Marguerite Mary Leoni and Christopher E. Skinnell, “The California Voting Rights Act,” *Public Law Journal* (Vol. 32, No. 2, Spring 2009; Official Publication of the State Bar of California Public Law Section; included here as Exhibit D).

⁹ Id.

¹⁰ Pursuant to Assembly Bill 350: “The amount of reimbursement required by this section is capped at \$30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor” (Section 1. 10010(f)(3); included here as Exhibit C). The increase in the Consumer Price Index for All Urban Consumers in 2017 was 2.1%, in 2018 the increase was 1.9%, in 2019 the increase was 2.3%, and in 2020 the increase was 1.4%, meaning the cap for reimbursement is now \$32,377.

¹¹ City of Santa Maria, "Council Agenda Report" (February 21, 2017; included here as Exhibit F).

Exhibits

- A. Draft Complaint Against the Pacific Grove Unified School District for Violation of the California Voting Rights Act**
- B. California Voting Rights Act**
- C. Assembly Bill 350**
- D. Marguerite Mary Leoni and Christopher E. Skinnell, “The California Voting Rights Act,” *Public Law Journal* (Spring 2009)**
- E. David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, “The Politics of Latino Education: The Biases of At-Large Elections,” *Journal of Politics* (Nov. 2004)**
- F. City of Santa Maria Council Agenda Report with Respect to Implementing District Elections**
- G. Resolution and Settlement Agreement Establishing District Elections in the Goleta Union School District**

EXHIBIT “A”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DRAFT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

**Complaint for Violation of the
California Voting Rights Act of 2001
Against the Pacific Grove Unified School District**

1
2
3 Plaintiffs, by and through their counsel of record, hereby bring this action against
4 defendant Pacific Grove Unified School District, California, and Does 1 through 25 (collectively
5 "Defendants" or "the defendants"). In support of their complaint, Plaintiffs allege as follows:

6
7 **I. INTRODUCTION**

8 1. This action is brought by Plaintiffs for injunctive relief against Defendants for their
9 violation of the California Voting Rights Act of 2001, California Elections Code Sec.s 14025, *et*
10 *seq.* (the "CVRA"). The imposition of the Pacific Grove Unified School District's at-large
11 method of election has resulted in vote dilution for residents of protected classes and has denied
12 them effective political participation in elections to the Pacific Grove Unified School District
13 Board of Education. The Pacific Grove Unified School District's at-large method of election for
14 electing members to its Board of Education prevents residents of protected classes from electing
15 candidates of their choice in Pacific Grove Unified School District Board of Education elections.
16

17 2. The effects of the Pacific Grove Unified School District's at-large method of
18 election are apparent and compelling. Despite a significant proportion of members of protected
19 classes living in the Pacific Grove Unified School District and attending its schools, no members
20 of protected classes have sought election or been elected to the Pacific Grove Unified School
21 District Board of Education for many years. The deficiency of members from protected classes as
22 candidates for and elected to the Pacific Grove Unified School District Board of Education
23 reveals the lack of access to the political process.
24

25 3. The Pacific Grove Unified School District's at-large method of election violates the
26 CVRA. Plaintiffs bring this action to enjoin the Pacific Grove Unified School District's
27 continued abridgment of the voting rights of members of protected classes. Plaintiffs seek a
28

1 declaration from this Court that the at-large method of election currently employed by the Pacific
2 Grove Unified School District violates the CVRA. Plaintiffs seek injunctive relief enjoining the
3 Pacific Grove Unified School District from further imposing or applying its current at-large
4 method of election. Further, Plaintiffs seek injunctive relief requiring the Pacific Grove Unified
5 School District to design and implement district-based elections to remedy its violation of the
6 CVRA.
7

8 **II. THE PARTIES**

9
10 4. At all material times, Plaintiffs are and have been registered voters residing in the
11 Pacific Grove Unified School District and are eligible to vote in the Pacific Grove Unified School
12 District's elections.

13 5. At all material times, defendant Pacific Grove Unified School District, California,
14 is and has been a political subdivision of the State of California subject to the provisions of the
15 CVRA.
16

17 6. Plaintiffs are unaware of the true names and capacities of the defendants sued
18 herein as Does 1 through 25, inclusive, and therefore sue these defendants by such fictitious
19 names. Plaintiffs will amend this complaint to allege the true names and capacities of these
20 defendants when their true names are ascertained. Plaintiffs are informed and believe, and on
21 that basis allege, that the acts and conduct alleged herein of each defendant was known to,
22 authorized by, and/or ratified by the other defendants. Does 1 through 25, inclusive, are
23 individuals or entities that have caused the Pacific Grove Unified School District to violate the
24 CVRA, failed to prevent the Pacific Grove Unified School District's violation of the CVRA, and/
25 or are otherwise responsible for the acts and omissions alleged herein.
26
27
28

7. Plaintiffs are informed and believe, and allege on that basis, that each defendant named herein, at all times mentioned in this complaint, was the agent, employee, partner, joint venturer, and/or employer of the other defendants and was at all times herein mentioned acting within the course and scope of that agency, employment, partnership, ownership, or joint venture.

III. JURISDICTION AND VENUE

8. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts subject to this complaint occurred in the County of Monterey.

9. Venue is proper in this court because the Pacific Grove Unified School District is a public entity located within this county.

IV. GENERAL ALLEGATIONS

A. Political Background on the Pacific Grove Unified School District

10. The Pacific Grove Unified School District is governed by a Board of Education. The Pacific Grove Unified School District Board of Education serves as the governmental body responsible for the operation of the Pacific Grove Unified School District. The Board of Education is comprised of five members.

11. The Board of Education of the Pacific Grove Unified School District is elected at-large. All of the voters of the Pacific Grove Unified School District elect all of the members of the Board of Education.

12. Vacancies to the Board of Education are elected on a staggered basis. Every two years, the electorate elects two or three Board of Education members, each of whom serves a four-year term.

1 13. No member of a protected class has been elected to the Pacific Grove Unified
2 School District Board of Education since at least 2007. No member of a protected class currently
3 serves on the Board of Education.
4

5 **B. Racial Polarization's Impact on the Pacific Grove Unified School District**

6 14. Elections held within the Pacific Grove Unified School District are characterized
7 by racially polarized voting.
8

9 15. Racially polarized voting occurs when members of a protected class -- as defined
10 by California Elections Code Sec. 14025(d) -- vote for candidates or other electoral choices that
11 differ from the rest of the electorate.

12 16. Racially polarized voting exists within the Pacific Grove Unified School District.
13 There is a clear difference between the choice of candidates and other electoral choices that are
14 preferred by voters from protected classes and the choice of candidates and other electoral
15 choices that are preferred by voters in the rest of the electorate.
16

17 17. Racially polarized voting consists of both voter cohesion on the part of members of
18 protected classes and voter cohesion by the non-protected class electorate against the choices of
19 protected class voters.
20

21 18. Patterns of racially polarized voting and vote dilution have the effect of impeding
22 opportunities for protected class voters to elect candidates of their choice to the at-large Board of
23 Education positions in the Pacific Grove Unified School District. The non-protected class
24 electorate dominates elections.

25 19. Voters from protected classes are harmed by racially polarized voting.
26
27
28

1 20. There are many examples of racially polarized voting in the Pacific Grove Unified
2 School District. Merely in the past two election cycles, there is evidence of racially polarized
3 voting on the following state ballot measures, in which precincts within the Pacific Grove
4 Unified School with larger numbers of members of protected classes and other precincts have
5 differed in their electoral choices:
6

7 2018 -- Proposition 1 (housing programs);

8 2018 -- Proposition 3 (water bonds);

9 2018 -- Proposition 8 (dialysis payment restructuring);
10

11 2018 -- Proposition 10 (local rent control);

12 2020 -- Proposition 15 (funding for public schools);

13 2020 -- Proposition 16 (repeal of Proposition 209);

14 2020 -- Proposition 17 (allow 17-18-year olds to vote);

15 2020 -- Proposition 19 (change property tax rules);

16 2020 -- Proposition 25 (require money bail).
17

18 21. There is also evidence of racially polarized voting and vote dilution on ballot
19 measures at the local level in recent years, including:

20 2009 -- Measure J, City of Pacific Grove (library parcel tax);

21 2010 -- Measure Q, City of Pacific Grove (library parcel tax);

22 2011 -- Measure V, Pacific Grove Unified School District (parcel tax);
23

24 2012 -- Measure A, Pacific Grove Unified School District (parcel tax);

25 2014 -- Measure A, Pacific Grove Unified School District (facilities bond);

26 2020 -- Measure V, Monterey Peninsula Community College District (facilities bond).
27
28

1 22. In addition, there is evidence of racially polarized voting and vote dilution for
2 candidates for local and state office in the Pacific Grove Unified School District. It is estimated
3 that, since the year 2000, it would be possible to demonstrate as many as 40 or more instances of
4 racially polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School
5 District on state ballot measures, local ballot measures, and candidates for state and local office.
6

7 **C. Impact of Polarization on Protected Classes**

8 23. Members of protected classes in the Pacific Grove Unified School District bear the
9 effects of past discrimination in areas such as education, employment, and health. Members of
10 protected classes have graduated at a lower rate from high school and college than whites, have
11 lower per capita and median household income, and have higher percentages of households and
12 individuals receiving food stamps and without health insurance. There are marked differences in
13 the educational performance of white and Latino students in the Pacific Grove Unified School
14 District in California Assessment of Student Performance and Progress (CAASPP) testing.
15

16 24. The at-large method of election voting has caused the dilution of protected class
17 votes in the Pacific Grove Unified School District. Protected class voters and the rest of the
18 electorate regularly express different preferences on candidates and other electoral choices,
19 which has been to the detriment of protected class voters.
20

21 25. The obstacles posed by the Pacific Grove Unified School District's at-large method
22 of election impairs the ability of protected class voters to elect candidates of their choice in
23 elections held in the Pacific Grove Unified School District.
24

25 26. An alternative method of election exists -- district-based elections -- that will
26 provide an opportunity for the members of protected classes as defined by the CVRA to elect
27 candidates of their choice in Pacific Grove Unified School District elections.
28

1 27. All allegations made in this complaint are based upon information and belief,
2
3 except those allegations which pertain to the named Plaintiffs, which are based on personal
4 knowledge. The allegations of this complaint are stated on information and belief and are likely
5 to have evidentiary support after a reasonable opportunity for further investigation or discovery.

6 **V. CAUSES OF ACTION**

7 **First Cause of Action**

8 **(Violation of California Voting Rights Act of 2001)**

9 **(Against All Defendants)**

10
11 28. Plaintiffs hereby reallege and incorporate by reference each and every allegation
12 stated in paragraphs 1 through 27 above as though set forth fully herein.

13 29. Plaintiffs are registered voters and reside within the Pacific Grove Unified School
14 District.

15 30. Plaintiffs are members of a protected class of voters under the CVRA.

16 31. Plaintiffs are over the age of 18 and are eligible to vote in the Pacific Grove Unified
17 School District's elections.

18 32. The Pacific Grove Unified School District is a political subdivision within the State
19 of California.

20 33. The Pacific Grove Unified School District employs an at-large method of election.

21 34. Racially polarized voting has occurred, and continues to occur, in elections in the
22 Pacific Grove Unified School District and in elections incorporating other electoral choices by
23 voters in the Pacific Grove Unified School District. As a result, the Pacific Grove Unified School
24 District's at-large method of election is imposed in a manner that impairs the ability of a
25
26
27
28

1 protected class as defined by the CVRA to elect candidates of its choice in Pacific Grove Unified
2 School District elections.

3
4 35. An alternative method -- district-based elections -- exists that will provide an
5 opportunity for the members of a protected class as defined by the CVRA to elect candidates of
6 their choice in Pacific Grove Unified School District Board of Education elections.

7 36. An actual controversy has arisen and now exists between the parties relating to the
8 legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of
9 rights.
10

11 37. Defendants' wrongful conduct has caused and, unless enjoined by this Court, will
12 continue to cause, immediate and irreparable injury to Plaintiffs, and those similarly situated.

13 38. Plaintiffs, and those similarly situated, have no adequate remedy at law for the
14 injuries they currently suffer and will otherwise continue to suffer.
15

16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
18 follows:

- 19 1. For a decree that the Pacific Grove Unified School District's current at-large
20 method of election for its Board of Education violates the California Voting Rights Act of 2001;
21
- 22 2. For preliminary and permanent injunctive relief enjoining the Pacific Grove
23 Unified School District from imposing or applying its current at-large method of election;
- 24 3. For injunctive relief mandating that the Pacific Grove Unified School District
25 design and implement single-member district-based elections, as defined by the California Voting
26 Rights Act of 2001, to remedy the Pacific Grove Unified School District's violation of the
27 California Voting Rights Act of 2001;
28

1 4. For an award of Plaintiffs' attorney fees, costs, and prejudgment interest pursuant
2 to the CVRA, California Elections Code Sec. 14030, and other applicable law; and
3

4 5. For such further relief as the Court deems just and proper.
5

6 Dated: September 30, 2021
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “B”

CALIFORNIA VOTING RIGHTS ACT

ELECTIONS CODE SECTIONS 14025-14032

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One that combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color, or language minority group, as

this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral

choices that affect the rights and privileges of members of a protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

EXHIBIT “C”



AB-350 District-based municipal elections: preapproval hearings. (2015-2016)

SHARE THIS:



Assembly Bill No. 350

CHAPTER 737

An act to amend Section 10010 of the Elections Code, relating to elections.

[Approved by Governor September 28, 2016. Filed with Secretary of State
September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 350, Alejo. District-based municipal elections: preapproval hearings.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or by districts formed within the political subdivision (district-based). Existing law requires a political subdivision, as defined, that changes from an at-large method of election to a district-based election to hold at least 2 public hearings on a proposal to establish the district boundaries of the political subdivision before a public hearing at which the governing body of the political subdivision votes to approve or defeat the proposal.

This bill would instead require a political subdivision that changes to, or establishes, district-based elections to hold public hearings before and after drawing a preliminary map or maps of the proposed district boundaries, as specified.

Existing law, the California Voting Rights Act of 2001 (CVRA), prohibits the use of an at-large method of election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce its provisions.

This bill would require a prospective plaintiff under the CVRA to first send a written notice to the political subdivision against which the action would be brought indicating that the method of election used by the political subdivision may violate the CVRA. The bill would permit the political subdivision to take ameliorative steps to correct the alleged violation before the prospective plaintiff commences litigation, and it would stay the prospective plaintiff's ability to file suit for a prescribed amount of time. This bill would also permit a prospective plaintiff who sent a written notice, as described, to recover from the political subdivision reasonable costs incurred in supporting the written notice.

Because the bill would impose additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10010 of the Elections Code is amended to read:

10010. (a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of this code), and it shall take into account the preferences expressed by members of the districts.

(c) This section applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.

(d) For purposes of this section, the following terms have the following meanings:

(1) "At-large method of election" has the same meaning as set forth in subdivision (a) of Section 14026.

(2) "District-based election" has the same meaning as set forth in subdivision (b) of Section 14026.

(3) "Political subdivision" has the same meaning as set forth in subdivision (c) of Section 14026.

(e) (1) Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the California Voting Rights Act.

(2) A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the political subdivision's receipt of the written notice described in paragraph (1).

(3) (A) Before receiving a written notice described in paragraph (1), or within 45 days of receipt of a notice, a

political subdivision may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so.

(B) If a political subdivision passes a resolution pursuant to subparagraph (A), a prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 90 days of the resolution's passage.

(f) (1) If a political subdivision adopts an ordinance establishing district-based elections pursuant to subdivision (a), a prospective plaintiff who sent a written notice pursuant to subdivision (e) before the political subdivision passed its resolution of intention may, within 30 days of the ordinance's adoption, demand reimbursement for the cost of the work product generated to support the notice. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within 45 days of receiving the written demand, except as provided in paragraph (2). In all cases, the amount of the reimbursement shall not exceed the cap described in paragraph (3).

(2) If more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent a written notice pursuant to paragraph (1) of subdivision (e), and the 45-day time period described in paragraph (1) shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs shall not exceed the cap described in paragraph (3).

(3) The amount of reimbursement required by this section is capped at \$30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXHIBIT “D”

THE CALIFORNIA VOTING RIGHTS ACT

Marguerite Mary Leoni*
Christopher E. Skinnell**

In 2002, the California Voting Rights Act, S.B. 976, was signed into law. (Elec. Code §§ 14027-14032.) The Act makes fundamental changes to minority voting rights law in California. As of January 1, 2003, the California Voting Rights Act ("CVRA") alters established paradigms of proof and defenses under the federal Voting Rights Act, thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices.¹ The potential consequences of this legislation are significant: it could force a city or special district to abandon an electoral system that may be perfectly legal under

* Ms. Leoni is a partner at Nielsen, Merksamer, Parrinello Mueller & Naylor, LLP (Mill Valley, California), Phone: (415) 389-6800, E-mail: mleoni@nmgovlaw.com. She specializes in legal counseling and civil litigation relating to redistricting and voting rights questions, school district reorganizations, campaign, government and initiative/referendum law. Her practice includes both trial and appellate practice.

Ms. Leoni has represented and currently represents numerous state agencies, municipalities, counties, school districts and other special districts on districting, redistricting and electoral matters. She has assisted in all phases of such cases including design of plans, the public hearing process, analysis of proposed alternatives, enactment procedures, referenda, districting and redistricting, preparing and advocating preclearance submissions to the U. S. Department of Justice, and defending federal court litigation concerning the legality of electoral systems under the federal constitution and Voting Rights Act. She represented the Administrative Office of the Courts on federal Voting Rights Act issues and electoral questions pertaining to trial court unification in California. She also represented the Florida Senate in designing that state's Senate and Congressional districts, Voting Rights Act preclearance, and in defending against ensuing state and federal court challenges. She also represented the consultant to Arizona's Independent Redistricting Commission in designing redistricting plans for Arizona's state legislative and congressional districts.

** Mr. Skinnell is an associate (bar results pending) at Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP (Mill Valley, California), Phone: (415) 389-6800, E-mail: cskinnell@nmgovlaw.com. He received his Bachelor's degree in 1999 from Claremont McKenna College, *magna cum laude*, and is a 2003 graduate of the University of Chicago Law School, where he served as Editor-in-Chief of *The University of Chicago Legal Forum*.

Prior to attending law school, he was a political consultant to several California legislative and initiative campaigns, a research associate at the Rose Institute of State and Local Government, and chairman of a successful initiative campaign in Southern California.

Mr. Skinnell has extensive experience with voting rights matters, both from the legal and technical perspectives. In addition to working on various voting rights lawsuits, he has published numerous articles and studies on voting rights and redistricting, has served as the technical/GIS consultant on several municipal redistrictings, and has prepared a successful preclearance submission to the U.S. Department of Justice under Section 5 of the Voting Rights Act.

¹ As noted in a celebratory press statement by the Mexican American Legal Defense and Education Fund (MALDEF) following the passage of S.B. 976, which along with the ACLU and voting rights attorney Joaquin Avila, was a primary supporter of the CVRA, the "[b]ill makes it easier for California minorities to challenge 'at-large' elections."

federal law, in the process exposing the jurisdiction to the possibility of paying very high awards of attorneys fees to plaintiffs.²

California's cities, counties, and special districts have had almost four decades of experience in complying with the federal Voting Rights Act ("federal VRA"), especially Section 2, the landmark legislation outlawing both intentional discrimination in voting practices and those practices that have unintentional but discriminatory effects when viewed in the totality of the circumstances. (Voting Rights Act of 1965, Pub. L. No. 89-110, Stat. 437 (1965), codified as amended at 42 U.S.C. §§ 1971, 1973-1973ff-6 (1994).) Indeed, California has adopted compliance with Section 2 as one of its statutory redistricting criteria for cities, counties, and special districts. (See, e.g., Elec. Code §§ 21601 [general law cities], 21620 [charter cities], & 22000 [special districts].) After decades of litigation under the federal VRA, the courts have provided a wealth of guidance for cities and special districts in identifying practices that may have discriminatory effects. Most notable in California is the prevalence of the "at-large" electoral system (see description below). Jurisdictions have learned to consider changing to a district-based electoral system when they have minority group residents who are sufficiently numerous and geographically concentrated to form a majority in a single-member district, especially when that minority group, despite running candidates for election, consistently fails to elect.

But now the voting rights legal environment with which cities and special districts have grown familiar has changed significantly. Here are some of the highlights.

CVRA Highlights.

- **Focus of the CVRA: "At-large" and "From-district" Elections.**

If your city or special district elects its governing board members "by-district," (i.e., only by the voters of the district, sometimes called "division" or "area," in which the candidate resides), you can stop reading now. The CVRA does not apply to a by-district electoral system. However, if you have an "at-large" or "from-district" system, read on!

The CVRA applies only to at-large and from-district electoral systems, or combination systems. (Elec. Code §§ 14026(a), 14027.) At-large systems are those in which each member of the governing board is elected by all the voters in the jurisdiction. Most

² In federal voting rights cases, the litigation bill can run to hundreds of thousands of dollars even for a small jurisdiction of a few thousand people. See Florence Adams, *Latinos and Local Representation: Changing Realities, Emerging Theories* 73 (Garland 2000) (noting that in the City of Dinuba, California, the costs of federal voting rights litigation added up to nearly \$60 per person, more than the annual cost of Dinuba's Fire Department). In a voting rights case filed against the City of Santa Paula in 2000 and recently settled, the City reportedly spent \$700,000 for attorneys fees. See T.J. Sullivan, "Santa Paula Quiet on Measure D," *Ventura County Star* B-01 (Oct. 20, 2002).

jurisdictions in California, especially smaller jurisdictions, have at-large electoral systems. "From-district" elections differ from at-large systems only in that they require each member of the governing board to live within a particular district. Election, however, is still by all the voters in the jurisdiction, rather than being limited to the voters within a district. There are also combination systems in which, for example, a primary election may be conducted "by-district", but the general election is conducted "from" those same districts, *e.g.*, the top two vote winners in the primary in each district run for election "at-large" in the general election.

Each of these variations is equally vulnerable to challenge if the minority plaintiffs can show that racially-polarized voting undercuts their ability to elect or influence the election of minority-preferred candidates. Features that might cause plaintiffs to scrutinize a city or special district as a potential target for a CVRA challenge include a history of electoral losses by minority candidates or a history of unresolved issues disproportionately affecting the minority community (*e.g.*, affordable housing, street and sidewalk maintenance, juvenile crime, etc.), coupled with a significant proportion of the population that are ethnic or racial minorities.

- **Protection For Minority Electoral "Influence."**

The federal VRA prohibits the use of electoral systems that abridge the ability of minority voters to *elect* candidates of their choice. Thus, if the minority plaintiffs would have still been unable to elect their chosen candidates in the absence of the challenged at-large system, the plaintiff would have very little chance of stating a federal claim (see below). Not so under the CVRA. The CVRA invalidates not only at-large elections that prevent minority voters from electing their chosen candidates, but also those that impair the ability of minority voters to *influence* elections.

To date, such influence claims have enjoyed very limited recognition or success in federal litigation, and California jurisdictions have no real experience with them. The U.S. Supreme Court has repeatedly declined to address influence claims in recent years. See *Johnson v. De Grandy*, 512 U.S. 997, 1008-09 (1994); *Holder v. Hall*, 512 U.S. 874, 900 n.8 (1994) (Thomas, J., concurring in judgment); *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993); *Grove v. Emison*, 507 U.S. 25, 41 n.5 (1993). The federal courts in California have refused to sanction such influence suits as well. See *Aldasoro v. Kennerson*, 922 F.Supp. 339, 376 (S.D. Cal. 1995); *DeBaca v. County of San Diego*, 794 F.Supp. 990, 996-97 (S.D. Cal. 1992); *Skorepa v. City of Chula Vista*, 723 F. Supp. 1384, 1391-92 (S.D. Cal. 1989); *Romero v. City of Pomona*, 665 F. Supp. 853, 864 (C.D. Cal. 1987), *aff'd* 883 F.2d 1418, 1424 (9th Cir. 1989).

Indeed, only two federal courts have ever held³ that the federal VRA requires, rather than merely permits, the creation of influence districts in the absence of a showing of intentional discrimination, and both are of questionable precedential value. See *Armour v. Ohio*, 895 F.2d 1078 (6th Cir. 1990); *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 691 F.Supp. 991 (E.D. La. 1988). One of the opinions, *Armour v. Ohio*, was subsequently vacated when rehearing en banc was granted, 925 F.2d 987 (6th Cir. 1991). On remand the district court implicitly sanctioned such claims again, 775 F.Supp. 1044, 1059 n.19 (N.D. Ohio 1991),⁴ but later opinions from the Sixth Circuit have not treated *Armour* as binding on this issue, and have, in fact, expressly rejected influence suits. See *Cousin v. Sundquist*, 145 F.3d 818, 828 (6th Cir. 1998) ("We do not feel that an 'influence' claim is permitted under the Voting Rights Act."); *Parker v. Ohio*, 2003 U.S. Dist. LEXIS 8745, *11 (S.D. Ohio). The holding of the second case, *East Jefferson Coalition for Leadership*, was effectively undermined when the court subsequently amended the finding that necessitated the influence claim: that the minority community was too widely dispersed in the jurisdiction to constitute a majority in a single-member district. See *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 926 F.2d 487, 491 (5th Cir. 1991) (noting the amended finding that the minority group could indeed constitute a majority in a single-member district).

Given the reluctance of federal courts to enter the political thicket of influence suits, by opening the door to such claims the CVRA greatly expands protection for minority voting rights and, consequently, the potential for liability of cities and special districts.

The next question, of course, is obvious: what constitutes "influence"? The answer, unfortunately, is not so obvious. The CVRA does not define "influence" and there is very little federal precedent on which to rely for guidance. As the federal district court for Rhode Island put it in *Metts v. Almond*:

"Ability to influence" itself, is a nebulous term that defies precise definition. If it means only the potential to alter the outcome of an election, it provides no standard at all because a single voter can be said to have that ability. On the other hand, if it means something more, there does not appear to be any workable definition of how much more is required and/or any meaningful way to determine whether the requirement has been satisfied.

³ Several other courts have assumed as much, without so deciding, instead ruling on other grounds. See, e.g., *Voinovich*, 507 U.S. at 154; *West v. Clinton*, 786 F.Supp. 803, 806 (W.D. Ark. 1992).

⁴ The district court in *Armour* purported to avoid the question of influence claims. See 775 F.Supp. at 1059 n.19 ("We need not reach the question of whether [an influence claim] may be viable under the Voting Rights Act because we find that the plaintiffs have met their burden of demonstrating an ability to elect a candidate of their choice."). But as Judge Batchelder noted in dissent, the Court only avoided the issue by first holding that the plaintiffs need not constitute a majority in the reconfigured district. 775 F.Supp. at 1079 (Batchelder, J., dissenting). In so ruling, "the majority opinion effectively h[eld] that there is a cause of action under Section 2 when political boundaries are drawn so that they fail to maximize a minority group's ability to influence the outcome of elections." *Id.*

Nevertheless, defining “influence” is the task that a California court may soon face. The definition may well be case-specific to the demographic and political circumstances in each defendant jurisdiction, leaving local jurisdictions without clear guidelines.

- **Streamlined Proof for Plaintiffs.**

Federal voting rights cases under Section 2 require that a successful plaintiff show that (1) the minority group be sufficiently large and geographically compact to form a majority of the eligible voters in a single-member district, (2) there is racially-polarized voting, and (3) there is white bloc voting sufficient usually to prevent minority voters from electing candidates of their choice. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). If (and only if) all three of these “preconditions” are proven, the court then proceeds to consider whether, under the “totality of circumstances” the votes of minority voters are diluted. (42 U.S.C. § 1973(b) [prescribing the totality of the circumstances standard].)

The CVRA, by contrast, purports to prescribe an extremely light burden on the plaintiff to establish a violation. Under the CVRA, plaintiffs apparently can prove a violation based *solely* on evidence of racially-polarized voting. (Elec. Code §§ 14027 & 14028(e).) Racially-polarized voting is defined as “voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and the electoral choices that are preferred by voters in the rest of the electorate.” (Elec. Code § 14026(e).) See *Ruiz v. City of Santa Maria*, 160 F.3d 543, 552 (9th Cir. 1998) (adopting relatively lenient “separate electorates” test for determining whether a candidate was a minority-preferred candidate who was defeated by white bloc voting), *cert. denied*, 527 U.S. 1022 (1999).

The CVRA appears to eliminate the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district. (Elec. Code § 14028(c).) Assuming that racially-polarized voting can be proven, the CVRA defers inquiry into the size and geographical compactness of the minority group and the impact of those factors on the minority voters’ ability to elect or ability to influence elections, to the remedial phase of the litigation. (See discussion below.)

The CVRA also eliminates the requirement that plaintiffs prove discrimination under the totality of the circumstances test. (Elec. Code § 14028(e).) This departure from the federal standards may prove to be the most significant. Some federal courts have been very lenient in finding racially-polarized voting. They could afford to be so lenient,

because, under federal law, establishing racially-polarized voting is not sufficient to prove a violation. The other *Thornburg v. Gingles* preconditions must be established and a violation must be proven in the “totality of the circumstances” phase of the lawsuit. The totality analysis then permits a federal judge to take into account such matters as the *degree* of the racially-polarized voting and perhaps find that it was not severe enough to warrant judicial intervention into the electoral processes of a city.

The CVRA does not require any comparable “totality of the circumstances” analyses as part of the plaintiff’s proof. Under what would seem to be a draconian application of the CVRA, plaintiffs could argue that a jurisdiction is subject to liability if 51% of minority voters vote one way, 51% of non-minority voters vote the other way, and the minority-preferred candidate loses. Whether a court would sanction such an extreme application of the CVRA, without the subsequent safety valve of the totality analysis, cannot be known at this time. Another plausible reading of the CVRA is that the Legislature meant to ease the burden on plaintiffs but still permit the totality analysis to come in by way of defense. (Elec. Code § 14028(e) [stating that many of the traditional totality factors are “probative,” but not necessary to establish a violation].)

Despite the fact that Section 14028(a) provides that a violation is established if racially-polarized voting is shown, the legislation does identify at least one other factor that bears on the question of liability. Specifically the CVRA provides that the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of a jurisdiction is “one circumstance that may be considered *in determining a violation*.” (Elec. Code § 14028(b) [emphasis added].) Thus phrased, the relevance of such evidence would not appear to be limited to the remedial stage, but would affect the question of liability as well. Moreover, the phraseology suggests that other, unspecified circumstances may be considered on the question of liability as well. Under the federal scheme, minority plaintiffs whose preferred candidates have a winning record would find it difficult, if not impossible, to establish a violation of the federal VRA. Presumably this would be the result under the CVRA, but the new law is not explicit on that point. Also, the CVRA specifies that the successful candidate must also be a member of the minority group in order to be taken into consideration as “one circumstance” that may be considered at the liability phase of the litigation. The CVRA is silent on whether the election of non-minority persons who are proven to be the preferred candidates of minority voters can also be considered. Plaintiffs may well argue that such successful minority-preferred candidates do not count.

- **New Remedies.**

The most likely remedy in a successful CVRA action would be to order cities and special districts with at-large, from-district, or mixed electoral systems to change to by-district systems in which a minority group will be empowered either to elect its preferred candidates, or influence the election outcome. But judicial remedies under the Act may

not be limited to the imposition of a by-district system. In cases where the minority group may be too small to form a majority in a single member district (*i.e.*, a district from which one member of the governing board is elected), the CVRA mandates that a court impose remedies “appropriate” to the violation. Indeed, the advocates of limited or cumulative voting systems may see the CVRA as an opportunity to attempt to impose such experimental remedies in California.

In a limited voting system, voters either cast fewer votes than the number of seats, or political parties nominate fewer candidates than there are seats. Theoretically, the greater the difference between the number of seats and the number of votes, the greater the opportunities for minorities to elect their chosen candidates. Versions of limited voting are used in Washington, D.C., Philadelphia (PA), Hartford (CT) and many smaller jurisdictions.

In a cumulative voting system, voters cast as many votes as there are seats. But unlike winner-take-all systems, voters are not limited to giving only one vote to a candidate. Instead voters can cast some or all of their votes for one or more candidates. Chilton County (AL), Alamogordo (NM), and Peoria (IL) all use a version of cumulative voting, as do a number of smaller jurisdictions. The State of Illinois used cumulative voting for state legislative elections from 1870 to 1980.

- **No-Risk Litigation For Plaintiffs.**

The CVRA mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs. (Elec. Code § 14030.) Prevailing defendants, however, are not treated so kindly. The CVRA denies not only attorneys fees but also the costs of litigation to prevailing defendants, unless the court finds a suit to be “frivolous, unreasonable, or without foundation,” an extremely high standard. (*Id.*)

Furthermore, California law interprets “prevailing party” more broadly than does the analogous federal law governing attorneys fees awards for actions brought under Section 2 of the Voting Rights Act. The United States Supreme Court has, as a matter of statutory interpretation, recently rejected the “catalyst” theory of prevailing parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Servs.*, 532 U.S. 598, 603-05 (2001). The catalyst theory, which the California Supreme Court has previously approved, permits recovery of attorneys fees if there is any “causal connection” between the plaintiffs’ lawsuit and a change in behavior by the defendant. *Maria P. v. Riles*, 43 Cal.3d 1281, 1291 (1987). The *Maria P.* court continued:

“The appropriate benchmarks in determining which party prevailed are (a) the situation immediately prior to the commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in effecting any changes between the two.” . . . An award of attorney fees under section 1021.5 is

appropriate when a plaintiff's lawsuit “was a *catalyst* motivating defendants to provide the primary relief sought,” or when plaintiff vindicates an important right “by activating defendants to modify their behavior.”

Id. at 1291-92 (quoting *Folsom v. Butte County Assn. of Governments*, 32 Cal.3d 668, 685 n.31 (1982); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 353 (1983)) (internal citations omitted).

Federal law, by contrast, requires some “change [in] the legal relationship between [the plaintiff] and the defendant.” *Buckhannon*, 532 U.S. at 604 (quoting *Texas State Teachers Assn. v. Garland Independent School Dist.*, 489 U.S. 782, 792 (1987)). In other words, it is not enough under federal law that the defendant changed its conduct voluntarily—there must be some legally compelled impediment to the defendant falling back into the old ways, like a judgment or a settlement.

The California Supreme Court has traditionally treated federal precedent interpreting 42 U.S.C. § 1988 as persuasive authority, but it has also held that such federal precedent is not binding with regards to interpretation of state attorneys fee law. *See Serrano v. Unruh*, 32 Cal.3d 621, 639 n.29 (1982). Thus, the *Buckhannon* holding will not inevitably lead California to reject the catalyst theory in CVRA litigation as well.

Charter Cities.

Charter cities should not be complacent in a belief that they are immune from successful challenge under the new CVRA. The CVRA, after all, purports to apply to “cities” without making any explicit distinction between general law or charter cities. (Elec. Code § 14026(c).) It is true that a charter can provide for a form of government or electoral process for a city that is different from the general law. A charter city, however, remains subject to the California Constitution and would be prohibited from adopting or maintaining a discriminatory electoral system or electoral practices that violate the equal protection clause or the right to vote. *See Canaan v. Abdelnour*, 40 Cal.3d 703 (1985), *overruled on other grounds by Edelstein v. City & County of San Francisco*, 29 Cal.4th 164, 183 (2002); *Rees v. Layton*, 6 Cal.App.3d 815 (1970). Furthermore, California courts have recognized that state statutes can override city charters if they are narrowly-tailored to address an issue of statewide concern, even in the core areas of charter city control like election administration. *Edelstein*, 29 Cal.4th at 172-174; *Johnson v. Bradley*, 4 Cal.4th 389, 398-400 (1992). The CVRA expressly provides that it is intended to implement the guarantees of Section 7 of Article I (Equal Protection) and Section 2 of Article II (Right to Vote) of the California Constitution, which are themselves regarded as matters of statewide concern. *See Cawdrey v. City of Redondo Beach*, 15 Cal.App.4th 1212, 1226 (1993).

It is always possible that the California Supreme Court would decide that, even if preserving the right to vote is a matter of statewide concern, the CVRA sweeps too broadly and cuts too deeply into municipal affairs in violation of the principle of home rule. As the Supreme Court has noted, "[T]he sweep of the state's protective measures may be no broader than its interest." *Johnson*, 4 Cal.4th at 400. Cf. *Bd. of Trustees of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 365 (2000) (when Congress seeks to enforce constitutional protections with legislation, the statutory scheme must be congruent and proportional to the injury to be prevented or remedied); *City of Boerne v. Flores*, 521 U.S. 507 (1997). For example, charter cities could argue that, assuming eradicating the adverse effects of racially-polarized voting in at-large electoral systems is a matter of statewide concern, the CVRA is not narrowly-tailored because the federal VRA presents a scheme more carefully-crafted to weed out those at-large systems in which, under the totality of circumstances, minority voting rights are abridged, and leave in place those at-large systems in which a minority candidate may have simply lost an election.

Vote of the People.

The sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction. Indeed, the latter may increase the risk to the jurisdiction by serving as persuasive proof of a violation of the CVRA if the by-district system was rejected in an election characterized by a racially-polarized vote.

No Minority Candidates.

The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code §§ 14028(a) & (b).) Some particularly obvious examples from the last decade might include Proposition 187 (denying state services to undocumented immigrants), Proposition 209 (preventing state agencies from adopting affirmative action programs), and Proposition 227 (barring the use of bilingual education in California public schools). See *Cano v. Davis*, 211 F.Supp.2d 1208, 1241 n.37 (C.D. Cal. 2002) (assuming these initiatives may be used to demonstrate racially-polarized voting). But other local measures may also serve the same purpose.

CONCLUSION

California's cities and special districts are entering a new and uncertain era in voting rights law. Much about the CVRA is unclear and federal precedent on key issues appears to have been legislatively overruled. It may require years of litigation to sort it all out. It

is impossible to know now whether California courts will uphold the constitutionality of the CVRA, how they will interpret the new law, or what defenses will be available. Perhaps the "totality of the circumstances" test will be reinvigorated by way of defense. In the meantime, there is a safe harbor under the CVRA (though still not necessarily under the federal Voting Rights Act): a by-district electoral system.

Jurisdictions with a history of electoral losses by candidates who are members of a minority group should consider analyzing those elections for racially-polarized voting. If polarized voting is detected, these jurisdictions may want to consider whether a change to a by-district electoral system is warranted. Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the elected representatives and the voters, rather than adverse plaintiffs or a court, to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the city or special district is in the CVRA safe harbor, even if the districts are not exactly those that plaintiffs would have preferred.

S:\ces\drafts\0823.00 CVRA Article\THE CALIFORNIA VOTING RIGHTS ACT article [07-22-2003 rev].doc

EXHIBIT “E”

The Politics of Latino Education: The Biases of At-Large Elections

David L. Leal

The University of Texas at Austin

Valerie Martinez-Ebers

Texas Christian University

Kenneth J. Meier

Texas A&M University

This paper investigates the determinants and consequences of Latino political representation in the field of K-12 education. The first task is to examine the association between Latino population and the Latino presence on school boards. We then investigate if Latino representation is affected by the electoral structure of school boards, as scholars have reached differing conclusions on whether at-large and ward systems hinder or enhance minority descriptive representation. The next step examines the consequences of Latino representation, specifically whether board membership is associated with the share of Latino school administrators and teachers. The regression results show that Latino population positively affects Latino board representation, but that at-large systems hinder descriptive representation. The primary determinant of Latino administrators is Latino school board membership, and the primary determinant of Latino teachers is Latino administrators. In sum, at-large elections negatively influence Latino educational representation, which produces a ripple effect that ultimately reduces the share of Latino teachers.

Latinos are now the largest minority group in the United States, but numbers alone are no guarantee of political influence. The traditional view of how minorities gain access to the benefits of the U.S. political system is via education, but research has long established that access to education itself is inherently political. The Latino community has for many generations struggled for educational equity but has faced numerous structural and other impediments. We therefore investigate the political dynamics of Latino education in the field of K-12 education, a subject of major academic and policy consequence.

This paper specifically will examine the politics of Latino representation on school boards and whether such descriptive representation has substantive effects. The first question is whether Latino population size is associated with the Latino presence on school boards. We then investigate if such representation is affected by the electoral structure of school boards because scholars disagree whether at-

THE JOURNAL OF POLITICS, Vol. 66, No. 4, November 2004, Pp. 1224-1244
© 2004 Southern Political Science Association

large and ward systems influence minority representation. Third, we test whether such descriptive representation influences the proportion of Latino administrators and teachers. Because the most recent prior research on these questions used data from the late 1980s, this paper provides needed evidence on how current conditions have changed given the dramatic growth in the Latino population.

School board representation is an integral aspect of the political system. School boards in America are the most local electoral unit in the federal system. Almost 100,000 people serve on 15,000 boards, and they constitute the largest bloc of elected officials in America. Overseeing the education of forty-five million public school students, they are entrusted with annual school expenditures of approximately three hundred billion dollars (Toch and Glastris 1994).

Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts (Wirt and Kirst 1989). Boards, therefore, shoulder much responsibility for the quality of public education in America.

The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement. A report by the White House Initiative on Educational Excellence for Hispanic Americans (1999) documents how Latino underachievement in education begins as early as kindergarten and continues through higher education. By the age of nine, Latino children perform below their non-Latino peers in the subjects of reading, mathematics, and science. Their overall scores on the National Assessment of Educational Progress (NAEP) are also consistently below average. One-third of Latino students between the ages of 15 and 17 are enrolled below grade level, and Latinos are less likely to take college preparatory courses in high school.

The high Latino dropout rate is well known: 1998 data show a dropout rate of 30%, in comparison to 14% for African Americans and 8% for Anglos. Overall, Latinos perform lower than most groups on standardized tests, and they have the lowest high school graduation rates and four-year college enrollments of all racial and ethnic groups in the country (Riley and Pompa 1998; Secada et al. 1998).

Latinos also attend schools that are increasingly segregated in terms of race, ethnicity, and class (Orfield and Yun 1999). They often face institutional racism and cultural biases at school in terms of programming, curriculum, and tracking and ability grouping practices (Carrasquillo 1994; Grossman 1995; Spring 2000). In sum, Latinos are arguably the most educationally disadvantaged of all groups in the United States today (Riley and Pompa 1998).

Whether the dismal state of Latino education is related to political dynamics is a key question for political scientists to investigate. Meier and Stewart was one of the first investigations of this possibility. Using regression analysis and con-

trolling for intermediary factors, they discovered that Latino students were subject to more suspensions and expulsions, were underrepresented in gifted and talented classes, and were overrepresented in special education classes. Not only were such practices associated with lower student achievement, but they also served as "a substitute for segregation" (1991, 197).

Meier and Stewart also discovered that such treatment was associated with community political power. Most importantly, Latino representation on school boards was associated with better educational conditions. In districts with more Latino representation, Latino students experienced greater access to equal education and less "second-generation" discrimination. There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.

Others have found evidence that Latino representation on school boards is associated with policy outcomes of interest to this community. Leal and Hess (2000), for instance, found that the percentage of school board members who are Latino is positively associated with funding for bilingual education programs, even after controlling for objective student need for bilingual education. Board representation is, therefore, not just symbolic or of interest to a small number of activists but is inseparable from the aspirations of the larger community.

The first empirical part of this paper investigates the relationship between Latino population and the Latino presence on school boards. The overall literature on representation discusses two general linkages between constituents and representatives. The first is indirect representation, whereby a legislature may collectively represent the people even if there is no clear link between specific legislators and specific constituents (Weisberg 1978). Policy outcomes are therefore congruent with public opinion, even if elected officials are not actively trying to represent their constituents.

The second form of representation is direct. This takes place when the votes of a legislator are linked to the interests of his or her constituents. Elected officials in this scenario take seriously the delegate view of representation, as opposed to the trustee view exemplified by Edmund Burke in his famous letter to Bristol. Pitkin (1967) named this substantive representation and contrasted it with descriptive representation. The latter takes place when a constituency elects a representative who shares key traits but not necessarily policy views.

This paper begins by examining the descriptive representation of Latinos on school boards. While descriptive representation does not always lead to substantive representation, voters generally see a connection. This is not to say that Anglo school board members cannot adequately represent Latino constituencies, as many have undoubtedly done so. In a similar way, a lawyer may be able to represent a district of farmers. Farmers, however, may want their elected representatives to share an agricultural background. Not only would the latter likely know more about farming, but they could be better trusted to fight for farm interests behind closed doors in Washington.

This issue of trust is particularly important in the study of representation. Hall noted that many key legislative activities take place out of public view, such as "Building a coalition for a legislative package, drafting particular amendments, planning and executing parliamentary strategy, [and] bargaining with or persuading colleagues to adopt one's point of view" (1996, 2). Constituents must trust that members are acting in a way that furthers their interests, as there are few ways for them to monitor such legislative behaviors.

Bianco further observed that "many kinds of behavior that are not usually thought of as rational choices, such as voters' desire to be represented by 'someone like them,' are the product of a systematic, predictable calculus—moreover, a calculus aimed at securing favorable policy outcomes" (1994, ix). Voters therefore "focus on attributes because they cannot be the product of calculation and provide a clearer signal of a candidate's policy concerns" (62). In this way, descriptive representation is a shortcut voters use to increase the likelihood of their interests being served.

Electing a member of one's group to office also has symbolic value. As Davidson and Oleszek wrote, "When a member of an ethnic or racial minority goes to Congress, it is a badge of legitimacy for the entire grouping. Such legislators speak for people like them throughout the nation" (2000, 133). What is true for Congress at the national level is also true for school boards at the local level.

Prior studies of Latino representation in local political entities have documented its low levels. Scholars usually derive a statistic of group representation through the Engstrom and McDonald (1981) method, which regresses minority population on minority descriptive representation. Taebel (1978) found a Latino representation index of .44 for 60 large urban city councils, meaning an underrepresentation of 56%. Karnig and Welch (1979) found a similar city council ratio of .45 for 124 southwestern cities. Fraga, Meier, and England (1986) noted a ratio of .77 for 35 school districts in very large cities, and Meier and Stewart (1991) found it was .86 for a larger population of districts.

The second part of this paper examines whether specific types of electoral mechanisms affect the level of Latino descriptive representation. Historically, such representation was impeded by a variety of legal and extralegal tactics. Literacy tests, poll taxes, and simple intimidation were effective tools against the electoral participation of Latinos as well as African Americans and poor Anglos. These have largely passed from the political scene, but election laws originally adopted with discriminatory intent may still affect political representation.

School board membership is chosen through three means: elections by ward, elections at-large, and by appointment. Progressive reformers at the turn of the twentieth century advocated at-large elections as one prong in a larger effort to isolate school boards and city councils from the influence of political parties, immigrants, those of lower socioeconomic status, and the vagaries of the democratic process generally (Tyack 1974). This reform proved a substantial obstacle to minority communities, as minority candidates often lack the resources to launch district-wide campaigns and find it difficult to attract Anglo votes.

In recent decades, underrepresented minority groups used the *Voting Rights Act of 1965* as “the legal foundation for creation of district-based elections to replace at-large elections to city councils and other multimember bodies” (Bezdek, Billeaux, and Huerta 2000, 209). The above authors described the example of Corpus Christi, where the efforts of the Mexican American Legal Defense and Education Fund (MALDEF) led to the replacement of eight at-large city council seats with five ward seats and three at-large seats.¹

Whether at-large elections have discriminatory effects on minority representation is the subject of debate in the political science literature, and one with important practical ramifications. Some scholars have found that ward systems are positively associated with Latino representation on school boards (Davidson and Korbel 1981; Meier and Stewart 1991; Polinard, Wrinkle, and Longoria 1990, 1991). Others, however, have discovered no statistically significant effects (Fraga, Meier, and England 1986; Welch and Karnig 1978).

These varying findings are also present in different decades. Using data largely from the 1980s, Fraga, Meier, and England (1986) arrived at different conclusions than did Polinard, Wrinkle, and Longoria (1991) and Meier and Stewart (1991). Studies using data from the 1970s (Davidson and Korbel 1981; Welch and Karnig 1978) similarly arrived at opposite conclusions. In light of these differences across time, it is desirable to investigate representational dynamics with a contemporary survey.

A new study is also needed because the Latino population is located in a very different social and political space than was the case in the 1970s and 1980s. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino children are now encountering significant and growing numbers of such students. The state with the fastest-growing Latino population, for instance, is not Texas or California but North Carolina. The Latino population of this state increased by just over 440% from 1990 to 2000, growing from 69,020 to 372,964 people. The next largest growth rates were found in Arkansas (337%), Georgia (324%), and Tennessee (284%). The issues of Latino representation on school boards and the quality of education received by Latino children are therefore relevant to a growing number of states and regions. Consequently, a study using current data is vital to understanding how Latino educational representation fares in this new and expanding context.

The above dynamics are a larger and more noticeable continuation of previous trends. As Meier and Stewart noted, the school districts in their sample “have not had a stable enrollment composition over time. The average district increased its Hispanic enrollment by about ten percentage points since 1968 (Table 1–3). Some districts, of course, have become substantially Hispanic during this time period”

¹Many school boards have incorporated both ward and at-large elections under the theory that minorities can benefit from coalition building and win some of the at-large seats. McDonald and Engstrom (1992), however, suggested that this did not transpire in practice.

(1991, 31). They surveyed districts with at least 5,000 students, of whom at least 5% were Latino. Their total number of usable observations was 145; in comparison, our survey includes 857 such districts. Given these Latino population trends, additional studies might also be useful after each future census.

There is also a contemporary interest in Latinos that was largely absent in previous decades. Latino influence is now more strongly felt and more frequently commented upon in both politics and popular culture. This suggests that the role of Latinos in the contemporary political system may be qualitatively as well as quantitatively different than in previous decades.

In addition, given the extensive litigation over city council districts in recent decades, school boards are also probably the last place where at-large districts are still permitted in the presence of racial polarization. For those interested in whether and how electoral structures affect the representation of minorities on political bodies, school boards are the only arena to study. This was much less the case in the 1970s and 1980s, so a new study of school boards is the best way to investigate whether and how electoral structure can influence representation.

A related literature explores the impact of electoral systems on minority representation on city councils. Davidson and Korbel (1981) and Bezdek, Billeaux, and Huerta (2000) argued that ward districts increase Latino representation. On the other hand, Zax (1990) argued that residential segregation was a more important determinant than electoral method in the election of Latino officials. MacManus (1978) found that at-large plans did not impair the city council representation of African Americans and the Spanish speaking, although the details of the system and the socioeconomic environment were important. Taebel (1978) argued that city council size was more relevant for Latino representation than the electoral system. Rabinovitz and Hamilton (1980) suggested that a mixed system was better than a ward system for the representation of blacks on city councils.

Some have argued that electoral systems affect the representation of African Americans but not Latinos. Karnig and Welch (1979) and Welch (1990) found this was the case for city councils. One explanation is that Latinos are not subjected to the same degree of residential segregation as African Americans (Lopez 1981).

The third part of this paper investigates the consequences of descriptive representation, specifically whether the share of Latino board members is associated with the share of Latino school district employees. Administrators and teachers influence the quality of education received by students, and teachers in particular wield much power in their classrooms as "street level bureaucrats" (Lipsky 1980; on the substantive issue see Hess and Leal 1997 and Meier and Stewart 1991).

There is widespread agreement in the professional education community that minority students gain academically when they are taught by minority teachers. Empirical evidence for these propositions is less common than their assertion, however, although a growing number of scholars are testing this hypothesis in a

variety of settings. Hess and Leal (1997) examined the relationship between teacher race/ethnicity and student achievement in large urban school districts. They found that the proportion of minority teachers was positively associated with the college matriculation of all students. While they noted that the hiring of minority teachers might serve as a proxy for unobserved school conditions relevant to student achievement, the article provides intriguing evidence that minority teachers may promote the learning of both minority and Anglo students.

Meier, Wrinkle, and Polinard (1999) and Meier et al. (2001) tested how the percentage of minority teachers was associated with the student pass rates of standardized exams required by the state of Texas. They found that pass rates were higher for both minority and Anglo students in districts with a larger share of minority teachers (although see Nielsen and Wolf 2001). Meier, Wrinkle, and Polinard (1999) suggested an explanation based on discriminatory hiring practices. Districts less focused on the quality of educators than on their race will on average hire less competent teachers, thereby negatively affecting the educational outcomes of all students.

Dee (2001) argued that this question needed a randomized experimental methodology to accurately understand whether racial dynamics were factors in student achievement. He examined test score data from the Tennessee Project STAR (Student Teacher Achievement Ratio) class-size experiment, finding significant math and reading improvements among students randomly provided same-race teachers. There are also a number of more qualitative studies of Latino student achievement that highlight the importance of Latino faculty and staff (Garcia 2001; Nieto 1999; Reyes, Scribner, and Scribner 1999; Valdes 1996).

Substantial evidence also suggests that the Latino community wants more Latinos teaching their children (Nieto 1999; Romo and Falbo 1996). While the above debate asks whether minority teachers improve the educational outcomes of minority and Anglo children, this dynamic is less important from the perspective of representation theory. Many scholars have investigated whether elected officials and political institutions are responsive to constituents, but there is less discussion of the more difficult question—whether constituent wishes are objectively in their best interests. The presence of minority teachers is, therefore, an important indicator of political responsiveness to minority communities regardless of its effect on minority students.

The only previous research on board representation and the minority presence in teaching faculties and educational administrations is Meier and Stewart (1991). They found the share of Latino school board members was positively associated with Latino administrators but not with Latino teachers. They did find, however, a positive correlation between Latino administrators and Latino teachers.

Data and Methods

Data for this paper derive from three sources. Information on school board selection structures, school board ethnicity, administrator ethnicity, teacher eth-

nicity, and student ethnicity were obtained from an original survey. All school districts with more than 5,000 students were sent mail surveys in June 2001.² Nonrespondents received two follow-ups by mail. Up to six phone calls were then placed to nonrespondents in an effort to contact as many of the districts as possible; the phone interviews collected information only on the school board variables. A final attempt was made via email.

Of the 1,831 surveyed districts, 1,751 provided data on school boards (95.6%) and 1,532 (83.7%) on teachers and administrators. The actual numbers in the regression analysis are somewhat lower due to missing data for other variables. Nonrespondents on the electoral information were no different from respondents in terms of size of district, ethnic distribution in the district, and similar census data on which comparisons could be made. For the teacher and administrator data, district sizes were the same but nonrespondents were from locations with slightly smaller Latino populations. Given that the distinction between respondents and nonrespondents could not explain as much as 1% of the variance in any variable where measures existed, we are confident that any selection biases in the survey are slight and do not affect the results presented.³

Population figures and other demographic variables for 2000 were available from the 2000 census. Additional information used to check the accuracy of student enrollment figures on the survey were from the U.S. Department of Education (2001).

Findings

School Board Representation

The first step in assessing the level of descriptive representation is to examine the simple relationship between Latino population and Latino school board representation (both variables are expressed as a percentage of the total) as suggested by Engstrom and McDonald (1981). This equation essentially predicts the expected value of representation for a given level of population. The first column of Table 1 presents this seats-population relationship for all districts. The level of explained variation is consistent with past models for school board representation reported by Meier and Stewart [.60 (1991, 92)] and Fraga, Meier, and England [.77 (1986)]. Both previous studies, however, excluded districts with

²Districts with more than 5,000 students were surveyed for two reasons. First, these districts educate the overwhelming majority of Latino students, as they are located in the areas with the largest Latino populations. Our school districts had a total Latino population in 2000 of 32.84 million, which is 93% of the 35.3 million Latinos in the overall population. Second, there are significant data collection problems in many of the smaller districts. They often do not keep the type of records that larger districts do, particularly in terms of BEO data, as it is the larger districts that are regularly surveyed by the EEOC.

³We also checked to see if the districts lost from the sample because of missing data were different from those included in the analysis. The only difference we can find is that the districts with missing data are slightly smaller than other districts, which is not a major concern.

TABLE 1

The Representation Relationship: Latino School Boards

Dependent variable = Percent Latinos on School Board

Variable	All Districts	Minority Districts	Majority Districts	Five Percent + Latino
Intercept	-3.66 (13.05)	-1.36 (6.12)	-68.54 (7.54)	-8.97 (13.57)
Population	.71 (57.48)	.43 (40.44)	.72 (13.50)	.84 (40.44)
R-squared	.66	.33	.64	.66
Standard error	9.54	6.89	19.20	12.72
F	3,304.37	793.62	182.14	1,635.55
N of cases	1,739	1,633	106	857

Numbers in parentheses are t-scores.

fewer than 5% Latino students; Fraga et al. also only included districts with more than 25,000 students.

Two coefficients from the first regression in Table 1 merit discussion. First, the slope coefficient reveals that for each one percentage point increase in Latino population, Latino representation on the school board increases by .71 percentage points.⁴ In short, the translation of population into representation is only 71% effective. This figure should not be interpreted by itself as the precise estimate of underrepresentation, however. The intercept (-3.66) is negative and significant, thereby indicating a threshold effect. At low levels of population, increases in Latino population have no influence on expected representation levels. Only after a threshold is breached does population predict a positive value for expected representation. That "threshold" can be estimated by using the regression equation to predict the level of population where estimated representation will be at least zero. In the present situation, the threshold is 5.2%.

The findings in the first column suggest that the relationship between representation and population is not linear. The next two columns therefore show the same regression for districts where Latinos are a minority of the population and districts where they are a majority of the population. Previous arguments about electoral structure and representation presuppose the group in question, in this

⁴We use population as the base for all our regressions rather than voting-age population, estimated population who are citizens, or school enrollment for both an empirical reason and a normative reason. Empirically, the measures are highly correlated. The R^2 between voting-age population and population is .9963, and between enrollment and population it is .9631. Using other measures of population changes the size of the coefficients but has no impact on the statistical significance of any findings. The population numbers also predict representation better than any of the other three measures. In normative terms, to paraphrase the Supreme Court, these electoral units were created to represent populations, not citizens or school age children or even voting-age populations.

case Latinos, constitutes a minority of the total population. After all, if Latinos have a voting majority, then they can use at-large elections in the same manner as Anglos do when there is an Anglo majority.

The .71 coefficient for all districts drops to .43 in minority districts but jumps to .72 in majority districts. Comparing these figures directly is somewhat misleading simply because the intercepts are so dramatically different. Majority districts, for example, have an expected representation value of 17.5% for districts that are 50% Latino but 100% for districts with 98% or more Latinos. Both sets of findings strongly suggest that nonlinear estimates of the expected value of representation should be examined.

Before moving to the nonlinear estimates, the last column provides a comparison to the Meier and Stewart results by limiting the analysis to districts with at least 5% Latino population. Two things are immediately apparent. The representation coefficient increases to .84, essentially the same as the .86 coefficient reported by Meier and Stewart (1991, 92). The difference in intercepts in the two analyses, however, suggests caution in comparing these two values.

Table 2 estimates nonlinear equations linking population to representation. The differences between minority and majority jurisdictions are once again dramatic. In minority Latino districts, the population-squared term is significant and adds additional explanation to the overall equation. In majority districts, the nonlinear terms induce massive collinearity so that neither coefficient is significant and the level of explained variation has not changed at all.

These findings suggest that when Latinos are a minority of the population, the population-representation relationship is nonlinear, with larger percentages

TABLE 2
The Nonlinear Population-Representation Relationship:
Latino School Boards

Dependent variable = Percent Latinos on School Board				
Variable	Minority	Districts	Majority	Districts
Intercept	-1.3619 (6.12)	.0135 (.05)	-68.54 (7.54)	-46.31 (.81)
Population	.4315 (28.17)	.0683 (1.45)	1.72 (13.50)	1.08 (.66)
Population Squared		.0096 (17.33)		.00 (.39)
Adjusted R-squared	.33	.35	.64	.63
Standard error	6.89	6.76	19.20	19.20
F	793.62	445.75	182.14	90.41
N of cases	1,633	1,633	106	106

Numbers in parentheses are t-scores.

Tolerances for nonlinear equations, minority districts .10, majority districts, .0061.

getting significantly more representation than smaller percentages. The insignificant intercept for minority districts also eliminates the problematic threshold effect of the linear estimation. The insignificant linear term in this model suggests that it can be dropped from the analysis with no loss of information. The best interpretation for majority districts, however, is that the relationship between Latino population and Latino representation remains linear.

The now traditional way to assess the bias of electoral systems is to run an interaction between the various selection plans and population within a single regression (Engstrom and McDonald 1981). As noted above, there are three major selection plans for school districts: at-large systems, ward systems, and appointed systems. For those districts with less than 50% Latinos, the current sample contains 985 pure at-large systems (where all board members are elected at-large), 443 pure ward systems, and 53 pure appointed systems. The remaining 163 systems contain mixed combinations of the three selection types.

We created three variables for each district: the proportion of members elected from wards, the proportion elected at large, and the proportion appointed. Scores of 1.0 on any of these variables indicate a pure system, and lower scores indicate fewer members selected in the manner indicated by the variable. This process permits us to retain the 163 districts that do not have pure selection systems; the precise characteristics of these mixed systems are the subject of future research. To continue our distinction between majority and minority districts, these equations are estimated for both sets of districts with the hypothesis that structure matters when Latinos are a minority but does not matter when they are a majority.

Table 3 investigates this relationship for districts where Latinos are a minority. Adjusting for the nonlinear population coefficient, the regression contains five variables: Latino population squared, the ward selection percentage, the appointed selection percentage, ward selection multiplied by Latino population squared, and appointed selection multiplied by Latino population squared. This regression equation can then be used to derive representation estimates for each of the three pure systems.

Because several of the variables reduce to zero when other systems are in place, three equations can be derived from the results in Table 3:

At-Large Elections	Representation = .5283 + .0094 × Population ²
Ward Elections	Representation = −.1743 + .0148 × Population ²
Appointed	Representation = .8701 + .023 × Population ²

Because the various intercepts are not different from the at-large intercept, they can basically be ignored in discussions. Suffice it to say that while the at-large intercept is significantly different from zero, its size is trivial (that is, at 0% Latino population, the expected value of representation is .5%). The larger size of the population-squared coefficient for ward elections shows that they generate higher

TABLE 3

The Detrimental Impact of At-Large Elections: Latino School Boards

Dependent variable = Percent Latinos on School Board

Variable	Slope	t	tol.	Slope	t	tol.
Intercept	.5283	2.25	—	.5282	2.25	—
Latino Population Squared	.0094	21.45	.70	.0094	21.53	.70
Ward System	-.7026	1.77	.83	-.7054	1.78	.83
Ward x Population Squared	.0054	6.17	.67	.0054	6.20	.67
Appointed System	.3418	.33	.79	-1.2978	1.11	.63
Appointed x Population Squared	.0136	5.91	.78	—	—	—
Appointed x Population	—	—	—	.5112	6.21	.62
R-squared	.38			.38		
Standard error	6.61			6.60		
F	201.41			202.60		
N of cases	1,628			1,628		

Analysis includes districts only with less than 50% Latino population.

levels of Latino representation than at-large systems. Appointed systems generate the largest levels of representation, as found previously by Meier and Stewart (1991). For instance, with a Latino district population of 5%, expected Latino representation is .8% in at-large systems, .2% in ward systems, and 1.4% in appointed systems. With a Latino population of 25%, the respective numbers increase to 6.4%, 9.1%, and 15.2%; at 45%, the figures are 19.6%, 29.9%, and 47.2%.

The clear conclusion from Table 3 is that both *electoral* systems systematically underrepresent Latinos when they are a minority of the population, but at-large elections are significantly more detrimental to Latino representation than ward elections. It is unclear why some prior research found a lack of bias in at-large systems, but one possibility is that analyses that do not distinguish between majority and minority Latino districts may sometimes produce incorrect results. It is also possible that past research indicating differential ward and at-large effects was substantively correct but derived using incorrect models. Only a reanalysis of the data from previous projects would determine if this is the case.

We might also investigate some additional dimensions of the school board representation process, as Table 3 incorporated only two types of independent variables: population and selection plan. Such a regression overlooks the fact that Latinos are generally poorer, less well educated, less likely to own homes, and less likely to be citizens—all factors that affect voter turnout (Leighley 2001). Several demographic variables were therefore added to the equation in Table 3: percent of Latinos with college degrees, percent noncitizens, percent living in poverty, and median Latino family income. This new regression, which is not presented because of space considerations, shows that only the percentage of Latinos

who were noncitizens added any statistically significant explanation to the equation, and in that case the substantive impact was very small. To reduce Latino representation by 1.3 percentage points, fully one-half of all Latinos would need to not be citizens.⁵

As noted above, the theoretical arguments about electoral structure and ethnic minorities assume that ethnic minorities are a numerical minority. When Latinos become a numerical majority, electoral structure should have little effect on representation because they can simply use majoritarian electoral systems, such as at-large elections, to their advantage. To determine whether or not majority status changes the relationship between structure and representation, we replicated our analysis with the 106 school districts with a Latino majority. The equations in Table 4 include both linear relationships for population (as found in Table 2) and nonlinear relationships for population for comparison purposes.

Despite the substantial size of the coefficients for ward-based systems in both equations, none of the relationships are statistically significant. In short, when Latinos are a majority, there is no difference in the representational consequences of at-large elections compared to ward-based elections.

This finding should be qualified somewhat based on two additional bits of evidence. First, the equations are marked by a high degree of collinearity, thus making statistical significance difficult to obtain; tolerance levels for the linear relationship are especially low. At the same time, a joint *f*-test comparing the equations in Table 4 with those in Table 2 shows that the four additional variables as a group do not add a statistically significant level of explanation (*F*-test for the nonlinear specification = 1.67 with 4, 100 df, *p* = .16; *F*-test for the linear specification = 2.01, *p* = .10). Second, the appointive system relationships do appear to be somewhat different, with coefficients that approach or modestly exceed traditional levels of statistical significance. Because the translation of descriptive representation into substantive representation has been called into question in the literature (Meier and Stewart 1991), we leave the precise meaning of the relationships in appointive systems for future research.

Administrative Representation

Political representation on urban legislatures, be they city councils or school boards, has been linked to greater access to jobs for the represented group (Eisinger 1982; Mladenka 1989). Although there is some question as to whether the causal relationship runs from elected officials to employment or from employment to elected officials (Meier and Smith 1994), we will assume, as does the overwhelming majority of the literature, that the process flows from the top down—that is, representation on school boards increases representation in admin-

⁵ One reason why citizenship does not matter more than it does is that school district elections have very low turnout (often as little as 5% of registered voters). We also tried an interaction of the Latino population and the citizenship variable, but it was statistically insignificant.

TABLE 4
Selection Process Does Not Affect Latino Representation When
Latinos Are a Majority

Dependent variable = Percent Latinos on School Board						
Variable	Linear Slope	Population		Squared Slope	Population	
		t	tol.		t	tol.
Intercept	-65.40	6.21	—	-7.0380	1.25	
Latino Population	1.68	11.33	.71	.0116	11.25	.71
Ward System	-23.48	1.11	.04	-10.0413	.88	.15
Ward $\times$ Population	.34	1.15	.04	.0020	.98	.14
Appointed System	106.94	1.84	.04	48.6729	1.45	.11
Appointed $\times$ Population	-1.71	2.12	.04	-.0119	1.96	.11
R-squared	.65			.64		
Standard error	18.82			18.96		
F	39.46			38.55		
N of cases	106			106		

Analysis includes districts only with more than 50% Latino population.

istrative positions, and both in turn increase representation at the street level (in this paper, the teachers).

The first equation in Table 5 shows the relationship of Latino school board representation and population with the percentage of Latino administrators for minority districts. Population can be interpreted as a labor pool characteristic. Administrators are hired from a pool of individuals, a percentage of which will be Latino. To control for variation in the composition of the labor pool, therefore, the Latino population percentage is needed. In addition, the quality of this labor pool is affected by factors such as education levels, income, and even citizenship. Table 5 therefore controls for the Latino population percentage with college degrees, living in poverty, and who are not citizens.

Even with these controls, Latino board members are positively associated with more Latino administrators; a one percentage point increase in Latino board members is associated with a .16 percentage point increase in Latino administrators, *ceteris paribus*.⁶ The level of explained variation in Table 5 reveals that the hiring of Latino administrators is a far more predictable process than the election of school board members.

⁶The relationships in this table may all be nonlinear. When squared terms are added for both variables, all four slopes are positive and statistically significant. The level of explained variation increases by only three percentage points, however, and the literature does not contain any arguments about a nonlinear relationship.

TABLE 5

Latino Board Representation and Latino Administrators

Dependent variable = Percent Latino Administrators

Variable	Minority Slope	Districts		Majority Slope	Districts	
		t	tol.		t	tol.
Intercept	-.774	2.22	—	-26.866	2.85	
Latino Population	.327	30.31	.59	.391	2.40	.31
School Board Representation	.156	11.89	.68	.319	4.40	.33
Latino Non-Citizens	-.026	3.97	.89	-.359	2.55	.74
Latino College Graduates	.031	3.18	.68	1.619	3.76	.82
Latino Poverty	.014	1.44	.82	1.040	5.69	.66
R-squared	.62			.76		
Standard error	3.50			13.33		
F	450.86			65.63		
N of cases	1,371			101		

Table 5 also demonstrates how much other factors affect administrative hiring. The major influence on the percentage of Latino administrators hired is the percentage of Latino population, a percentage that reflects both the potential political clout of the Latino community as well as the potential pool of candidates for administrative positions. As expected, administrative representation increases with the percentage of college-educated Latinos. Even though citizenship is not a requirement for holding an administrative position in a school system, noncitizenship likely correlates with other factors that disadvantage Latinos, so the negative relationship is expected. The positive relationship between Latino poverty and administrative representation is likely a function of job opportunities. In communities with low poverty levels, well-paying jobs in the private sector are likely to attract many Latinos who might opt to be school administrators. High levels of poverty make safe, although lower paying, jobs in school systems more attractive. Even though each of these three relationships is statistically significant, their substantive impacts are relatively minor.

The second equation shows the same set of relationships for districts with a Latino majority. All relationships remain statistically significant although the size of the relationships, except for population, changes dramatically. The school board representation coefficient is now better than twice the size it was for minority Latino districts. Such a relationship is consistent with the notion that Latino representatives will be less constrained in pursuing their own interests in Latino majority jurisdictions than in jurisdictions where they are a minority. The other labor pool factors also increase in importance, thus suggesting that majority districts might be pushing up against the constraints of the size of the qualified labor force. The important finding in this second equation, however, is that Latino rep-

TABLE 6
The Determinants of Latino Teachers

Dependent variable = Percent Latino Teachers						
Variable	Minority Slope	Districts		Majority Slope	Districts	
		t	tol.		t	tol.
Intercept	-.058	.28	—	-32.268	7.16	—
Latino Population	.200	21.62	.36	.539	4.20	.30
School Board Representation	.055	5.93	.62	-.012	.19	.28
Latino Administrators	.290	16.04	.38	.467	6.04	.24
Latino College Grads	.013	2.06	.70	.890	2.54	.75
Latino Poverty	-.005	.72	.83	.435	2.64	.50
R-squared	.74			.82		
Standard error	2.35			10.43		
F	773.52			94.15		
N of cases	1,365			102		

resentation in majority districts differs from Latino representation in minority districts in significant ways.

Teacher Representation

Our final empirical analysis examines the determinants of Latino teachers. Well-developed models of teacher ethnicity in the literature suggest that labor pool characteristics (the size of the Latino population and the education levels of that population), Latino administrators, and Latino board members will be significantly linked to teacher representation. The strongest determinant of Latino teachers, however, is likely to be the percentage of Latino administrators.⁷

Table 6 reveals such a pattern. In Latino minority districts, a one percentage point increase in Latino administrators is associated with a .29 percentage point increase in Latino teachers, all other things being equal. Latino population also plays a role, but its impact is substantially less. Both Latino board representation and Latino college percentage have marginally significant relationships, but their direct substantive impact is small.⁸

⁷One potential question is what percentage of Latino teachers in the sample are bilingual education teachers. There are no national statistics on this question, but a separate Texas school data set indicates that less than 5% of Latino teachers are bilingual education teachers.

⁸To more fully explain this result, one might ask whether (1) non-Latino administrators resist hiring Latino teachers, (2) Latino administrators make extra efforts to hire Latino teachers, or (3) Latino teachers prefer to work for schools with relatively large numbers of Latino administrators. We cannot be certain which of these dynamics is taking place, but for the purposes of our study, it does not make a large difference whether one, two, or even all three are at work. The regressions show that the presence of Latino administrators leads to more Latino teachers, and it is beyond the scope of our paper to determine the relative importance of these three potential explanations.

The relationships for Latino majority districts are even more clear cut. Latino population, Latino administrators, and labor force characteristics matter, but school board representation does not. A one percentage point increase in Latino administrators is associated with a .47 percentage point increase in Latino teachers, all other things being equal. The corresponding impact for Latino population is a .54 percentage point increase.

The relative magnitude of the school board and administrators findings makes sense because administrators hire teachers and much of this process takes place in the schools rather than in front of the board. A number of researchers have indeed noted the indirect impact of school boards on many district decisions, as much power has devolved to administrators over time.⁹ In Latino minority districts, the impact of school board members is very small; in Latino majority districts, the influence cannot be distinguished from zero. Board members may lack a direct way to influence the composition of these street level bureaucrats. If the causal sequencing is correct, however, Latino school board members have a substantial indirect effect on teacher composition by affecting the ethnicity of school administrators.¹⁰

Conclusions

This is the first paper in a national study designed to update and expand the findings of previous research regarding the political factors and policy practices that influence educational outcomes for Latino students. Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students (Meier, Stewart, and England 1989; Reyes, Scribner, and Scribner 1999; Spring 2000). Meier and Stewart went further in their assessment of the importance of Latino representation when they identified it as the *one* contributing variable that can be manipulated or changed by "concerted political efforts and appropriate policy decisions" (1991, 210). In this report we focus on descriptive representation with the objective of improving our ability to explain and predict the population-representation relationship.

A contemporary study of this topic is useful for several reasons. First, research in the 1970s and the 1980s arrived at different conclusions about the influence of electoral structure on minority educational representation. Second, the Latino population is now located in a different social and political situation. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino chil-

⁹ See Tyack (1974) for a discussion of how the responsibility for teacher hiring changed over time. Other research further suggests that the impact of Latino board members on the hiring of Latino teachers is real although indirect (Wirt and Kirst 2001, 164).

¹⁰ One might ask whether any of the above relationships vary according to which Latino national-origin group comprises the majority of the district population. We were able to test this possibility by separately analyzing majority Mexican-American districts and majority Puerto Rican districts. The regression results derived from these subsamples were very similar to those derived from the overall sample. There were only two plurality Cuban-American districts, however, and there were no majority or plurality districts for other Latino national-origin groups.

dren are now encountering significant and growing numbers of such students. A new and comprehensive national study is therefore important to understanding how Latino educational representation fares in this new and expanding context.

Third, to advance the methodology of analysis, the paper tests for a nonlinear population effect, which was not conducted in the educational representation literature. We also separately examine majority Latino population districts and minority Latino population districts, which was not done by previous research. Lastly, given the extensive litigation over city council districts, current school boards may represent the last opportunity to investigate whether and how electoral structures affect minority representation on political bodies in contemporary America.

Overall, our findings highlight the complexity of the relationship between Latino populations and their representation on school boards. Looking strictly at levels of population and levels of representation on school boards, earlier studies found Latinos significantly underrepresented. Our analysis shows this trend continues and appears to be growing.

The presence of a threshold effect, however, suggests that a nonlinear specification may be appropriate. We also note that Latinos (like any group) may be able to profit from at-large districting when they are a majority of the population. We test a squared population term and divide the sample into majority and minority Latino districts. The nonlinear Latino population variable is significant in the minority Latino districts and adds additional explanation to the overall equation. Both population variables are insignificant in the majority Latino districts and the model contains significant collinearity, however, thus suggesting that in these districts the relationship between Latino population and Latino representation remains linear.

A key question in the literature is the ethnic bias of different selection plans. Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with ward elections than with at-large elections. Our findings show that at-large election systems usually disadvantage Latinos; the obvious policy recommendation is that at-large systems should be replaced by single-member systems.

Interestingly, appointment systems appear more efficient than ward elections. We contend that the circumstances in appointment systems, however, are fundamentally different from elections. These differences may produce higher representation but potentially change the impact of representation. Why? The attitudes and priorities of political appointees may more closely reflect those of community elites rather than the general population, or appointees simply may behave differently than elected officials. Further study is clearly needed on the political context of appointment systems and its effect on appointee attitudes and behaviors.

We also explored other population demographics that were hypothesized to influence the low level of Latino representation on school boards. Based on theories of participation and group power, we expected the political resources of the population—income, education, and citizenship—to play a role. We found that the low socioeconomic status of the Latino population has no effect on the rela-

tionship. The percentage of the population that is ineligible to vote (noncitizens) has a negative effect, not surprisingly, but the size of that impact is trivial.

Finally, although our models predicting Latinos in lower positions of school authority basically mirror those previously reported, our analysis serves to emphasize the linkage between descriptive and substantive representation. While characteristics of the available labor pool play a role in predicting the presence of Latino administrators and teachers, they are overshadowed by the importance of having Latinos at higher levels of authority. Latino representation on school boards is significantly associated with increases in the percentage of Latino administrators, and the percentage of Latinos in administration is the most important variable determining the presence of Latino teachers. As we know the Latino community wants more Latinos teaching their children, greater Latino school board representation is therefore more likely to lead to education policies congruent with community wishes.

Acknowledgment

An earlier version of this paper was presented at the 2002 annual meeting of the Western Political Science Association, Long Beach, CA. We would like to thank Eric Gonzalez Juenke, Miner P. Marchbanks, III, and Nick Theobald for assistance collecting the data and compiling the data set. Financial support was provided in part by the Cantu Hispanic Education and Opportunity Endowment and the Texas Educational Excellence Project at Texas A&M University. The first author would like to acknowledge the support of a National Academy of Education/Spencer post-doctoral fellowship.

Manuscript submitted November 12, 2002

Final manuscript received January 30, 2004

References

- Bezdek, Robert, David Billeaux, and Juan Carlos Huerta. 2000. "Latinos, At-Large Elections, and Political Change: Evidence from the 'Transition Zone.'" *Social Science Quarterly* 81 (March): 207-25.
- Bianco, William. 1994. *Trust: Representatives and Constituents*. Ann Arbor: University of Michigan Press.
- Carrasquillo, Angella. 1994. "A Rationale for Hispanic Representation in Instructional Materials." *The Journal of Educational Issues of Language Minority Students* 14 (Winter): 115-26.
- Davidson, Chandler, and George Korbel. 1981. "At-Large Elections and Minority Group Representation: A Re-Examination of Historical and Contemporary Evidence." *Journal of Politics* 43(4): 982-1005.
- Davidson, Roger, and Walter Oleszek. 2000. *Congress and Its Members*. Washington: Congressional Quarterly Press.
- Dee, Thomas S. 2001. "Teachers, Race and Student Achievement in a Randomized Experiment." NBER Working Paper Series, Working Paper 8432. Cambridge: National Bureau of Economic Research.

- Eisinger, Peter K. 1982. "Black Employment in Municipal Jobs: The Impact of Black Political Power." *American Political Science Review* 76 (June): 380-92.
- Engstrom, Richard, and Michael McDonald. 1981. "The Election of Blacks to City Councils." *American Political Science Review* 75 (June): 344-54.
- Fraga, Luis R., Kenneth J. Meier, and Robert E. England. 1986. "Hispanic Americans and Educational Policy: Limits to Equal Access." *Journal of Politics* 48(4): 850-76.
- Garcia, Eugene. 2001. *Student Cultural Diversity: Understanding and Meeting the Challenge*, 3rd ed. Boston: Houghton Mifflin.
- Hall, Richard. 1996. *Participation in Congress*. New Haven: Yale University Press.
- Grossman, Harvey. 1995. *Special Education in a Diverse Society*. Boston: Allyn & Bacon.
- Hess, Frederick, and David Leal. 1997. "Minority Teachers, Minority Students and College Matriculation: A New Look at the Role-Modeling Hypothesis." *Policy Studies Journal* 25 (Summer): 235-48.
- Karnig, Albert, and Susan Welch. 1979. "Sex and Ethnic Differences in Municipal Representation." *Social Science Quarterly* 60 (December): 465-81.
- Leighley, Jan E. 2001. *Strength in Numbers? The Political Mobilization of Racial and Ethnic Minorities*. Princeton: Princeton University Press.
- Lipsky, Michael. 1980. *Street Level Bureaucracy*. New York: Russell Sage Foundation.
- Leal, David, and Frederick Hess. 2000. "The Politics of Bilingual Education Expenditures in Urban School Districts." *Social Science Quarterly* 81 (December): 1064-72.
- Lopez, Manuel Mariano. 1981. "Patterns of Interethnic Residential Segregation in the Urban Southwest." *Social Science Quarterly* 62 (March): 50-63.
- MacManus, Susan. 1978. "City Council Election Procedures and Minority Representation." *Social Science Quarterly* 59 (June): 153-61.
- McDonald, Michael, and Richard Engstrom. 1992. "Minority Representation and City Council Electoral Systems: A Black and Hispanic Comparison." In *Ethnic and Racial Minorities in Advanced Industrial Democracies*, eds. Anthony Messina, Luis Fraga, Laurie Rhodebeck, and Frederick Wright. New York: Greenwood Press, pp. 127-42.
- Meier, Kenneth J., and Kevin B. Smith. 1994. "Representative Democracy and Representative Bureaucracy: Examining the Top Down and the Bottom Up Linkages." *Social Science Quarterly* 75 (December): 790-803.
- Meier, Kenneth J., and Joseph Stewart, Jr. 1991. *The Politics of Hispanic Education*. Albany: State University of New York Press.
- Meier, Kenneth J., Joseph Stewart, Jr., and Robert E. England. 1989. *Race, Class and Education: The Politics of Second Generation Discrimination*. Madison: University of Wisconsin Press.
- Meier, Kenneth J., Robert D. Wrinkle, and J. L. Polinard. 1999. "Representative Bureaucracy and Distributional Equity: Addressing the Hard Question." *Journal of Politics* 61(4): 1025-39.
- Meier, Kenneth J., Warren S. Eller, Robert D. Wrinkle, and J. L. Polinard. 2001. "Zen and the Art of Policy Analysis: A Response to Nielsen and Wolf." *Journal of Politics* 63(2): 616-29.
- Mladenka, Kenneth R. 1989. "Barriers to Hispanic Employment Success in 1,200 Cities." *Social Science Quarterly* 70 (June): 391-407.
- Nielsen, Laura B., and Patrick J. Wolf. 2001. "Representative Bureaucracy and Harder Questions: A Response to Meier, Wrinkle, and Polinard." *Journal of Politics* 63(2): 598-615.
- Nieto, Sonia. 1999. *The Light in Their Eyes: Creating Multicultural Learning Communities*. New York: Teachers College Press.
- Orfield, Gary, and John Yun. 1999. *Resegregation in American Schools*. <<http://www.law.harvard.edu/groups/civilrights/publications/resegregation99.html>>. Cambridge: The Civil Rights Project, Harvard University. Accessed: June 1, 2000.
- Pitkin, Hanna. 1967. *The Concept of Representation*. Berkeley: University of California Press.
- Polinard, J. L., Robert Wrinkle, and Thomas Longoria. 1990. "Education and Governance: Representational Links to Second Generation Discrimination." *Western Political Quarterly* 43 (September): 631-46.

- Polinard, J. L., Robert Wrinkle, and Thomas Longoria. 1991. "The Impact of District Elections on the Mexican American Community: The Electoral Perspective." *Social Science Quarterly* 72 (September): 608-14.
- Rabinovitz, Francine, and Edward Hamilton. 1980. "Alternative Electoral Structures and Responsiveness to Minorities." *National Civic Review* 69 (July): 371-401.
- Reyes, Pedro, Jay D. Scribner, and Alicia Paredes Scribner, eds. 1999. *Lessons from High-Performing Hispanic Schools*. New York: Teachers College Press.
- Riley, Richard, and Delia Pompa. 1998. *Improving Opportunities: Strategies from the Secretary of Education for Hispanic and Limited English Proficient Students*. Washington: U.S. Department of Education.
- Romo, Harriet D., and Toni Falbo. 1996. *Latino High School Graduation: Defying the Odds*. Austin: University of Texas Press.
- Secada, Walter, Rudolfo Chavez-Chavez, Eugene Garcia, Ciprano Munoz, Jeannie Oakes, Isaura Santiago-Santiago, and Robert Slavin. 1998. *No More Excuses: The Final Report of the Hispanic Dropout Project*. Washington: U.S. Department of Education.
- Spring, Joe. 2000. *American Education*, 9th ed. Boston: McGraw-Hill.
- Taebel, Delbert. 1978. "Minority Representation on City Councils." *Social Science Quarterly* 59 (June): 142-52.
- Toch, Thomas, and Kukula Glastis. April 18, 1994. "Who's Minding the Schools?" *U.S. News & World Report*, 78-79.
- Tyack, David. 1974. *The One Best System: A History of American Urban Education*. Cambridge: Harvard University Press.
- U.S. Department of Education, National Center for Education Statistics. 2001. *Common Core of Data: Public Elementary/Secondary School Universe Data, 1998-99*. Washington: U.S. Department of Education.
- Valdes, Guadalupe. 1996. *Con Respeto: Bridging the Distance between Culturally Diverse Families and Schools: An Ethnographic Portrait*. New York: Teachers College Press.
- Weisberg, Robert. 1978. "Collective vs. Dyadic Representation in Congress." *American Political Science Review* 72 (June): 535-47.
- Welch, Susan. 1990. "The Impact of At-Large Elections on the Representation of Blacks and Hispanics." *Journal of Politics* 52(4): 1050-76.
- Welch, Susan, and Albert Karnig. 1978. "Representation and Blacks on Big City School Boards." *Social Science Quarterly* 59 (June): 162-72.
- White House Initiative on Educational Excellence for Hispanic Americans. 1999. *Latinos in Education: Early Childhood, Elementary, Secondary, Undergraduate, Graduate*. ERIC Clearinghouse on Urban Education.
- Wirt, Frederick M., and Michael W. Kirst. 1989. *Schools In Conflict: The Politics of Education*. Berkeley, CA: McCutchan Publishing Company.
- Wirt, Frederick, and Michael Kirst. 2001. *The Political Dynamics of American Education*. Richmond, CA: McCutchan Publishing Company.
- Zax, Jeffrey. 1990. "Election Methods and Black and Hispanic City Council Membership." *Social Science Quarterly* 71 (June): 339-55.

David L. Leal is assistant professor of government, The University of Texas at Austin, Austin, TX 78712-1087, (dleal@gov.utexas.edu). Valerie Martinez-Ebers is associate professor of political science, Texas Christian University, Fort Worth, TX 76129, (v.martinez@tcu.edu). Kenneth J. Meier is Charles Puryear Professor of Liberal Arts and professor of political science, Texas A&M University, College Station, TX 77843-4348, (kmeier@polisci.tamu.edu).

EXHIBIT “F”

COUNCIL AGENDA REPORT

TO: City Council

FROM: City Manager and City Attorney

SUBJECT: RESOLUTION DECLARING THE CITY OF SANTA MARIA'S INTENTION TO TRANSITION FROM AN AT-LARGE CITY COUNCIL ELECTED PROCESS TO A DISTRICT-BASED ELECTION PROCESS PURSUANT TO ELECTIONS CODE SECTION 10010

RECOMMENDATION:

That the City Council adopt a resolution declaring its intention to transition from an at-large City Council election process to a district-based elections process, outlining specific steps it will take and providing an estimated timeline for doing so pursuant to Elections Code Section 10010.

BACKGROUND:

The City received a certified letter on December 16, 2016, from Jason Dominguez, Esq., on behalf of his client Hector Sanchez, an unsuccessful candidate for City Council in the November 2016 election, asserting that the City's at-large electoral system violates the California Voting Rights Act, codified at California Elections Code sections 14025-14032 ("CVRA"). Mr. Dominguez claims "polarized voting" may be occurring and threatens litigation if the City declines to adopt district-based elections.

The CVRA was signed into law in 2002. The law was motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the Federal Voting Rights Act ("FVRA"). In fact, the City of Santa Maria had successfully defended a FVRA lawsuit in the early 1990's brought by the Mexican American Legal Defense and Education Fund. This litigation cost over \$1 million to defend and took ten years to resolve in the City's favor.

The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elected their members to its governing body through "at-large" elections with the ultimate goal to transition to "district-based" elections. By way of background, in a district-based election system, a candidate must live in the district he or she wishes to represent.

It is staff's understanding that no such FVRA lawsuits have been filed in California since 2000. Accordingly, all voting rights lawsuits in California have been filed under the CVRA since its passage. Under the CVRA, to prove a violation, plaintiffs must only demonstrate that there is "racially polarized voting." This occurs when there is a

difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate. Plaintiffs in other litigation have taken the position that the CVRA does not require a showing of discriminatory intent or an actual electoral injury. They have further argued that the CVRA does not require proof that racially polarized voting actually resulted in the defeat of a group's preferred candidate. No appellate court has yet ruled on these issues.

Cities throughout the State have increasingly been facing legal challenges to their "at-large" systems of electing City Council members. Almost all have settled claims out of court by essentially agreeing to voluntarily shift to district-based elections, while others have defended CVRA challenges through the courts. Ultimately, these cities have either voluntarily adopted, or have been forced to adopt, district-based elections. The exception is the City of Santa Clarita that resolved the CVRA action filed against it by agreeing to change the date of its general municipal election to November of even-numbered years.

Cities that have attempted to defend their existing "at-large" system of City Council elections in court have incurred significant legal costs, including attorneys' fees incurred by plaintiffs. Awards in these cases have reportedly ranged from about \$400,000 to over \$3,500,000. When sued, the settlements entered into by cities typically have included paying the plaintiff's attorney fees. For example, in February 2015, the City of Santa Barbara reportedly paid \$800,000 in attorneys' fees and expert costs to settle their CVRA lawsuit. Another example is the City of Palmdale that incurred expenses in excess of \$4.5 million in its unsuccessful attempt to defend against a lawsuit brought under the CVRA. Moreover, what is most concerning is that staff is unaware of any city that has prevailed in defending its "at-large" system of election under a claim filed by any individual or group under the CVRA. Accordingly, staff has concluded that the public's best interest is in preserving and protecting vital general fund revenues from being unnecessarily expended (given the low probability of defending against a CVRA lawsuit) and that this interest outweighs the public's interest in maintaining the current at-large voting system.

DISCUSSION:

Accordingly, after much analysis and in-depth conversations with those most familiar with these types of litigation matters, staff is recommending that the City Council adopt a resolution declaring its intention to transition from at-large to district-based elections following the procedures required by Elections Code section 10010, as amended by AB 350, to establish voting districts. Staff makes this recommendation due to the extraordinary costs to successfully defend against a CVRA lawsuit and the fact that no apparent city has successfully prevailed against a CVRA lawsuit, and that the public interest would best be served by transitioning to a district-based electoral system.

While the City has a sustained history of electing Latinos/as to the City Council, the outcome of litigation is always uncertain. Unlike other cities where at-large elections have prevented Latinos from electing candidates of their choice, the election history for the Santa Maria City Council has demonstrated that Latino candidates have been

regularly elected. Since 1996, at least one Latino/a has been elected to the City Council in each election except the November 2012 election where a Latina candidate (Waterfield) lost by only two votes. In all, ten Latinos/as have been elected to the City Council in the last twenty years. In addition, partly because of appointments made by the City Council to fill unexpired terms, the City Council has been represented by a Latino majority from 2002 until 2010 and the current City Council is a Latino elected majority. Notwithstanding the aforementioned history of being able to elect Latinos to the City Council, the CVRA essentially makes any at-large election vulnerable to challenge with a low probability of successfully defending against such a challenge.

Staff estimates that the cost to defend this lawsuit would exceed \$1,000,000 even if it were successful, and would likely exceed \$2,000,000 if the plaintiff prevailed and the City was ordered to pay plaintiff's attorneys' fees. These attorney fees and costs would be a General Fund liability which would be a significant unexpected expense that could not come at a worse time since the City already has a multi-million dollar structural budget deficit AND pension-related expenses continue to escalate.

It should be noted that Government Code section 34886 permits the legislative body of any city to adopt an ordinance establishing election of members of the legislative body by district. AB 350 was recently adopted by the State Legislature and became effective on January 1, 2017, and amended Elections Code section 10010 to place a cap of a maximum of \$30,000 on attorneys' fees that a plaintiff would be entitled to recover if the target city voluntarily adopted an ordinance to establish voting districts either before or after receiving notice of a CVRA violation. In addition, AB350 prohibits a plaintiff from filing a CVRA lawsuit within 90 days of a city's adoption of a resolution declaring its intention to transition to district-based elections. Accordingly, should the City Council adopt the proposed resolution, the maximum the City will have to reimburse Mr. Dominguez in attorneys' fees and costs is \$30,000, and plaintiff would be prohibited from filing a CVRA lawsuit until May 22, 2017.

Alternatives:

1. The City Council may elect to place this issue on the ballot and let the electorate decide if they prefer district-based elections. However, even if the voters rejected district-based elections, the City would be vulnerable to a CVRA lawsuit if racially polarized voting is occurring in the City.
2. The City Council may direct staff to defend against any CVRA lawsuits that may be filed. This option will be very expensive to defend, and even if successful, would expose the City to an award of costly attorneys' fees.

Fiscal Considerations:

There will be significant staff time needed to transition to district-based elections because of the staff time that will be incurred for the five (5) public hearings that will be required in addition to the cost for a demographics and elections consultant and special legal counsel. Should the City Council concur with staff's recommendation, the City will only be required to reimburse plaintiff for its attorney's fees and costs up to \$30,000. In addition, staff expects roughly a \$10,000 increase in election costs for district-based

elections during each of the upcoming election cycles. These fiscal impacts are necessary and unavoidable if the Council transitions to district-based elections.

Impact to the Community:

The decision to change from at-large to district-based voting may have a substantial impact on the community since the City Council has been elected at-large since the City's incorporation in 1905. There may be a profound and noticeable impact to the community if the City adopts district-based elections and confusion until district-based elections are fully implemented in 2020. As proposed, two council seats will be elected by-district in the 2018 election and two or three council seats (pending the outcome of the five public hearings) in the 2020 election after the current incumbents have served their full terms. In some situations, the Mayor may be elected at-large, but all other members of the City Council must reside in the district they represent. The decision whether to establish four voting districts with the Mayor elected at-large, or five voting districts is one of the topics that will be decided upon by the City Council as a result of the minimum of five (5) public hearings that will be held as required by California Elections Code section 10010 should it adopt the proposed resolution.



RICHARD J. HAYDON
City Manager



GILBERT A. TRUJILLO
City Attorney

EXHIBIT “G”

**RESOLUTION OF THE GOVERNING BOARD
OF THE GOLETA UNION SCHOOL DISTRICT
Resolution No. 2019-01**

**Resolution to Initiate a Transition to a By-Trustee Area Election System Commencing
with the 2022 Governing Board Election and Statement of Intent to Seek a Waiver of the
Election Requirement from the State Board of Education**

WHEREAS, the Goleta Union School District Board of Education ("Board") is keenly aware of the importance of maintaining a fair election system;

WHEREAS, the Board has always strived to listen to all voices in the community and represent all of our community;

WHEREAS, California Education Code sections 5019(a) & (c)(1) and 5030 authorizes the Santa Barbara County Committee on School District Organization ("County Committee"), upon application of a school district's governing board, to change the method of election of governing board members in a school district under its jurisdiction;

WHEREAS, the California Voting Rights Act (Elections Code §§ 14025 *et seq.*) ("CVRA") prohibits the use of an "at-large" election system for governing board members of a school district if the "at-large" elections may impair the ability of a protected class to elect candidates of its choice, or its ability to influence the outcome of an election;

WHEREAS, Governing Board ("Board") Members of the Goleta Union School District ("District") are currently elected using an "at-large" election system (i.e., election system in which registered voters of the entire jurisdiction elect candidates to the governing board);

WHEREAS, it is considered the view of the Board that starting with the 2022 Board elections, and with the benefit of then-updated federal decennial Census data released in 2021, the public interest may be better served by election of its Board members using a "by-trustee area" election system (i.e., elections in which one candidate residing in each trustee area is elected by only the registered voters in that particular trustee area);

WHEREAS, although Education Code section 5020 requires that a County Committee's resolution approving a change in the method of electing governing board members be submitted to the electorate for its approval at the school district's next regular election following the District's formal adoption of the new election system, the Board intends to seek a waiver of the voter approval requirement as permitted by law. Education Code sections 33050-33053 authorize the State Board of Education to waive this voter approval requirement, which could reduce the costs and risks associated with a school district's transition to a "by-trustee area" election system;

WHEREAS, the Board finds it is appropriate to seek a waiver of the election requirement in Education Code section 5020, and portions of sections 5019, 5021, and 5030, to ensure the timely implementation of the "by-trustee area" election system commencing with the 2022

Governing Board election, to reduce costs for the District associated with placing an item on the ballot and to reduce any potential legal liability or financial risk to the District under the CVRA;

WHEREAS, the adoption of “by-trustee area” elections will not affect the terms of any Board members serving or elected during this transition, each of whom will serve out his or her full term; and

WHEREAS, the Board, cognizant of its need for fiscal responsibility, desires to implement this change in the manner of electing Board members in a cost effective and efficient manner.

NOW, THEREFORE, the Governing Board of the Goleta Union School District does hereby resolve, order and determine as follows:

1. The above recitals are true and correct.
2. The Board hereby determines that the trustee area boundary lines shall be developed based on the most updated federal decennial Census data following its release in 2021 to provide for “by-trustee areas” elections commencing in 2022.
3. By this resolution, and pursuant to Education Code sections 5019(a) and 5030, the Board directs District staff, when timely, to transmit this resolution to the Santa Barbara County Committee on School District Organization to apply to have the County Committee adopt a change in the method of electing members of the board from “at-large” elections [Education Code section 5030(a)] to “by-trustee area” elections [Education Code section 5030(b)] commencing with the 2022 Board elections.
4. Before submitting a final proposal to the County Committee for a trustee area plan using the federal Census data, multiple public hearings in accordance with Elections Code section 10010 shall be scheduled to obtain public input on the draft proposals prepared.
5. The Board shall apply to the County Committee for establishment of trustee areas pursuant to Education Code section 5019(a) in a timely manner to have the 2022 elections for the Board conducted within the new trustee areas.
6. The Superintendent, or her designee, shall send a copy of this resolution to the County Committee for action in accordance with law.
7. The Superintendent, or her designee, is hereby directed to prepare an additional Board resolution, and implement the applicable legal requirements in a timely manner, to seek a waiver from the State Board of Education of the election requirement imposed by Education Code section 5020.
8. The Superintendent, or her designee, shall consult with legal counsel to resolve all legal issues necessary to give effect to this resolution.
9. The foregoing resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board on January 9, 2019, at a duly noticed meeting by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I, Susan Epstein, Clerk of the Governing Board of the Goleta Union School District, HEREBY CERTIFY that the foregoing Resolution was duly introduced, passed and adopted by the Board at a meeting thereof held on January 9, 2019, by a vote of _____ to _____.

IN WITNESS THEREOF, I have hereto set my hand this ____ day of _____, 2019.

Clerk of the Governing Board

390-112/4392421.1

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE

This CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into on this 9th day of January, 2019 ("Effective Date") by and between the GOLETA UNION SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California, operating within Santa Barbara County ("DISTRICT"), and LINDSAY ROJAS and HECTOR MENDEZ, residents of District ("Prospective Plaintiffs"). The above parties are referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. The Goleta Union School District Board of Education ("Board") is keenly aware of the importance of maintaining a fair election system. The Board has always strived to listen to all voices in the community and represent the interests of the entire community. Currently, members of the Board are elected pursuant to an "at-large" election system in which registered voters of the entire jurisdiction elect candidates to the Board.
- B. On November 26, 2018, the District received a Notice of Violation ("Notice") of the California Voting Rights Act ("Act") from Prospective Plaintiffs, dated November 20, 2018, alleging that the District's at-large system of electing District Board members violates the Act and threatening suit unless the District transitions to a district-based electoral system, an election method in which a candidate must reside within an election district or "trustee area" that is a divisible part of the District and is elected only by voters residing within that election district.
- C. The District denies that the District's at-large electoral system violates the Act. Nevertheless, in recognition that litigation involves significant costs and uncertainty, the District desires to enter into this Agreement.
- D. The Parties mutually desire to delay the institution of district-based elections until 2022 so that the trustee-area boundaries may be drawn based on 2020 federal decennial Census data, which will not become available until 2021.
- E. The Parties now wish conditionally to resolve and settle the Notice and all attendant and potential litigation arising therefrom.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree:

1. Obligations of Parties

- A. At or before its regular meeting on February 6, 2019, the District will consider approval of a resolution of intent to institute a district-based election system for District Board elections by the November 2022 regular election.¹ The District

¹ The November 2022 regular election will occur on November 8, 2022.

already planned to consider such a resolution at a January 2019 Board meeting prior to receiving the Notice.

- B. Provided that the District adopts the resolution described in subsection A, Prospective Plaintiffs shall not bring suit against the District prior to November 9, 2022 for any cause of action related to the District's electoral system, including, but not limited to, suit seeking the implementation of district-based elections or claims related to or arising from the Notice.
- C. Provided that the District adopts the resolution described in subsection A, within 30 days of such adoption, the District will remit a payment of \$30,000.00 (thirty thousand dollars) to Prospective Plaintiffs as reimbursement of its costs incurred for the work product to support the Notice in fulfillment of the requirement to reimburse prospective plaintiffs' reasonable costs pursuant to Elections Code section 10010(f). The check will be made payable to Prospective Plaintiffs' attorney-of-record Robert Goodman to his trust account Robert Goodman Trust Account. Pursuant to Elections Code section 10010(f)(1), Prospective Plaintiffs have made a demand for reimbursement and staff has substantiated that the documentation provided by Prospective Plaintiffs represents the demography and legal costs incurred by Prospective Plaintiffs supporting their Notice.

2. Condition Precedent

Prospective Plaintiffs acknowledge, understand and agree that the District's passing of the resolution described in Section 1 is an express condition precedent to the consummation of this Agreement and the covenants, conditions and agreements contained herein. In the event that the resolution is not approved as set forth in Section 1, then this Agreement shall be null and void and shall be of no further force and effect. In such event, neither this Agreement, nor any of its terms or provisions, shall be admissible in any action or proceeding initiated by Prospective Plaintiffs for any purpose.

Further, the Prospective Plaintiffs recognize and acknowledge that the District is under no obligation to pass the resolution and that the District reserves its discretion and the full measure of its powers to evaluate the resolution in accordance with applicable procedures, standards and requirements. It is understood and agreed that this Agreement shall not be construed in any fashion as an advance determination and does not provide the Prospective Plaintiffs with any expectation as to the outcome of the District's decision on the resolution. The District's lack of approval or inaction on the resolution will not constitute a default of this Agreement, but instead will constitute a terminating event of this Agreement.

3. Admissibility of Agreement

If the District does not institute district-based elections for District Board elections by the November 2022 regular election, this Agreement shall not be construed as an admission by the District that such failure to act is unreasonable or unlawful under the Elections Code. In addition, this Agreement may not be introduced into or be admissible in any

judicial proceeding other than a judicial proceeding to enforce the terms of this Agreement.

4. Release

- A. Subject to the performance of the Parties' obligations in this Agreement, the Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective officers, employees, agents, representatives and attorneys) (the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any way connected with, arising out of or in any way relating to the Notice (collectively, the "Released Claims"). In connection with the release of the Released Claims, the Parties waive any and all rights that they may have under the provisions of section 1542 of the California Civil Code, which states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

- B. The Parties understand and acknowledge that the foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the execution of this Agreement, but which the Parties do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.
- C. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any Party.
- D. Except as provided in Section 1.C. of this Agreement, each of the Parties waives any and all claims for the recovery of any costs, expenses, or fees, including attorney fees, associated with the matters and claims released in this Agreement.

5. Representations and Warranties

- A. Prospective Plaintiffs hereby represent and warrant to the District, as of the Effective Date, as follows:
- i. They have not heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim, or any part or portion thereof.
 - ii. To the best of their knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against the Prospective Plaintiffs that would adversely affect their ability to consummate the transactions contemplated in this Agreement. To the best of their knowledge, Prospective Plaintiffs are not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against the District, whether asserted or not, that have not been fully released and discharged by the release set forth in this Agreement.
 - iii. Prospective Plaintiffs have freely entered into this Agreement and are not entering into this Agreement because of any duress, fear, or undue influence; this Agreement is being entered into in good faith.
 - iv. Prospective Plaintiffs have made such investigation of the facts pertaining to this Agreement as they deem necessary.
 - v. Prospective Plaintiffs have, prior to the execution of this Agreement, obtained the advice of independent legal counsel of their own selection regarding the substance of this Agreement and the claims released herein.
- B. In executing this Agreement, Prospective Plaintiffs acknowledge, represent, and warrant to the District that they have not relied upon any statement or representation of any District officer, agent, employee, representative, or attorney regarding any facts not expressly set forth within this Agreement. In entering into this Agreement, Prospective Plaintiffs assume the risk of any misrepresentations, concealment or mistake, whether or not they should subsequently discover or assert for any reason that any fact relied upon by them in entering into this Agreement was untrue, or that any fact was concealed from them, or that their understanding of the facts or of the law was incorrect or incomplete.
- C. The representations and warranties of each of the Parties set forth in this Section and elsewhere in this Agreement will survive the execution and delivery of this Agreement and are a material part of the consideration to the District in entering into this Agreement.

6. Interpretation

- A. The Parties have cooperated in the drafting and preparation of this Agreement and, in any construction or interpretation to be made of this Agreement, the same

shall not be construed against any Party. This Agreement is the product of bargained for and arm's length negotiations between the Parties and their counsel. This Agreement is the joint product of the Parties.

- B. This Agreement is an integrated contract and sets forth the entire agreement between the Parties with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by either Party.
- C. This Agreement may not be changed, modified or amended except by written instrument specifying that it amends such agreement and signed by both Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.
- D. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.
- E. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, officers, employees, agents, heirs, devisees, successors and assigns.

7. Further Cooperation

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties.

8. No Third Party Beneficiaries

Nothing in this Agreement is intended to benefit any third party or create a third party beneficiary. This Agreement will not be enforceable by any person not a Party to this Agreement.

9. Enforced Delay (Force Majeure)

- A. Performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, quarantine, casualties, acts of God, litigation,

governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement.

- B. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Either Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists but in any event not longer than for such period of time.

10. Governing Law; Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this Agreement must be commenced in the state courts of the State of California, County of Santa Barbara, and each party hereby consents to the jurisdiction of the above courts in any such action and to venue in the State of California, County of Santa Barbara, and agrees that such courts have personal jurisdiction over each of them.

11. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

12. Effectiveness

This Agreement shall become effective immediately following execution by each of the Parties and ratification by the Goleta Union School District Board of Education as required by Education Code section 17604.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below ("Date of Execution").



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: David Laredo, City Attorney
MEETING DATE: December 1, 2021
SUBJECT: Voting Rights Act Status Review
CEQA: Does not constitute a "Project" per California Environmental Quality Act
Guidelines Section 15378

RECOMMENDATION

Receive presentation requested by Mayor Peake.

Attachments

PPT

Voting Rights Act

Status Review



City Council
City of Pacific Grove

December 1, 2021

David C. Laredo, City Attorney

PRGCC-12-2021
Page 16

California Voting Rights Act (CVRA)

Elections Code Section 14040

- Election systems cannot impair ability of a protected class to influence an election.
- A way to avoid CVRA challenges is to use area (“district” or “division”) elections.
- District/division elections require each council member reside within an area boundary.
- Successful election challenge can award reasonable attorney’s fee and expenses.

* * * * *

- Pacific Grove now elect Council Members “at-large”: all City voters elect each member.
- 3 members are elected every even-numbered year & serve 4-year terms.
- 3 Council seats set for November 2022; the other 3 seats set for November 2024.
- The Mayor is elected for a 2-year term each even-numbered year.

Moving to Voter Election Districts

Non-at-large election districts must be based on U.S. Census data.

Change the at-large election to separate voter districts requires local neighborhoods and communities be grouped into separate election areas to select council members.

Before creating each voter division, the City Council must seek input regarding different maps before finalizing area maps for council member elections.

The public must have an opportunity to share their views on the election area boundaries that best represent the community.

Criteria used for voter districts

If practicable, election district lines must use the following criteria, in order of priority:

- (1) ***geographically contiguous*** areas (each to share a common border with the next),
- (2) ***geographic integrity*** of neighborhoods to minimize separation,
- (3) ***identifiable boundaries***, such as streets, highways, etc.),
- (4) ***geographic compactness*** is favored, and .
- (5) ***boundaries that do not favor or discriminate*** against a political party.

What Is Redistricting?

Once voter districts are first created, election districts must be redrawn every ten years following the decennial census to ensure each voter area is substantially equal in population.

This process is called “redistricting.” The process ensures each elected official represents approximately the same number of constituents.

What Steps Are Involved?

Decide to Explore Creation on Voter Districts... or Not...

To Explore Voter Districts, engage an elections system demographer

Demographer costs approximate \$15,000 to \$35,000

Process can take 6 – 9 months

Public Engagement is Required

Publicize the voter district process using local media

Community groups notified via workshops, online posting of maps, and via a dedicated web page

Voter Districts enacted by City Ordinance

Questions?



City Council
City of Pacific Grove

December 1, 2021

David C. Laredo, City Attorney

PGCC-12-2021
Page 23

NIELSEN MERKSAMER'S REDISTRICTING AND VOTING RIGHTS PRACTICE

One of Nielsen Merksamer's leading specialties for more than 40 years has been advising public agencies—states, counties, cities, school districts, and special districts, on the complex web of federal and state laws governing voting rights and redistricting. Marguerite Leoni and Chris Skinnell co-chair the firm's redistricting and voting rights practice, and their practices provide a unique combination of knowledge of redistricting law along with knowledge of and facility with the GIS systems and databases fundamental to redistricting and voting rights analysis. Other experienced voting rights litigators and advisors include Sean Welch, Hilary Gibson, and David Lazarus.

Just in the last decade alone, the firm has advised well over 100 public entities on all aspects of the redistricting process, state and federal voting rights law, including potential liability under the Federal and California Voting Rights Acts ("FVRA" and "CVRA"), on the process of transitioning from at-large voting to district-based elections, and on the substantive legal considerations regarding the drawing of the lines, including compliance with California's recently-enacted FAIR MAPS Act.

And while no redistricting plan adopted by a public entity while advised by this firm has ever been successfully challenged in court,* we also have long experience litigating under these laws on behalf of public agencies.

Nielsen Merksamer is uniquely qualified and experienced to provide legal assistance and representation in developing and implementing redistricting plans and litigating voting rights issues – given its long experience in the field, deep understanding of the law, and sensitivity to the political context in which these issues arise.

Nielsen Merksamer's voting rights and redistricting practice includes:

- Advising governmental entities on compliance with the complex and ever-changing state and federal legal requirements in drawing and redrawing district boundaries, including the federal and California Voting Rights Acts. This involves working closely with public agencies

* Needless to say, prior results do not guarantee future outcomes. The results in each case depend on the facts of that case and may differ as facts differ.

[07/2022]

SAN FRANCISCO BAY AREA

2350 KERNER BLVD, SUITE 250
SAN RAFAEL, CA 94901

T 415.389.6800 F 415.388.6874

SACRAMENTO

1415 L STREET, SUITE 1200
SACRAMENTO, CA 95814

T 916.446.6752 F 916.446.6106

and their demographic and other consultants to address competing interests, develop a process for successful redistricting, and develop solutions to seemingly conflicting political demands and legal criteria.

- Thorough knowledge of GIS systems, data sets and statistical methodology associated with voting rights litigation, which enables the firm to more precisely advise its public agency clients on redistricting matters and exposure to voting rights litigation.
- Litigation concerning all aspects of voting rights law, redistricting and elections law, including the federal and California Voting Rights Acts. As the State's premier political law firm, the firm brings to such litigation a deep understanding of the political and fiscal realities of its public agency clients and the need for a multifaceted approach to such litigation.

Our firm has provided legal representation in the following selected redistricting and voting rights matters since 2000. (Naturally, is not a comprehensive list because it does not include many additional projects that are confidential, including those that involve threatened or anticipated litigation that is not publicly known.)

SELECTED VOTING RIGHTS AND REDISTRICTING PROJECTS, 2000-PRESENT*

A. REDISTRICTING/VOTING RIGHTS COUNSEL.

- **States:**
 - o **New Mexico Citizens Redistricting Commission:** served as voting rights and redistricting counsel to New Mexico's first Citizens Redistricting Commission in 2021 concerning all aspects of the Voting Rights Act and traditional state redistricting criteria
 - o **State of Arizona Independent Redistricting Commission:** Represented consultant to the Commission concerning all aspects of the 2001 first ever citizen-commission redistricting of the state's Congressional and legislative districts including United States Attorney General preclearance under Section 5 of the federal Voting Rights Act.

* Information regarding the firm's pre-2000 voting rights and redistricting practice can be requested.

- o **Senate of the State of Florida:** Represented the Florida State Senate concerning all aspects of the state's 2001 Congressional and state Senatorial redistricting including United States Attorney General preclearance under the federal Voting Rights Act; special litigation counsel in state and federal courts defending against constitutional and Voting Rights Act challenges to the plans.
- **Counties:**
 - o **Merced County, California:** Nielsen Merksamer has represented the County for more than two decades concerning voting rights and elections issues, including United States Attorney General preclearance under Section 5 of the federal Voting Rights Act and voting rights litigation. In 2001, 2011, and 2021, the firm served as special counsel to the County concerning all aspects of the redistricting of the county's supervisorial districts. Further, as discussed below, following an extensive audit process and successfully defending the County in litigation alleging Voting Rights Act violations (*Lopez v. Merced County*), the firm represented the County in successfully seeking judicial approval of bailout from its Section 5 obligations, making the County the largest jurisdiction to successfully exit Section 5 coverage. *Merced County v. Holder*, Case No. 12-cv-00354-TFH-DST-ABJ (D.D.C. 2012) (three-judge § 5 court) (consent judgment filed Aug. 31, 2012).
 - o **San Diego County, California:** We advised the County Board of Supervisors concerning all aspects of the redistricting of the county's supervisorial districts in 2011, and the firm served as general counsel to the County's first-ever Independent Redistricting Commission in its 2021-2022 redistricting process as well.
 - o **Tulare County, California:** We represented the County concerning all aspects of the redistricting of its supervisorial districts in 2001, 2011, and 2021, including advice to the Redistricting Advisory Committee and County Board of Supervisors.
 - o **Monterey County, California:** We served as special voting rights counsel to the County with regard to its 2011 and 2021 supervisorial redistrictings. We also represented the County as special counsel with regard to United States Attorney General

preclearance of the County's 2001 and 2011 supervisorial redistrictings under the federal Voting Rights Act.

- o **Kern County, California:** After representing the County in litigation under the FVRA, as discussed below, we advised the County Board of Supervisors regarding its 2021 redistricting process to avoid potential voting rights pitfalls in redrawing lines previously approved by a federal court.
- o **Marin County, California:** in 2021 we advised the County Board of Supervisors regarding redrawing its supervisorial lines and compliance with the newly-enacted FAIR MAPS Act.
- o **Yuma County, Arizona:** Special voting rights counsel to the County with regard to its 2011 supervisorial redistricting. Represented the County with regard to United States Attorney General preclearance of the county's 2011 supervisorial redistricting under the federal Voting Rights Act.
- **Cities/California Voting Rights Act:** Since the CVRA's enactment in 2001, and especially in the years following the decision upholding the Act's constitutionality in 2006, we have represented dozens of public agencies, including cities, in responding to threatened litigation under the Act. Many of these are discussed in the "Litigation" section below, but in addition to those that ended up in active litigation we have also advised the following additional cities in addressing potential CVRA litigation (again, these are only the projects that can be made public):
 - o City of Atascadero
 - o City of Chino
 - o City of Covina
 - o City of Encinitas
 - o City of Fremont
 - o City of Hemet
 - o City of Kingsburg
 - o City of Los Banos
 - o City of Martinez
 - o City of Napa
 - o City of Novato
 - o City of Redlands
 - o City of San Luis Obispo
 - o City of San Mateo
 - o City of San Rafael
 - o City of Santa Maria
 - o City of Solana Beach
 - o City of Sunnyvale
 - o City of West Covina
 - o City of Wildomar
 - o City of Victorville
 - o City of Visalia
 - o Town of Yucca Valley
- **Cities/(Re)districting:** In addition to work under the CVRA, and in some cases growing out of the CVRA work we have done, we have represented dozens of cities concerning the drawing of new councilmanic

district lines or the redistricting of the cities' councilmanic districts following the release of the Census, including:

- o *City of Buckeye, Arizona:* Represented the City concerning Voting Rights Act compliance—including preparation of Attorney General preclearance submission—in connection with the redistricting of the City's councilmanic districts in 2011.
- o *City of Compton, California:* Following a vote to adopt by-district elections, advised the City regarding the readjustment of its councilmanic district boundaries based on the 2010 Census.
- o *City of Elk Grove, California:* In connection with the City's decennial redistricting process, advised the City regarding the move from five councilmanic districts to four districts with a separately-elected Mayor.
- o *City of Encinitas, California:* Represented the City concerning the redistricting of the City's councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- o *City of Fresno, California:* Represented the City concerning the redistricting of the City's councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- o *City of Glendale, Arizona:* Represented the City concerning Voting Rights Act compliance—including preparation of Attorney General preclearance submission—in connection with the redistricting of the City's councilmanic districts in 2011.
- o *City of Los Banos, California:* Represented the City concerning the redistricting of the City's councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- o *City of Modesto, California:* Following litigation under the CVRA, retained to advise the City regarding compliance with federal voting rights law and its commission process for moving to by-district councilmanic elections.
- o *City of Moreno Valley, California:* Represented the City concerning the redistricting of the City's councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.

- o *City of Orange, California:* Represented the City concerning the redistricting of the City’s councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- o *City of San Diego, California:* Represented the City concerning voting rights aspects of the redistricting of the City’s councilmanic districts in 2011.
- o *City of San Rafael, California:* Represented the City concerning the redistricting of the City’s councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- o *City of Santa Barbara, California:* Represented the City concerning the redistricting of the City’s councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- o *City of Stockton, California:* Represented the City concerning all aspects of the redistricting of the City’s councilmanic districts in 2011.
- o *City of Sunnyvale, California:* Represented the City concerning the redistricting of the City’s councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- o *City of Surprise, Arizona:* Represented the City concerning Voting Rights Act compliance—including preparation of Attorney General preclearance submission—in connection with the redistricting of the City’s councilmanic districts in 2011.
- o *City of Visalia, California:* Represented the City concerning the redistricting of the City’s councilmanic districts during the 2021-2022 cycle, including Voting Rights Act issues and compliance with the FAIR MAPS Act.
- **School & Community College Districts/CVRA:** Legal representation of dozens of school districts and community college districts regarding potential liability under the California Voting Rights Act. Representations included:
 - o **Community College Districts:**
 - Coast Community College District

- Cerritos Community College District (litigation discussed below)
 - Glendale Community College District (voluntary move to trustee areas after litigation, discussed below, was dismissed)
 - Santa Clarita Community College District (litigation discussed below)
 - San Diego Community College District
 - State Center Community College District
 - West Hills Community College District
- o **San Diego County Board of Education:** We represent the County Board of Education regarding numerous school districts' proposals to adopt by-trustee area voting in response to litigation threatened under the CVRA.
- o **San Diego County School Districts:** represented numerous San Diego County school districts concerning CVRA matters and redistricting:
- Cajon Valley Union School District
 - Chula Vista Elementary School District
 - Coronado Unified School District
 - Del Mar Union School District
 - Escondido Union High School District
 - Fallbrook Union Elementary District
 - Fallbrook Union High School District
 - Grossmont Union High School District
 - Jamul-Dulzura Union School District
 - La Mesa-Spring Valley School District
 - Lakeside Union School District
 - Lemon Grove School District
 - National School District
 - Palomar Community College District
 - Poway Unified School District
 - San Marcos Unified School District
 - South Bay Union School District
 - Spencer Valley Elementary School District
 - Sweetwater Union High School District
 - Vallecitos School District
 - Valley Center-Pauma Unified School District
- o **Fresno County Office of Education:** Representation advising the County Superintendent regarding potential liability and issues under the CVRA.

- o **Fresno County School Districts:** represented several Fresno County school districts in moving to trustee areas, to avoid any potential for CVRA liability:
 - Fresno Unified School District
 - Firebaugh-Las Deltas Joint Unified School District
 - Fowler Unified School District
 - Golden Plains Unified School District
 - Caruthers Unified School District
 - West Fresno Elementary School District
- o **Kern County Office of Education:** Advise the County Superintendent regarding potential liability and issues under the California Voting Rights Act.
- o **Kern County School Districts:** represented several Kern County school districts concerning CVRA matters and redistricting:
 - Kern Union High School District.
 - Bakersfield City School District.
 - Panama-Buena Vista Union School District
 - McFarland Unified School District
 - Rosedale Union School District
 - Greenfield Union School District
 - Fruitvale School District
 - Arvin Union School District
- o **Tulare County Office of Education:** Representation advising the County Superintendent regarding potential liability and issues under the CVRA.
- o **Tulare County School Districts:** represented more than a dozen school districts concerning CVRA matters and redistricting:
 - Visalia Unified School District
 - Tulare Joint Union High School District
 - Tulare City School District
 - Porterville Unified School District
 - Lindsay Unified School District
 - Woodlake Public Schools (in connection with unification)
 - Cutler-Orosi Joint Unified School District
 - Monson-Sultana Joint Elementary School District
 - Burton School District
 - Kings River Elementary School District

- Strathmore Elementary School District
 - Sundale Elementary School District
 - Sunnyside Elementary School District
 - Sunnyside Elementary School District
 - Alta Vista School District
 - Alpaugh Unified School District
 - Buena Vista Elementary School District
 - Farmersville Unified School District
 - Liberty School District
 - Columbine Elementary School District
 - Oak Valley Elementary School District
 - Palo Verde Elementary School District
 - Pixley Elementary School District
 - Pleasant View Elementary School District
 - Rockford Elementary School District
 - Terra Bella Union School District
 - Traver Joint Union Elementary School District
 - Waukena Joint Union Elementary School District
- o **Napa County Office of Education:** Advised the County Superintendent regarding potential liability and issues under the California Voting Rights Act.
 - o **Madera Unified School District:** Represented the school district that had been sued under the California Voting Rights Act in the legal process for moving to by-trustee area elections.
 - o **Merced Union High School District:** Represented the school district in the process of moving to by-trustee area elections and adjusting its existing trustee area boundaries in time for its 2009 elections.
 - o **Numerous Other School Districts:** Retained to assess dozens of districts' potential risk of suit and liability under the California Voting Rights Act, and to advise the districts regarding the legal significance of demographic studies commissioned by the districts.
 - **School & Community College Districts/(Re)districting:** In addition to work under the CVRA, and in some cases growing out of the CVRA work we have done, we have represented dozens of school districts and other education institutions concerning redistricting of the districts' trustee areas following the release of the Census, including:
 - o Bakersfield City School District

- o Cajon Valley Elementary School District
- o Coast Community College District
- o College of the Sequoias
- o Cutler-Orosi Joint Unified School District
- o El Tejon School District
- o Fresno Unified School District
- o Grossmont Union High School District
- o Kern County Board of Education
- o Kern High School District
- o Lakeside Union School District (Kern County)
- o Merced Community College District
- o MiraCosta Community College District
- o Norris School District
- o Orange County Board of Education
- o Panama-Buena Vista School District
- o Richland Elementary School District
- o San Diego Community College District
- o San Diego County Board of Education
- o San Jose-Evergreen Community College District
- o Santa Clarita Community College District
- o Tehachapi Elementary School District
- o West Hills Community College District

- **Special District Representations:**

- o **Central Contra Costa County Sanitary District:** initially assisted the District in adopting by-division elections in response to a threat of litigation under the CVRA and then advised the District Board on redistricting following the 2020 Census.
- o **Consolidated Irrigation District:** Represented CID in conducting first redistricting in 80 years in 2001; sought and obtained preclearance of new redistricting plan and dozens of historical annexations. Represented the District in readjusting its director division lines in 2011 following release of the 2010 Census.
- o **Fresno Irrigation District:** Represented this large irrigation district with regard to revising and updating its electoral system in compliance with federal and state redistricting and voting rights laws in 2001, and in readjusting its director division lines in 2011 following release of the 2010 Census.
- o **Kings River Conservation District:** Represented this district with regard to revising and updating its electoral system in compliance with federal and state redistricting and voting rights

laws in 2005, in in readjusting its director division lines in 2011 and 2021-2022, following release of the 2010 and 2020 Censuses, respectively, and in obtaining required preclearances from the U.S. Attorney General when the District was subject to Section 5 of the Voting Rights Act.

- o **Merced Irrigation District:** Represented this large irrigation district with regard to readjusting its director division lines in 2011 and 2021, following release of the 2010 and 2020 Censuses, respectively. Obtained U.S. Attorney General preclearance for the 2011 redistricting.
- o **Santa Clara County Open Space Authority:** Represented the District in readjusting its director division lines in 2011 and 2021-2022, following release of the 2010 and 2020 Censuses, respectively.
- o **Santa Clara Valley Water District:** Represented the water district in implementing a redistricting plan pursuant to recently enacted AB 466, and in readjusting its director division lines in 2011 following release of the 2010 Census and then redistricting again following the release of the 2020 Census.
- o **2021-2022 Redistricting:** In addition to the foregoing projects, advised the following special districts on redistricting their director divisions following the release of the 2020 Census:
 - Central Basin Municipal Water District
 - Midpeninsula Regional Open Space District
 - Washington Hospital District
 - Water Replenishment District of Southern Cal.
 - West Basin Water District
 - West Valley Water District
- **Other Notable Voting Rights/Redistricting Projects:**
 - o **Yes on Proposition 11:** Represented the campaign regarding preclearance of Proposition 11, the 2008 ballot measure that established an independent commission for redistricting of state legislative offices in California.
 - o **Yes on Proposition 20:** Represented the campaign regarding preclearance of Proposition 20, the 2010 ballot measure that expanded the duties of Proposition 11's independent commission for redistricting to congressional offices in California.

- o **California Administrative Office of the Courts:** Represented the AOC in obtaining United States Attorney General preclearance for the unification of California's trial courts. The firm also obtained preclearance of statewide constitutional and statutory amendments (Proposition 220, Proposition 191, S.B. 2139) and the Rules of Court enabling trial court unification. Also, obtained United States Attorney General preclearance of the unification of the superior and municipal courts of Monterey and Kings Counties.
- o **Monterey County Office of Education:** Represented the county committee in its consideration of a proposal to change the at large electoral system of Monterey Peninsula Community College District to by-trustee area elections. Obtained United States Attorney General preclearance of the adopted change.
- o **Tulare County Board of Education:** Represented the County Board of Education concerning all aspects of the redistricting of its trustee areas in 2001 and 2011, including United States Attorney General preclearance under Section 5 of the federal Voting Rights Act.
- o **City of Atwater, California:** Represented the City seeking preclearance of voting changes under the federal Voting Rights Act.
- o **Redistricting & Voting Rights Counsel** to numerous other counties, boards, college districts, school districts, water districts in California and Arizona for redistricting and voting rights advice, including among others the City of Rancho Mirage, City of Hanford, City of Reedley, City of Surprise, AZ, Alta Irrigation District, Riverdale Unified School District, Twin Rivers Unified School District, and Kings Canyon Unified School District, among others.

B. LITIGATION.

- ***Dolores Huerta Fdn. v. Panama-Buena Vista Union Sch. Dist.*, Case No. 1:22-cv-00226-AWI-BAK (E.D. Cal. filed Feb. 22, 2022):** Currently representing this school district in a suit challenging the District's now-abandoned multimember electoral system under the federal Voting Rights Act and related laws; advised the District on transition from multi-member system to single-member trustee areas for 2022 and beyond).

- ***HQH Chinese Am. Equalization Assn. v. City of Arcadia*, Case No. 22STCP01878 (Los Angeles County Super. Ct. filed 2022):** Currently representing the City of Arcadia in defending its adopted redistricting map against claims that (1) the adoption was illegal because the deciding vote was cast by an “illegally” appointed councilmember and (2) the adopted map violates the FAIR MAPS Act, U.S. Constitution, Voting Rights Act, etc.
- ***Tate v. City of Morgan Hill*, Case No. 22CV396857 (Santa Clara County Super. Ct. filed 2022):** In a rare instance of representing a non-public entity client, represented members of the local community in successfully challenging the Morgan Hill City Council’s adoption or revised councilmanic districts, on the grounds that the map violated the FAIR MAPS Act).
- ***David v. San Francisco Redistricting Task Force, et al.*, Case No. CPF-22-517741 (San Francisco Superior Court filed 2022):** Represented local citizens in suit under Elections Code § 21629 based on the San Francisco Redistricting Task Force’s failure to complete redistricting by Charter deadline; dismissed as moot following the adoption of a map supported by plaintiffs.
- ***Higginson v. Becerra*, 590 U.S. ___, 140 S. Ct. 2807, 207 L. Ed. 2d 144 (2020):** Filed brief *amicus curiae* on behalf of six California cities supporting review of the constitutionality of the California Voting Rights Act by the United States Supreme Court.
- ***Robles v. City of Ontario*, Case No. DS2007038 (San Bernardino County Super. Ct. filed 2020):** Currently defending the City’s determination to move to district-based voting starting in 2022, following the release of new Census data.
- ***Sanchez v. City of Martinez*, Case No. C-18-02219 (Contra Costa County Super. Ct. filed 2018):** Successfully represented city in defense of its redistricting plan, adopted under the “safe harbor” of the California Voting Rights Act, against a claim that the map considered improper criteria.
- ***Southwestern Voter Registration & Educ. Project v. City of Orange*, Case No. 30-2019-01051924-CU-CR-CJC (Orange County Super. Ct. filed 2019):** Representing City in defense against claim under the CVRA and districting process.

- ***Salas v. City of Palm Desert*, Case No. PSC-1903800 (Riverside County Super. Ct. filed 2019):** Representing Defendant in action under the California Voting Rights Act and in adoption of district lines.
- ***Southwestern Voter Registration & Educ. Project v. City of Camarillo*, Case No. 56-2018-00522031-CU-CR-VTA (Ventura County Super. Ct. filed 2018):** Representing City in defense against claim under the CVRA, where City had not adopted “safe harbor” resolution but had informed plaintiffs’ counsel of its intention to consider plaintiffs’ demand in advance of next municipal election.
- ***Va. House of Delegates v. Bethune-Hill*, 587 U.S. ___, 139 S. Ct. 1945, 204 L. Ed. 2d 305 (2019):** Filed brief *amicus curiae* on behalf of the American Legislative Exchange Council arguing in favor of the standing of legislators to defend a redistricting plan when the State’s governor and/or attorney general decline to do so.
- ***No. Carolina v. Covington*, 583 U.S. ___, 138 S. Ct. 974 (2018):** Filed brief *amicus curiae* on behalf of multiple states’ chief elections officials concerning logistical issues relating to last-minute injunctions against districting plans.
- ***Luna v. County of Kern*, Case No. 1:16-cv-00568-DAD-JLT (E.D. Cal. filed Apr. 22, 2016):** Represented the County of Kern, California, in defending against a challenge to its 2011 supervisorial districts under Section 2 of the federal Voting Rights Act.
- ***Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. ___, 137 S. Ct. 788, 197 L. Ed. 2d 85 (2017):** Filed brief *amicus curiae* on behalf of political scientists concerning techniques for identifying racially polarized voting in a case concerning the legal standard for determining whether race predominated in the drawing of Virginia’s legislative districts.
- ***Jaramillo v. City of Fullerton*, Case No. 30-2014-007375780-CU-CR-CJC (Orange Co. Super. Ct. filed 2014):** Advised city on voting rights aspects of settlement of litigation under the CVRA.
- ***Ariz. Legislature v. Ariz. Independent Redistricting Comm’n*, 576 U.S. 787, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015):** Represented former California Governors Deukmejian, Wilson and Schwarzenegger; the California Chamber of Commerce; Charles Munger, Jr.; and Bill Mundell, as *amici curiae* on a brief that successfully urged the Supreme Court to reject a challenge to congressional districting by an independent commission, rather than a state’s legislature; the majority

opinion quoted (without attribution) a passage from the firm's brief discussing the original meaning of the term "Legislature" as reflected in founding-era dictionaries.

- ***Vandermost v. Bowen*, 53 Cal. 4th 421 (2012):** Represented Charles T. Munger, Jr., the leading proponent of Propositions 11 and 20, as *amicus curiae*, addressing the possible remedies that the Court could employ in the event that it concluded the Senate Map drawn by the Citizens Redistricting Commission could not be used in 2012 due to a pending referendum petition against the map.
- ***Jauregui v. City of Palmdale*, Appeal Nos. B251793 & B253713 (Cal. Ct. App. 2d Dist.):** Retained following entry of trial court's July 23, 2013 order finding liability under the California Voting Rights Act, to represent the City in connection with the remedial stage of trial court proceedings, and on appeal. The case ultimately settled.
- ***Banales, et al. v. City of Santa Barbara*, Case No. 1468167 (Santa Barbara Superior Court filed July 29, 2014):** Represented City of Santa Barbara in defense of suit challenging at-large electoral system under CVRA; settled prior to trial, resulting in adoption of district-based elections. The firm has been retained to represent the City in its 2021-2022 redistricting process as well.
- ***Melliz v. City of Bellflower*, Case No. 551555 (Los Angeles Super. Ct. filed July 14, 2014):** Represented the City of Bellflower in defense of suit challenging at-large electoral system under CVRA; settled, resulting in adoption of district map, and placing the questions of changing to district-based elections on the ballot.
- ***Diego v. City of Whittier*, Case No. BC517363 (Los Angeles Super. Ct. filed Aug. 5, 2013):** Represented the City of Whittier in defense of suit challenging at-large electoral system under the CVRA, and on appeal from trial court order in favor of City dismissing action after City implemented district-based elections through the political process.
- ***Soliz v. Santa Clarita Community College District*, Case No. BC512736 (Los Angeles Super. Ct. filed June 20, 2013):** Represented Santa Clarita Community College District in defense of suit challenging at-large electoral system under CVRA. This case settled on the eve of trial. The firm advised the District on subsequent implementation of the settlement agreement and the adoption of trustee areas.

- ***Soliz v. City of Santa Clarita*, Case No. BC512735 (Los Angeles Super. Ct. filed June 20, 2013):** Represented the City of Santa Clarita in defense of a suit challenging at-large electoral system under CVRA; as part of the settlement process, successfully litigated complicated issues relating to the viability of cumulative voting as a remedy under the California Voting Rights Act.
- ***Avitia v. Tulare Local Healthcare District*, Case No. 07-224773 (Tulare County Super. Ct. 2007):** Represented the individual board members, named as defendants in their official capacities in an action under the California Voting Rights Act alleging that the healthcare district's at-large electoral system is illegal under the Act. Successfully opposed a motion for preliminary injunction and summary judgment, and conducted extensive expert discovery. This case settled the Friday before opening statements to commence trial.
- ***Moreno v. City of Anaheim*, Case No. 30-2012-00579998-CU-CR-CXC (Orange Co. Super. Ct. filed June 28, 2012):** Represented the City of Anaheim in defense of a suit challenging at-large electoral system under CVRA. The City settled the case by agreeing to submit the issue of district-based voting to the City's electorate. Following approval of district-based voting by the electors, our firm advised the City in connection with the districting process.
- ***Pinto v. Glendale Community College District*, Case No. BC490354 (Los Angeles Co. Super. Ct. filed Aug. 15, 2012):** Represented the District (as co-counsel with the District's general counsel firm) in defense of suit challenging at-large electoral system under CVRA. The suit was ultimately dismissed.
- ***Gonzalez v. City of Compton*, Case No. BC450494 (Los Angeles Co. Super. Ct. filed Dec. 2, 2010):** Represented City in defense of a suit challenging from-district electoral system under CVRA. Successfully opposed a motion for preliminary injunction and summary judgment, and conducted extensive expert discovery. After the case was mooted by a public vote to adopt by-district elections, represented the City in successfully mediating plaintiffs' demand for attorneys' fees resulting in an award of less than a third of the demand. The firm also represented Compton in its subsequent redistricting process.
- ***Chavez v. Cerritos Community College District*, Case No. BC470595 (Los Angeles Super. Ct. filed Sept. 27, 2011):** Represented the District in opposing an action under the California Voting Rights Act; moving to trustee area elections; and negotiating an

attorneys' fee award of approximately 1/3 the amount demanded by plaintiffs.

- ***Gomez v. Hanford JUHSD*, Case No. 04C0294 (Kings County Super. Ct. 2004):** Represented the school district and Kings County Board of Education in defense of one of the very first actions under the California Voting Rights Act, negotiating a very favorable settlement of the action.
- ***Brown v. Bowen*, Case No. 12-cv-05547-PA-SP (C.D. Cal. 2012):** Represented Californians to Defend the Open Primary, the Independent Voter Project, former Lt. Governor Abel Maldonado, and David Takashima, in successfully seeking intervention and in defending against challenges to Proposition 14, the Top Two Open Primary Act, based on the U.S. Constitution and Section 2 of the federal Voting Rights Act.
- ***Lopez v. Merced County*, Case No. 06-CIV-01526-OWW-DLB (E.D. Cal. filed Oct. 27, 2006):** Successfully opposed motions for TRO and preliminary injunction seeking to enjoin the certification of municipal election results in November 2006 under Section 5 of the federal Voting Rights Act. *Lopez v. Merced County*, 473 F. Supp. 2d 1072 (E.D. Cal. 2007). Successfully moved to dismiss first amended complaint on jurisdictional grounds, *Lopez v. Merced County*, 2007 U.S. Dist. LEXIS 44426 (E.D. Cal. June 8, 2007), and successfully moved for summary judgment on the second amended complaint based upon plaintiffs' lack of standing to challenge historical polling place changes. *Lopez v. Merced County*, 2008 U.S. Dist. LEXIS 3941 (E.D. Cal. Jan. 16, 2008).
- ***Merced County, Cal. v. Holder*, Case No. 1:12-cv-00354-TFH-DST-ABJ (D.D.C.) (three-judge § 5 court) (consent judgment and decree filed Aug. 31, 2012):** Represented the County of Merced in successfully obtaining "bailout" from its obligations under Section 5 of the federal Voting Rights Act, making it the largest jurisdiction ever to obtain bailout.
- ***Alta Irrig. Dist., Cal. v. Holder*, Case No. 1:11-cv-00758-RJL-DHG-PLF (D.D.C.) (three-judge § 5 court) (consent judgment and decree filed July 15, 2011):** Represented the District in successfully obtaining "bailout" from its obligations under Section 5 of the federal Voting Rights Act, making it the first jurisdiction in California ever to obtain bailout.
- ***Shelby County, Alabama v. Holder*, 570 U.S. 529, 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013):** On behalf of Merced County, filed an amicus

brief in the Supreme Court in this challenge to Section 5's constitutionality, pre-emptively defending the County's recent bailout from anticipated attack on the basis that the Department of Justice improperly permitted the bailout as part of a strategy to save Section 5.

- ***League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006):** Filed an *amicus curiae* brief in the U.S. Supreme Court on behalf of the American Legislative Exchange Council & Free Enterprise Coalition, successfully urging the Court to reject plaintiffs' claim that the 2003 legislative redistricting in Texas was invalid because mid-decade redistricting is *per se* unconstitutional.
- ***Hernandez v. Merced County*, Case No. 03-CV-06147-OWW-DLB (E.D. Cal. filed Aug., 25, 2003) & *Gallegos v. State of California*, Case No. 03-CV-06157-OWW-DLB (E.D. Cal. filed Aug. 25, 2003):** Represented the County of Merced in successfully defending against a lawsuit seeking to enjoin the conduct of the 2003 gubernatorial recall election and related statewide ballot measures under Section 5 of the federal Voting Rights Act.
- ***United States v. Upper San Gabriel Valley Muni. Water Dist.*, Case No. 00-CV-07903-AHM-BQRx (C.D. Cal. filed 7/21/2000):** Represented the district in defending a lawsuit brought by the United States Department of Justice under Section 2 of the federal Voting Rights Act to enjoin elections and compel interdecennial redistricting. Defeated a motion for a preliminary injunction after which the case was dismissed with prejudice.
- **City of Vista:** Represented the City in an investigation and threatened litigation by the United States Department of Justice concerning a possible violation of Section 2 of the federal Voting Rights Act arising from the City's at-large electoral system. By taking a multifaceted approach to the defense, including instituting a parallel investigation that demonstrated that the legal standards under Section 2 could not be met, the Department of Justice terminated its investigation.
- ***Lopez v. Monterey County*, 525 U.S. 266, 119 S. Ct. 693, 142 L. Ed. 2d 728 (1999):** Represented the Monterey County Municipal Court in obtaining preclearance of the consolidation of the municipal and justice courts. The firm also represented the municipal courts in a related enforcement action under Section 5 of the Voting Rights Act.

C. **PUBLICATIONS AND PRESENTATIONS:**

Recent publications and presentations by Nielsen Merksamer attorneys on voting rights and redistricting issues include:

- Skinnell, Follow-Up Interview re 2021 Redistricting, [PublicCEO Report](#) #16 (Sept. 16, 2021) (with Dr. Douglas Johnson & Ryder Todd Smith)
- Leoni & Skinnell, *Presentation, Legal Requirements & Technical Aspects of Redistricting in 2021*, RURAL COUNTY REPRESENTATIVES OF CAL. (Mar. 5, 2021) (with Dr. Douglas Johnson)
- Skinnell, Interview re 2021 Redistricting, [PublicCEO Report](#) #6 (Feb. 18, 2021) (with Dr. Douglas Johnson & Ryder Todd Smith)
- Skinnell, *Presentation, 2021 Redistricting is Here—and the Rules Have Changed Again*, LEAGUE OF CAL. CITIES - CITY CLERKS NEW LAW & ELECTIONS SEMINAR (Dec. 18, 2020) (with Dr. Douglas Johnson, Shalice Tilton, and Elio Salazar)
- Leoni & Skinnell, *Presentation, CLE Brown Bag Webinar: 2021 Redistricting – What County Counsel Needs to Know*, COUNTY COUNSEL’S ASSN. OF CAL. (Dec. 17, 2020) (with Dr. Douglas Johnson)
- Leoni, Moderator and Panelist, *Timeline and Public Records Requirements*, ROSE INSTITUTE OF STATE & LOCAL GOVERNMENT, CONFERENCE: 2021 REDISTRICTING: NEW RULES FOR LOCAL GOVERNMENTS (Sept. 17, 2020) (with Shalice Tilton, Randi Johl, and Neal Kelley)
- Skinnell, Moderator and Panelist, *Criteria for Redistricting*, ROSE INSTITUTE OF STATE & LOCAL GOVERNMENT, CONFERENCE: 2021 REDISTRICTING: NEW RULES FOR LOCAL GOVERNMENTS (Sept. 17, 2020) (with Dr. Justin Levitt and Nicolas Heidorn, Esq.)
- Skinnell & Welch, *Presentation, Redistricting After 2020 Census*, MUNI. L. INSTITUTE/BAR ASSN. OF SAN FRANCISCO (Mar. 6, 2020) (with Dr. Douglas Johnson)
- Leoni & Skinnell, *Presentation, 2020-2021 California Redistricting: A Legal and Legislative Update*, COUNTY COUNSEL’S ASSN. OF CAL., MEETING & ROUNDTABLE OF COUNTY COUNSEL LEGAL ADVISORS TO COUNTY ELEC. OFFICIALS (Jan. 17, 2020)
- Skinnell, *Presentation, Redistricting 101 for Municipalities*, LEAGUE OF CAL. CITIES - CITY CLERKS NEW LAW & ELECTIONS SEMINAR (Dec. 12, 2019)

- Leoni & Skinnell, *Webinar, Local Redistricting in California in 2021: The Same... But Different*, ROSE INSTITUTE OF STATE & LOCAL GOVERNMENT (Nov. 7, 2019) (with Dr. Justin Levitt).
- Leoni & Skinnell, *Webinar, "The California Voting Rights Act: A Revolution in Local Governance,"* ROSE INSTITUTE OF STATE & LOCAL GOVERNMENT (Oct. 24, 2019) (with Dr. Douglas Johnson)
- Skinnell, *Presentation: 2020 Census and Redistricting*, STATE L. RES. GROUP (Sept. 20, 2019)
- Skinnell, *Panelist, Partisan Gerrymandering: 2019 Update*, AM. BAR ASSN. YOUNG LAWYERS DIV. ANNUAL MEETING (Aug. 9, 2019)
- Skinnell, *Presentation: District Elections*, SANTA CLARA & SAN MATEO COUNTIES/CITIES JOINT MANAGERS MEETING (June 13, 2018)
- Skinnell, *Presentation: Taking Voter Equality Seriously: What Does "One-Person, One-Vote" Really Mean?*, ROSE INSTITUTE OF STATE & LOCAL GOVERNMENT (Nov. 17, 2015)
- Leoni, *Presentation, The California Voting Rights Act: Understanding Your City's CVRA Options: 2015 Update*, LEAGUE OF CALIFORNIA CITIES: 2015 ANNUAL CONFERENCE (Oct. 1, 2015)
- Skinnell & Leoni, "Victory for California Voters, Too," THE LOS ANGELES DAILY JOURNAL (July 10, 2015) (article analyzing the impact of the Supreme Court's ruling in *Arizona Legislature v. Arizona Independent Redistricting Commission*)
- Skinnell, *Presentation (Online Seminar), Arizona Legislature v. Arizona Independent Redistricting Commission: Supreme Court Addresses the Future of Redistricting Reform in America*, PRACTISING LAW INSTITUTE (July 10, 2015)
- Skinnell, *Presentation, Who Draws the Lines? Will the Supreme Court Strike Down Independent Redistricting Commissions?*, ROSE INSTITUTE OF STATE & LOCAL GOVERNMENT (Apr. 6, 2015) (Moderator)
- Skinnell & Leoni, *Guest Post: Response by Merced County's Section 5 Lawyers to J. Christian Adams's Article*, ELECTION LAW BLOG, ELECTIONLAWBLOG.ORG (Dec. 3, 2013)
- Leoni, *Presentation, The California Voting Rights Act*: LEAGUE OF CALIFORNIA CITIES CITY MANAGERS DEPT. MEETING (Jan. 29, 2015)
- Skinnell, *Webinar: The Supreme Court's Shelby County & the Future of Voting Rights Enforcement*, PRACTISING LAW INSTITUTE (July 12, 2013)
- Leoni & Skinnell, *Chapter 12: The California Voting Rights Act*, AMERICA VOTES! A GUIDE TO MODERN ELECTION LAW AND VOTING RIGHTS (Am. Bar Assn. 2d ed. 2012)

- Skinnell, *Presentation, Redistricting: Court Challenges & Legal Issues*, THE COUNCIL ON GOVERNMENTAL ETHICS LAWS ANNUAL CONFERENCE (Dec. 5, 2011)
- Leoni & Skinnell, *Presentation, Redistricting Litigation: State & Local*, CAL. ASSN. OF CLERKS & ELECTED OFFICIALS' ANNUAL CONFERENCE (July 19, 2011)
- Skinnell, *Presentation, Section 203 of the Federal Voting Rights Act*, CAL. ASSN. OF CLERKS & ELECTED OFFICIALS' ANNUAL CONFERENCE (July 19, 2011)
- Leoni, *Presentation, Redistricting 2011: Legal Overview & Practical Considerations*, CAL. COUNTY COUNSELS' ASSN CONFERENCE (Apr. 14, 2011)
- Skinnell, *Presentation, Commuter Flight: Participating In Local Redistricting*, CAL. REDISTRICTING ALLIANCE: REDISTRICTINGCA CONF. (Mar. 31, 2011)
- Skinnell, *Presentation, Redistricting Essentials: 2011 Redistricting & Local/Special Districts*, LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK (Jan. 20, 2011)
- Leoni, *Presentation, Voting Rights Law & Redistricting 2011*, ROSE INSTITUTE: CHANGES AND CHALLENGES FACING THE (CAL.) CITIZENS REDISTRICTING COMMISSION (Dec. 2010)
- Skinnell, *Presentation, Redistricting Law 2011: The same . . . but different*, NAT'L CONFERENCE OF STATE LEGISLATURES: FALL FORUM (Dec. 11, 2009)
- Leoni & Skinnell, *Presentation, The California Voting Rights Act: Developing Jurisprudence*, CALIFORNIA SCHOOL BOARDS ASSOCIATION: ANNUAL 2009 EDUCATION CONFERENCE & TRADE SHOW (Dec. 4, 2009)
- Leoni & Skinnell, *Presentation, The California Voting Rights Act: Developing Jurisprudence*, LEAGUE OF CALIFORNIA CITIES: 2009 CITY CLERKS NEW LAW & LEADERSHIP CONFERENCE (Dec. 3, 2009)
- Leoni, *Presentation, Redistricting Law 2011*, ROSE INSTITUTE: REDISTRICTING, THE 2000 CENSUS, AND YOUR BUDGET (Oct. 15, 2009) (Marguerite served as the co-chair of this conference on local redistricting)
- Skinnell, *Presentation, The California Voting Rights Act: Developing Jurisprudence*, ROSE INSTITUTE: REDISTRICTING, THE 2000 CENSUS, AND YOUR BUDGET (Oct. 15, 2009)
- Leoni, *Presentation, Trends in Redistricting for 2011*, CALIFORNIA POLITICAL ATTORNEYS ASSOCIATION (Sept. 12, 2009)
- Leoni & Skinnell, *The California Voting Rights Act*, PUB. L. J. (CAL. STATE BAR) 15 (Spr. 2009)

- Leoni & Skinnell, *School Districts & the California Voting Rights Act*,
CAL. SCHOOLS MAGAZINE 9 (Spr. 2009)

BIOGRAPHIES

MARGUERITE MARY LEONI is a partner of the firm, whose practice focuses on legal counseling and civil litigation relating to voting rights and redistricting questions, school district reorganizations, campaign, government and initiative/referendum law, and complex issues pertaining to elections administration. Her practice includes both advising clients on these matters as well as trial and appellate practice.

Marguerite has represented numerous state agencies, municipalities, counties, school districts and other special districts on districting, redistricting, voting rights and electoral matters, including unique expertise in the California Voting Rights Act. She has assisted in all phases of voting rights and redistricting cases including design of redistricting plans, the public hearing process, analysis of proposed alternatives, enactment procedures, referenda, districting and redistricting, preparing and advocating preclearance submissions to the U.S. Department of Justice when required, and defending federal and state court litigation concerning the legality of electoral systems under the federal constitution and Voting Rights Act. Marguerite represented the Administrative Office of the Courts on federal Voting Rights Act issues and electoral questions pertaining to trial court unification in California. She also represented the Florida Senate in designing that state's 2002 Senate and congressional districts, Voting Rights Act preclearance, and in defending against ensuing state and federal court challenges. She also provided legal counsel to the consultant to Arizona's Independent Redistricting Commission for the 2001 redistricting of state legislative and congressional seats. Marguerite has substantial expertise and experience in administrative preclearance practice in the United States Department of Justice under Section 5 of the Federal Voting Rights Act.

Marguerite graduated from the University of California, Berkeley, where she earned both Bachelor of Arts and Master of Arts degrees. In 1981, she received her law degree from the University of California, Hastings College of the Law. She was on the editorial staff of the Hastings Law Journal to which she was selected for academic achievement. She has published articles about Voting Rights Act issues and is a frequent panelist on redistricting and voting rights issues.

CHRIS SKINNELL is a partner of the firm and its general counsel. His practice focuses on law and civil litigation relating to redistricting and voting rights matters, elections, state and local initiative and referendum law, campaign finance compliance and litigation, lobbying compliance and government ethics, and general constitutional and government law issues.

Chris has extensive experience with redistricting and voting rights matters, from the legal, academic and technical perspectives. He has advised scores of counties, cities, school districts and special districts on compliance with state and federal laws governing redistricting; has counseled many additional public entity clients regarding the requirements of the federal Voting Rights Act and the California Voting Rights Act; has represented public entity defendants in several leading VRA and CVRA cases; and has represented *amici curiae* in several significant voting rights and redistricting cases before the United States Supreme Court, including: *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006); *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017); and *No. Carolina v. Covington*, 138 S. Ct. 974 (2018).

Chris has also published and lectured extensively on voting rights and redistricting, including serving as a guest lecturer on these topics at Claremont McKenna College. Prior to law school, Chris worked as the lead researcher and demographic consultant on numerous redistricting and voting rights projects at the Rose Institute of State and Local Government (where he now is serving his second term on the Board of Governors), and he also served as the technical/GIS consultant on several municipal redistricting projects.

Chris graduated *magna cum laude* from Claremont McKenna College and received his law degree from the University of Chicago Law School, where he served as the Editor-in-Chief of the *University of Chicago Legal Forum*.

In 2019, 2020, 2021, and 2022, Chris was selected as a *Northern California Super Lawyer*, having previously been named a Rising Star five times, from 2013-2017. He was the subject of a feature article in the 2020 edition of *Super Lawyer* magazine entitled "[The Electioneer](#)." Only the top 5 percent of all attorneys in California are named as Super Lawyers. They are selected through peer nominations and evaluations along with third-party research.

Sacramento magazine selected Chris for inclusion in its list of Top Lawyers of 2015 and *Sonoma Magazine* named Chris one of its Lawyers of Distinction in 2021. In both cases, attorneys were selected for inclusion on the list through a survey of local-area attorneys conducted for the magazines by independent third-party research firms.

SEAN WELCH is a partner of the firm specializing in law and civil litigation in the areas of election, campaign, initiative and referenda, government law, and complex litigation involving highly regulated industries.

Sean has extensive experience guiding clients through the complexities of the initiative and referendum process, from initiative drafting and the formation of ballot measure committees to mounting and defending legal challenges to ballot measures and ballot argument litigation at the state and local level. In addition to successfully litigating multiple cases in this area of law, including the removal of unlawful petitions from the ballot, Sean serves as legal counsel and Treasurer to numerous political committees in favor of or against ballot measures, providing guidance on a wide variety of state and local campaign reporting and disclosure requirements. He is also a trusted resource regarding voter registration issues, balloting, recounts, and election contests, and was a leader of ground teams and litigation strategy for the winning side during the first ever recount of a statewide ballot measure.

Sean also counsels non-profit organizations, corporations, political action committees and individuals on compliance with various federal, state and local election, campaign and government ethics laws, including conflicts of interest.

In addition, he has represented numerous clients in the private and public sectors regarding redistricting, voting rights, and constitutional and government law litigation.

Prior to joining the firm, Sean practiced in the San Francisco office of a national law firm where he represented public and corporate clients in matters ranging from public contracts and regulatory issues to antitrust and unfair competition disputes. He also served as an extern clerk to the Hon. Phyllis Hamilton, United States District Court for the Northern District of California.

HILARY GIBSON is a partner in the firm's Bay Area office. She advises clients on a wide variety of election law, government law, and voting rights matters, including litigating complex and novel issues arising in these areas of law.

Ms. Gibson has worked extensively with the firm's voting rights practice over the past decade. She was integral to Nielsen Merksamer's historic bailout of Merced County from coverage under Section 5 of the Federal Voting Rights Act and worked with the U.S. Department of Justice to address a variety complex issues related to that process. As a member of the firm's litigation practice, Ms. Gibson has assisted in the firm's representation of public entity clients in numerous voting rights act cases, and in that context, has developed expertise in the legal requirements of both the California and Federal Voting Rights Acts. She has worked closely with leading demographics and statistical consultants, and has experience reviewing, interpreting, and analyzing statistical and demographic data as it pertains to the redistricting process. Ms. Gibson is also an expert in election law and political reform legislation including conflict of interest laws and regulations.

Ms. Gibson also frequently advises both public agencies and private entities on issues within her area of expertise. She works with public agencies primarily on specialized matters such as redistricting, voting rights, and questions related to measures appearing on the ballot, but also by providing routine guidance on public transparency laws such as the Brown Act, the Public Records Act, and the Political Reform Act.

In 2021, Ms. Gibson served as general counsel to the San Diego County Independent Redistricting Commission.

DAVID LAZARUS is an associate specializing in election law, voting rights matters, ballot measure legal compliance, school district reorganizations and related education law issues, and state and federal campaign, ethics, and lobbying compliance.

David's representative work includes defending officeholders, political committees, and corporations in ethics and political law enforcement matters before the Federal Election Commission, House Ethics Committee, Office of Congressional Ethics, and various state and local agencies, counseling a technology corporation's response to a government agency subpoena, developing corporate political activity policies, litigating election law, campaign finance, and voting rights matters, and forming and counseling non-profit organizations on tax and charitable registration laws. David also has extensive experience advising consulting firms, investors, law firms, and non-profit organizations on the Foreign Agents Registration Act.

David has worked on a wide range of voting rights and redistricting matters. During the 2018 election cycle, he represented committees in multiple state court proceedings to vindicate the rights of disenfranchised voters. He has drafted briefs and worked with expert witnesses in cases challenging restrictive election laws and practices that disproportionately impact older voters, disabled voters, and disenfranchised communities. David has also advised elected officials on the constitutionality of redistricting proposals.

David is a 2014 graduate of Stanford Law School, where he was a member of the Stanford Law & Policy Review. During law school, he worked as a law clerk in the U.S. Attorney's Office for the Northern District of California and assisted nonprofits with election law reform initiatives. Following graduation, David clerked on the U.S. Court of Appeals for the Ninth Circuit for Judge Michael Daly Hawkins.

Prior to law school, David worked on campaigns and public policy. He served on President Obama's Presidential Transition Team and then as Senior Advisor to Secretary Tom Vilsack at the U.S. Department of Agriculture. David was also Legislative Assistant to U.S. Senator Richard Durbin, where he worked on the 2008 Farm Bill and helped draft legislation that became the Food Safety Modernization Act (P.L. 111-353).