BEFORE THE DIRECTOR OF HOUSING AND COMMUNITY DEVELOPMENT

In the Matter of the Appeal of
Revocation of Mobilehome Parks Act Local Enforcement Agency Status of The City of Desert Hot Springs

Case No. 2012-1

DECISION

STATEMENT OF THE CASE

The City of Desert Hot Springs ("City") appealed to the Director of the California Department of Housing and Community Development in order to reverse a decision by the Division of Codes and Standards of that Department ("Department" or "State") to revoke its status as a "local enforcement agency" under the Mobilehome Parks Act ("MPA").[1] The Director delegated the authority for hearing and deciding this matter to Senior Staff Counsel (ret.) Ronald S. Javor as "Hearing Officer".

The Hearing Officer and parties conferred and determined that there was no specific Department regulation governing the procedure for hearing an appeal of revocation, and the matter was set for an informal hearing pursuant to the Administrative Procedure Act.[2] A prehearing conference was held by telephone on February 9, 2012, and a briefing and hearing schedule was established. Prior to the hearing, the Hearing Officer ruled on several procedural matters.

The matter came on for hearing on February 16, 2012, before the Hearing Officer, at which time both oral and written testimony and evidence was presented After completion of oral testimony and argument, each party submitted a post-hearing brief and, thereafter, a further responsive brief. Exhibits R-1 through R-8 were proffered at the hearing, subject to later objections; in addition, each party submitted voluminous exhibits, to be unnumbered and subject to later objections.[3]

The City was represented by the City Attorney's Office, Ruben Duran, Esq., and Bianca Sparks, Esq., and also present was City Community Development Director Martin Magana.

The Department was represented by Senior Staff Counsel Lisa Campbell, Esq., and also present was Codes and Standards Division Deputy Director Kim Strange.

The Department, as the State's oversight agency for implementation of the Mobilehome Parks Act, previously determined that the City, as the MPA local enforcement agency, was violating its obligations by charging a "development impact fee" as a condition of an applicant receiving a manufactured home installation permit from the City to install a manufactured home in an existing mobilehome park on a previously unused space. The Department also previously determined that the City had committed other specified and unspecified acts and omissions, including nonpayment to the Department of certain fees, in violation of its MPA responsibilities.

The City asserts its authority, under the Mitigation Fee Act and under its police power ordinances as a charter city, to collect the development impact fee as a condition of issuance of a building permit, and denies or asserts substantial compliance with the alleged acts and

[1] Health and Safety Code sections 18200, *et seq*.
[2] Government Code sections 11445.10, *et seq*.
[3] See Attachment A, hereto, for objections and rulings.

omissions. It maintains it has not violated its statutory and regulatory obligations as a local enforcement agency.

ISSUES

The issues to be resolved are:

1. Does the City have independent authority to charge the development impact fee as a condition of issuance of a mobilehome installation permit?
2. Is the City's charging of the development impact fee preempted by the Mobilehome Parks Act?
3. Does the City's charging of the development impact fee, or the commission of other specified acts and omissions, or both, constitute grounds for revocation of the City's local enforcement authority status?

FINDINGS OF FACT

Stipulated Facts[4]

The Mobilehome Parks Act ("MPA") and regulations adopted thereunder[5] is a state law governing the construction, maintenance, occupancy, design and use of mobilehome parks, and the installation of manufactured homes, both inside and outside of mobilehome parks.

The California Department of Housing and Community Development ("the Department") is charged by the Legislature for overall enforcement of the MPA. In most of the State, the Department provides direct inspections of the regulation activities within parks.

Among other provisions of the MPA is authority for a city or county to assume enforcement authority as a local enforcement agency ("LEA").[6] The Department has the authority to revoke that LEA authority for specified reasons.

The City of Desert Hot Springs ("City"), a California charter city, is an LEA for the MPA, agreeing to assume that obligation in 1986.

The City has enacted and is implementing a Development Impact Fee ("DIF") or DIF ordinance[7] under the authority of the Mitigation Fee Act ("MFA")[8] and its police powers for the financing of the construction of various public facilities, as identified in the City's 2008 Nexus Study Report.

The DIF ordinance incudes specified rates of fees for different types of development. The MFA provides procedures for the development and enactment of DIF's and defines various terms including but not limited to "development project", "fees", and "final inspections or

[4] Transcript, pp. 36-39; all references to "Transcript" pages throughout this Decision are approximate and are based on the initial Reporter's draft.
[5] Health & Safety Code sections 18200, *et seq*., Title 25, California Code of Regulations, sections 1000, *et seq*.
[6] Health & Safety Code section 18300, subdivisions (b)-(e), Title 25, California Code of Regulations, section 1004-1006.
[7] Desert Hot Springs Municipal Code ("DHSMC") Title 17 (Zoning), Chapter 17.144 (Development Impact Fees), commencing with section 17.144.010.
[8] Government Code sections 66000, *et seq*.

certificates of occupancy". The MFA also provides procedures for challenging the enacted DIF's.

Palm View Estates, a mobilehome park formerly known as Silver Sage Mobilehome Park ("the Park") is in the City. The land use approvals were approved by the County of Riverside and construction permits for the Park itself were issued by the County of Riverside in early 1986. Thereafter, it was part of the parcel annexed to the City, effective October 29, 1987.[9]

Seventy-nine spaces in the Park never have been occupied by manufactured homes.[10] Since enactment of the DIF ordinance, the City has assessed the DIF when a manufactured home is installed for the first time on a space in an existing mobilehome park.

The City ordinance requires payment of a DIF before the installation of any manufactured home in any space in any mobilehome park if that space has not been occupied previously by a manufactured home. The City, as LEA, also charges state-mandated fees for an installation permit.

Mountain Financial Group, LLC is the owner of the Park. Mr. Darren Proulx has represented himself as a representative of the Park and has objected to the imposition of the DIF for the installation of manufactured homes in the Park. The City has paid the State all outstanding State fees[11] due by December 31st, 2011.

Additional Facts

A preponderance of the evidence proves the following additional facts:

At the time of the April 23, 1985, approval of the Park's (then called "Silver Sage Mobile Home Park") initial construction by Riverside County, prior to the City's annexation, the County did not impose any Impact Fees other than "voluntary school impaction fees".[12] When the Park's construction status was reviewed with the City after annexation, the City Manager stated,

> We have reviewed the chronological history of approvals for [the Park]. Based on this review…it is our conclusion that the park may be allowed to proceed per the originally approved development plan, and the original conditions of approval…I believe the next step at this point would be for [the Park operator] to meet with…building officials to determine what materials are necessary to complete the building permit application…."[13]

After preparation of the October, 2008 Development Impact Fee Calculation and Nexus Report for the City of Desert Hot Springs, California (City Limits Planning Area) ("2008 Nexus

[9] The Hearing Officer deemed any matters related to the annexation of the land encompassing the Park immaterial to the matters contested herein. Any vested rights assumed by the Park owners and their successors in interest are not subject to enforcement by the Department.

[10] The terms "manufactured home" and "mobilehome" are used interchangeably in this Decision. For the purposes of this Decision, the terms apply only to manufactured homes installed in a mobilehome park, with installations that are not on permanent foundations, but are installed pursuant to Health & Safety Code section 18613.

[11] Title 25, California Code of Regulations, section 1008(a)(4).

[12] Exhibit: January 14, 2011, Memorandum to Mr. Darren K. Proulx from Chris Herrin, Re: "Palm View Estates (Formerly Silver Sage Mobile Home Park)".

[13] Exhibit: July 11, 1988, City of Desert Hot Springs letter to Mr. Philip Smith, Huntington Beach Savings & Loan, from Duane H. Gasway, City Manager.

Study Report"), the City enacted an ordinance and increased the DIF's [applicable to a mobilehome park] to $6,969.57 from $2,449.[14] Between 2003 and 2008, 13 manufactured homes were installed on previously unused spaces in the Park, paying DIF's ranging from $774.02, the original DIF amount, to $2,449. After the current fee was enacted, only two manufactured homes were installed, both by Mr. Jim Waterman, a manufactured home seller, who paid the $7.057.53 impact fee[15]. He stated that he did not install a second one because of the high fee. He testified that he would not be issued an installation permit by the City without paying the DIF.[16] He further stated that it was infeasible to install additional manufactured homes in the Park because the DIF made installation and sale infeasible.[17]

The Department learned of the DIF being charged as a result of a complaint from Mr. Proulx and, later, from newspaper articles. The Department personnel also spoke with the City's City Attorney, Mr. Ruben Duran, to confirm the existence of the DIF being charged on installation of manufactured homes in existing mobilehome parks for spaces not previously occupied by a manufactured home. According to both Mr. Waterman and Martin Magana, Community Development Director for the City, the DIF is charged at the time of a request for an installation permit to install a manufactured home in a park.[18]

On October 18, 2011, the Department issued a letter to Mr. Duran on behalf of the City, objecting to the imposition of the DIF's based on preemption by the MPA., and because conditioning issuance of the installation permit on payment of the DIF violates the City's obligations as an LEA because the total fee is in excess of the installation fees permitted by the MPA laws and regulations. The letter requested that the City repeal the ordinance as it applies to installation of manufactured homes on existing lots in existing parks.

On November 17, 2001, Mr. Duran, on behalf of the City, responded to the Department, disagreeing with the Department's conclusions. He stated, *inter alia*, the DIF was enacted pursuant to the City's constitutional police powers; the installation of mobilehomes are "development projects" for the purposes of the MFA; the development of mobilehomes [their installation] has an impact on City facilities and services; the City charges both the "building permit fee" allowed by the MPA and the DIF; and the DIF is not preempted by the MPA. He stated that it was common practice for other cities to require the payment of a DIF prior to issuance of a building permit because the commencement of construction creates the "strain" on public facilities that the DIF is intended to address. With respect to preemption by the MPA, he asserted that the purposes behind the MPA and the MFA are similar, since the essential public facilities funded by DIF's allow mobilehome park residents to maintain a decent standard of living and protect property values

On January 3, 2012, the Department issued a formal notice of intent to revoke the City's LEA authority effective February 15, 2012, entitled "City of Desert Hot Springs Invalid

[14] The validity of the procedures for the Study and the findings of the Report, including the amount of the fee attributable to manufactured housing installations, are not at issue in this matter, nor is the validity of the enactment of the DIF ordinance itself.
[15] Transcript, pp. 81, and 91, Exhibit R-1.
[16] Transcript, pp. 87, 88, 92-93.
[17] Transcript, p. 95.
[18] Numerous references were made during the oral and written phases of this matter that payment of the fee is a condition of receiving a final inspection or mobilehome installation acceptance certificate ("MIA"). This is not supported by any evidence even though, indirectly, one cannot receive an MIA because one cannot receive a permit; the issue here is whether or not the permit application is denied due to refusal to pay the DIF.

Application of Development Impact Fees Inside Pre-Existing Mobilehome Parks". The letter indicated two grounds:

(1) "The City Conditions Approval of an Installation Permit of a Manufactured Home Inside a Pre-Existing Park Upon Payment of the City's DIF Fees"; and

(2) "The City Has Failed to Forward Statutory Permit to Operate Fees to the Department".

With respect to the first grounds, the Department stated the cure is "the IMMEDIATE cessation and desistance from further assessment of DIF fees against renters or lessees of lots or spaces inside a pre-existing mobilehome park". With respect to the latter grounds, the Department required payment of State fees owed to the State for prior years in the amount of $7,654.00 before February 14, 2012; and "(1) a written plan and calculation of estimated fees owed to the State for 2011, 2012, [and] 2013, based on the current number of Parks situation in the City's jurisdiction; (2) the name and contact information for the City's person who will be responsible to receive training and to have the knowledge of the City's statutory and regulatory MPA LEA duties and who will produce the calculation noted in item 1 and be responsible for ensuring payment to the Department within thirty (30) days of receipt by the City." The letter stated that the City could appeal this decision within 30 days from the date of the notice.

On January 20, 2012, the City formally appealed the Department notice of intent to revoke the City's LEA authority to the Department Director, Cathy Creswell. The appeal incorporated the position previously taken by the City with regard to imposition of the DIF and that it charges a separate building fee for manufactured home installations consistent Department regulations. It also stated that the past due fees had been paid on December 15, 2011, and stated that the City "will create a plan regarding the Permit to Operate Fees and forward the plan to the Department by February 2, 2012".

On January 23, 2012, a City employee, Shannon Buckley, contacted Department staff by email, informing him of her responsibility regarding collection of State fees and requesting information and assistance regarding a plan for collection based on a December 1, 2011, memorandum provided by the Department's Riverside Office to assist the City in calculating the fees due to the Department. In addition, on February 6, 2012, City Building Inspector Bruce Nearman contacted the Department and stated he was assisting with mobilehome park issues and requesting additional clarification. No "written plan" for collection of fees has been submitted to the Department. However, on or about December 15, 2011, the City remitted to the Department $7,860, the fees due for the calendar years ending December 31, 2011.

PRINCIPLES OF LAW AND ANALYSIS

Burden of Proof

In general, in an administrative hearing, disciplinary charges must be proven by a preponderance of evidence by the party seeking the disciplinary action.[19] In the instant matter, there is no disagreement that the City is charging the development impact fee as a condition of receiving a manufactured housing installation permit in the Park. There also is no question but that the City failed to transfer certain mobilehome park fees to the Department when initially due, but did remit them within the time period prescribed by the Department's notice of

[19] Evidence Code section 115, *Anderson v. Board of Dental Examiners* (1915), 27 Cal.App. 336.

revocation. All other facts herein are found to exist by a preponderance of evidence or the existence of no conflicting evidence.

The primary question herein relates to the interpretation and interaction of several statutes, in particular, the MFA and the MPA. City asserts that the party claiming that a general state law preempts a local ordinance has the burden of proof to demonstrate preemption. The City argues case law that the party claiming that a general state law preempts a local ordinance has the burden of proof to demonstrate preemption.[20] However, *Big Creek* also includes two critical caveats:

- "The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption (citations)"[21] (emphasis added). However, as the City has stated repeatedly, the DIF's are a common tool used by many localities for the purposes throughout the state: to finance general infrastructure enhancements created by additional population. Thus, unlike in Big Creek Lumber, dealing with forestry in a rural county, there is no unique issue for Desert Hot Springs compared to other localities.
- "The presumption against preemption applies "unless such intention is made clearly to apply either by express declaration or by necessary implication.(citations)"[22] As described later in this Decision, the Legislature's intent to preempt local DIF ordinances when applied in a mobilehome park is clearly present.

The City also repeatedly argues that, in areas of traditional local control such as zoning and land use, courts should presume non-preemption, also citing *Big Creek Lumber*, *supra*. However, as the dissent in that decision aptly notes, the case law relied upon by the majority for that presumption does not provide any basis for the presumption and it has to be treated as dicta, at best, and subject to being distinguished or corrected at worst.

Even though the City argues that Department has conceded that the term "development impact fee" is not expressly mentioned in the MPA, or that the MPA expressly covers standards and requirements established for the construction, maintenance, operation, use and design of mobilehome parks, those conclusions ignore the balance of the Department's arguments: that installation fees are specified expressly and preempt city options to charge higher installation fees, and that the installations of manufactured homes in a park clearly fall within several of the terms "construction, maintenance, occupancy, use, and design" of mobilehome parks.

In addition, under traditional rules of interpretation, an agency's interpretation of a law it administers must be given great deference.[23] As the Supreme Court noted in *Ste. Marie v. Riverside County Regional Park and Open Space District* (2009) 46 Cal. 4th 282

> "[C]ourts must give great weight and respect to an administrative agency's interpretation of a statute governing its powers and responsibilities. [Citation.] Consistent administrative construction of a statute, especially when it originates

[20] *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.
[21] *Ibid*, p. 1149.
[22] *Ibid*, p. 1149-1150.
[23] See, for example, *Ross v. California Coastal Commission* (2011), 199 Cal.App.4th, 900, 922, in which the court noted, "[a]lthough the courts have final responsibility for interpreting a statute, an agency's interpretation of its governing statutes is entitled to great weight [citations].

> with an agency that is charged with putting the statutory machinery into effect, is accorded great weight." [citation] Significant factors to consider include whether the administrative interpretation has been formally adopted by the agency or is instead in the form of an advice letter from a single staff member, and whether the interpretation is long-standing and has been consistently maintained. [citations] Such deference is also appropriate for practical reasons: "When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation.[24]

An agency's interpretation and regulations consistent with that interpretation also add to the patina of validity and are entitled to deference. As noted in *County of Butte v. Emergency Medical Services Authority, et al.* (2010) 187 Cal.App. 4th 1175,

> "In this regard the courts generally distinguish between quasi-legislative rules, which involve the exercise of a delegated lawmaking power and come with a strong presumption of regularity, and an agency's interpretation of a statute, which is due a lesser degree of judicial deference. [Citations.]
>
> Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this "expertise," expressed as an interpretation … that is the source of the presumptive value of the agency's views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's legal opinion, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference.' [Citation.]

The Department's interpretation and implementation of statewide preemption meets those tests: it is the agency responsible for implementing—and monitoring implementation of—the MPA, its officially-promulgated regulations are consistent with the existence of preemption, it is a long-standing and official interpretation, and it has been publicized and cited by others, most recently as the Information Bulletin included in the evidence herein[25].

Thus, for the reasons set forth herein, the Department's opinion is entitled to deference and it has met its burden with respect to enforcing the preemptive nature of the MPA and finding that the City has violated its statutory obligations as a local enforcement agency if it continues to require payment of DIF's as a condition for issuance of a manufactured home installation permit. As to the other factors the Department asserts as grounds for revocation, the competing factors are discussed and resolved below.

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[24] *Ste. Marie v. Riverside County etc.*, 187 Cal.App.4th, at p. 292.

[25] April 21, 2008, Information Bulletin 2008-10 (MP), entitled "VALIDITY OF LOCAL ORDINANCES RELATING TO INSTALLATION OF NEW MANUFACTURED HOMES AND/OR SALE OR CONVERSION OF MOBILEHOME PARKS", Exhibit R-7.

Legal Principles of Statutory Interpretation

The Department's February 27 Post-Hearing Brief provides a succinct overview of the legal principles which govern the interpretations necessary to consider whether preemption applies in this situation.

> Pursuant to established principles of statutory construction, the first task is to ascertain the legislative intent so as to effectuate the purpose of the law. In determining intent, a court must first look to the words of the statute, given the language its usual ordinary import and according significance, if possible to every word, phrase, and sentence [citations]. A construction making some words surplusage is to be avoided [citations]. The words of the statute must be construed in context, keeping in mind the statutory purpose and statutes or statutory sections relating to the same subjects must be harmonized both internally and with each other, to the extent possible [citations]. Where uncertainty exists, consideration should be given to the consequences that will flow from a particular interpretation. [citations] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered when ascertaining the legislative intent of a statute [citation].

Legislative Intent

The Legislature has provided significant legislative intent as to the purposes and implementation of the MPA. It has found, in particular, that because of the relatively permanent nature of residence in mobilehome parks and the substantial investment which a manufactured home represents, residents of these parks are entitled to live in conditions which assure their health, safety, general welfare, and a decent living environment, and which protect the investment of their manufactured homes.[26] The MPA standards and requirements established for construction, maintenance, occupancy, use, and design of mobilehome parks should guarantee park residents maximum protection of their investment and a decent living environment.[27] Finally, it provided that the specific requirements relating to construction, maintenance, occupancy, use and design of parks are best developed by the department in accordance with the criteria established by the MPA..[28] The fundamental purposes of the MPA, according to the Legislature, include to "[a]ssure protection of the health, safety, and general welfare of all mobilehome park residents."[29]

A fee not expressly contemplated by the MPA may have a significant impact on both the general welfare of homeowners and renters, as well as on their investment in their homes. Such a fee—particularly if significant—must be paid or amortized in a loan, increasing the cost of a home, or may be passed on as part of rent by a non-owner-occupant. It may discourage new homes from being added to a park, thus increasing vacant spaces and impacting the investment value of those homes already there. A significant number of vacant spaces also impacts the financial ability to operate the park by the owner, or will cause increased rents to homeowners in order to offset the lack of rent from empty spaces. The Legislature's focus on limiting fees charged by the enforcement agency for general administrative costs[30] bears

[26] Health & Safety Code section 18250.
[27] Health & Safety Code section 18251.
[28] Health & Safety Code section 18253.
[29] Health & Safety Code section 18254.
[30] See, Health & Safety Code sections 18502.5 and 18503.

witness to the impact of excessive fees placed on owners of no-longer mobile manufactured homes.[31]

The Mitigation Fee Act and the City's Ordinance

Background

The Mitigation Fee Act ("MFA")[32] establishes procedures for the development, calculation, and charging of development impact fees ("DIFs"), as well as their expenditure. The authority for imposing DIF's is inherent in the City's constitutional police powers.[33] The underlying question is whether the fees developed and imposed pursuant to the City's DIF ordinance can be imposed on an individual installing a manufactured home for the first time on an empty space in an existing mobilehome park.[34]

Two issues have been addressed by the parties regarding the Mitigation Fee Act as applied in the instant situation:

(a) Is the Act, by its express terms or the intent of the Legislature, intended to encompass or authorize the imposition of development impact fees when a manufactured home is installed, for the first time, on a space in an existing mobilehome park?
(b) Is the Act, by its express terms or the intent of the Legislature, intended to allow the imposition of a development impact fee requirement (as opposed to the mere payment) at the time of ministerial approvals (such as a building permit), as opposed to discretionary approvals (such as zoning or land use decisions)?

The MFA provides several applicable definitions which for clarity in review, are set forth below in conjunction with the City's equivalent definitions.

A "development project" is defined in Government Code section 66000(a) of the MFA as "… any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate."

A "development project" is defined in the DHSMC section 17.144.020 of the City's DIF ordinance as "any project undertaken for the purpose of development. [It] means and includes

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[31] These restrictions, and the intent to protect manufactured home owners from excessive rents and fees also are demonstrated by the Legislature's enactment and continual amendment of the Mobilehome Residency Law, Civil Code sections 798, et seq.; see, especially, Articles 3.5 (commencing with section 798.30), Article 4 (commencing with section 798.39.5), and Article 54.5 (commencing with section 798.45).

[32] Government Code sections 66000, *et seq*.

[33] Cal. Const, art. XI, sec. 7, provides, "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (emphasis added) To distinguish the procedural authority in the MFA from the enactment authority in the Constitution, see 72 Ops.Cal.Atty.Gen.229 (1990); 81 Ops.Cal.Atty.Gen. 213 (1998).

[34] This Decision and discussion of the MFA authority of the City to impose such an impact fee does not address the basic authority under the City's police powers to develop, enact, and impose such fees; this general authority is conceded but the question remains as to the preemptive nature of the MPA with regard to the police powers authority to impose these fees; see, *infra*. It also does not address the related question of whether or not development impact fees can be imposed when new spaces are added to an existing mobilehome park or when a new mobilehome park is constructed.

a project involving the issuance of a permit for construction or reconstruction, remodeling, or any work requiring any permit under the ordinances of the City, as the same presently exist or may be amended from time to time hereafter. The term "development project" shall also include permits for erection of manufactured housing or structures, and structures moved into the City." (emphasis added)

A "fee" is defined in Government Code section 66000(b) of the MFA as "…a monetary exaction other than a tax or special assessment, whether established on a broad class of projects by legislation of general applicability, or imposed on a specific project on an ad hoc basis, that is charge by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project…"

A "fee" is defined in DHSMC section 17.144.020 of the City's DIF as "…a monetary exaction, other than a tax or special assessment, which is charged by the City to an applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and includes fees specified in Section 66577 of the California Government Code (in lieu of land dedication for parks) but does not include fees for processing applications or government regulatory actions or approvals."

In addition, DHSMC section 17.144.150 of the City's DIF provides: "The provisions of this chapter and any resolution adopted pursuant hereto, shall at all times be subject and subordinate to the provisions of [the Mitigation Fee Act] as the same presently exist or may hereafter be amended from time to time, to the extent the same are applicable. In the event of conflict between the provisions of this chapter and said State law, the latter shall control."

Is a manufactured home installation a "development project" for purposes of the MFA?

The MFA includes a broad definition of "development project", "…any project undertaken for the purpose of development…includes a project involving the issuance of a permit for construction…." The City, in enacting its DIF ordinance pursuant to the MFA, added to the MFA definition, "The term "development project" shall also include permits for erection of manufactured housing or structures, and structures moved into the City." Was the City's application of DIF's to manufactured home installations contemplated by the MFA?

The explicit language of the MFA does not include the term "manufactured home installation", nor does it expressly exclude it from being considered subject to impact fees established pursuant to the MFA.

Failure to Include the Term "Manufactured Home" or "Mobilehome Park". It is a common principle of statutory construction that the Legislature's use of a term in one place, but exclusion of that term in another place in a similar statute on the same subject, implies a legislative intent to exclude that term. *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal 3d 711, 725; *Craven v. Crout* (1985) 163 Cal.App.3d. 779, 783. In the instant situation, while "manufactured homes" were not included by the Legislature in the MFA, they were expressly included by the Legislature in the analogous School Facilities Fee Act. The school impact fee authorized by Education Code section 17620 requires, in subdivision (a)(1)(D) that it apply to "location, installation, or occupancy of manufactured homes….".

While this current provision was adopted in 1996, it was derived from former Government Code section 53080, added by the Statutes of 1986, Chapter 887, which authorized school impact fees against any development project as defined in "Government

Code section 65928 and provided, as well, in subdivision (c) that in the case of the sale of a manufactured home or mobilehome, the payment of the school impact fees shall occur at time of occupancy pursuant to the sale or lease of the unit. Thus, it is reasonable to assume that the Legislature did not intend to include manufactured home spaces in the MFA

Relying on plain language. Does the plain language of the MFA contemplate its applicability to mere installation of manufactured homes, rather than being limited to construction of site-built conventional ("stick-built") homes and apartment houses?

According to the testimony, the construction of a mobilehome or manufactured occurs in a factory, where it then is placed on a chassis and moved to its ultimate site. It is then "installed" by being placed on piers and pads, tied-down to posts drilled in the ground, connected together (if it is a double-wide unit), and then connected to existing utilities. Prior to installation, the owner of the home must obtain a permit from the MPA enforcement agency. That permit may only be for installation, subject to a $196 fee for enforcement agency approval of the installation plan and inspection following installation, or may be combined with an installation and construction permit, the latter covering construction of a garage, cabana, or other structure requiring a construction permit under the MPA. Thus, the permit application may include both an installation fee and fees related to "construction" for these separate activities. However, the development impact fee covers only the residential unit, not accessory structures.

Many of the plain words and procedures used in the MFA militate against its being interpreted to apply to manufactured home installations. Some of the provisions which appear to reference site-built housing construction, but have questionable relevance to manufactured housing installations, are the following:

a. In the definition of "development project" (Gov. C. §66000(a)), applying the terms "development" and "permit for construction" to the mere installation of a home constructed in a factory dozens or hundreds of miles away and towed to the site seems incongruous, if not thoroughly out of scale. The $100,000 to $200,000 value of the home is based on labor and materials utilized at the factory, compared to the far lower cost of mere installation at the site.
b. The term "fee" is defined (Gov. C. §66000(b)) as an exaction "…in connection with approval of a development project…" Not only is the concept of a mere installation facially inconsistent with the plain meaning of the term "development project", but the "approval" in a park installation situation is the mere technical review, processing, and issuance of an installation permit; "approval" connotes a more rigorous process of consideration, including consideration of impacts of a project.
c. The special requirements for fees in Government Code section 66005 all relate to conventional projects, rather than mere installations of manufactured homes. For example, Gov. Code section 66475.1 refers to subdividers dedicating land, and section 66477 refers to approval of a tentative map or parcel map, rather than an installation plan.
d. In dealing with vehicular traffic mitigation fees, Government Code section 66005.1(c) defines "housing development" as a "development project with common ownership and financing consisting of residential use or mixed use where not less than 50% of the floor space is for residential use". This clearly is inconsistent with the concept of installation of a manufactured home. [35]

[35] However, DHSMC section 17.144.010A.3. in the City's DIF ordinance, expressly includes the impact fee for "streets, bridges, and traffic signals".

e. The provisions governing timing of the payment of the impact fee (Gov. C. §66007(a)) are based on "the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first". Subdivision (e) of that section expressly states that the terms "final inspection" or "certificate of occupancy" shall "have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition." These terms, and that Code, apply only to conventional construction, not installation of manufactured homes; the latter are subject to issuance of a "mobilehome installation acceptance" upon inspection finding that all requirements of the MPA have been complied with.[36] In addition, the standards for installation are subject to laws and regulations established in the MPA, not the building code.[37] Finally, the Building Standards Law, Health & Safety Code sections 18901, et seq., pursuant to which the model building codes are adopted and amended for conventional housing, expressly exclude both manufactured homes and mobilehome parks from its standards.[38]

The City has argued that the installation of a manufactured home is a "development project" because it involves the "construction, reconstruction, and movement of the structure within the City". That, however, is inconsistent with either the plain language of the term, "develop", as well as the legislative intent.

The term "develop" is defined in the New World Dictionary[39] as, among other things, "a thing that is developed; specif., a number of structures on a tract of land built by a real estate developer." In the case of a manufactured home, the bulk of the construction is done away from the site, and the site work for the unit is minimal attachment to land and the "marrying" of two "sides" of the manufactured home.

The dictionary definition of "develop" is more akin to the initial construction of a mobilehome park, than the mere installation of a home. The hearing testimony provided a clear contrast between "development" of mobilehome park and the installation of a manufactured home. While the latter consists of placing the home on pads and piers, connecting two sides, and connecting the home to existing utilities, the park construction consists of grading, installation of roads, pouring concrete slabs for parking on lots, flat work for walkways and sidewalks, construction of electrical service and pedestals, laying of gas lines and risers, and construction of sewers and water lines, all of which must be completed, inspected, and operable before a home can be installed and occupied.[40]

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[36] Section 301 of the 1985 Uniform Building Code provides that "no building or structure regulated by this code shall be erected, constructed…unless a separate permit for each building or structure has first been obtained…" (emphasis added). Manufactured housing construction is subject to a code promulgated by the United States Department of Housing and Urban Development (42 USCA sections 5401, et seq.; Title 24 CFR, Part 3280[sections 3280.1, et seq.], not the Uniform Building Code. A "certificate of occupancy, pursuant to Section 307(a) of the 1985 Uniform Building Code must be obtained for a "building or structure of Group A, E, I, H, B, or R"; none of those categories cover a manufactured home.

[37] H&SC section 18613, 25 Cal Code of Regulations, Art. 7 (commencing with sec. 1320)

[38] In H&SC section 18909, the definition of "Building Standard" includes the following: ¶…(e) "Building standard" does not include any regulation, rule, or order or standard that pertains to mobilehomes, manufactured homes…¶ (f) "Building standard" does not include any regulation, rule or order or standard that pertains to a mobilehome park…except that "building standard "includes the construction of [buildings and utilities not applicable here].

[39] Webster's New World Dictionary (Second College Edition, World Publishing Co., 1976), pp. 385-86.

[40] Transcript, pp. 111-117.

In addition, if the Legislature had intended an extremely broad definition of "development" in the MFA, it could have specifically said so, such as the definition set forth in the California Coastal Act[41] or in the Permit Streamlining Act, adopted in 1977, with a definition of "Development" in Government Code section 65927 which is almost identical in scope and length to that in the California Coastal Act. In addition, in construing what is a "development", in the Permit Streamlining Act[42], Government Code section 65928 adds that a development includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate; it expressly states, as well, that a development project "does not include any ministerial projects proposed to be carried out or approved by public agencies". (emphasis added).

Therefore, when read in context, using both the plain and technical meanings of various definitions, concepts, and words, it would appear that attempting to apply the MFA's definition of "development" to the mere installation of a previously-constructed manufactured housing unit on a lot, even if it is necessary to use a hammer, screwdriver, or other tools to complete the installation, severely contorts the plain and technical meanings of the terms used in the MFA, rather than applying those references only to conventional construction of a housing unit or lot on a site.

Does the MFA apply only to discretionary approvals, rather than ministerial issuance of building permits?

While the MFA, by its terms, applies to any project involving the issuance of a "permit for construction", that is not necessarily the same as a "building permit". In fact, the MFA generally establishes the applicability in terms such as "in connection with approval of a development project"; see, for example, Government Code sections. 6600(b), 66001(a), 66005, et al.. Given that the purpose of the development impact fee is to mitigate the impact of proposed projects, and that development projects are best analyzed and conditioned at the time of discretionary approvals, the question is whether or not the development impact fee requirement can be imposed as a requirement only at the time of discretionary approvals (such as land use/zoning or subdivisions, for example), as opposed to merely paid at the time of a ministerial issuance of a building permit for installation of a manufactured home on never-used lot in an existing mobilehome park approved in or before 1986.

[41] Public Resources Code section 30106 defines "development" as "…on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

[42] Chapter 4.5, commencing with Government Code section 65920, enacted in 1977.

The legislative history of the MFA is available, and supports the Department's interpretation that the MFA applies only to discretionary approvals.[43] The Enrolled Bill Report, AB 1600 (as amended 8/26/87), dated September 14, 1987, provides significant background and understanding of legislative intent. The MFA was enacted by Assembly Bill 1600 ("AB 1600") in the 1987 session of the Legislature. It was enacted after complaints by "the development community" of excessive fee exactions for financing infrastructure needs created by developments. The California Senate and Assembly committee chairs introduced bills "that would strike a balance between the developers' interests and local governments." AB 1600 established procedures "when imposing fess as a condition of approval of a development project". The bill was supported by the California Building Industry Association, California Business Properties Association, California Park and Recreation Society, CA Rural Legal Assistance Foundation, Commercial Industrial Development Association, County of Santa Cruz, County Supervisors Association of California, League of California Cities, Shapell Industries, Southgate Recreational and Park District, Tri-County Apartment Association and passed unanimously in both houses of the Legislature.[44]

An assumption that the development mitigation fees are mandated at the time of a discretionary approval, rather than at the time of approval of a mere building permit, is further illustrated by the Senate Local Government Committee analysis of AB 1600 for the 7/15/87 hearing. That analysis points out:

> Local officials often require developers to install public facilities, dedicate land, or pay in lieu fees when they approve development projects. These fees or exactions are authorized by several statues and local governments' inherent powers…Assembly Bill 1600 creates procedures that cities, counties, and special districts must follow when establishing, increasing, or imposing a fee as a condition of approval on a development project after January 1, 19890.

These are not the types of "approval" undertaken immediately prior to the time of construction (e.g., a building permit), but instead are approvals related to the land use and other discretionary approvals after study and disclosure of long- and short-term impacts.

Applying the fee at the time of discretionary approvals only, when a development project is fully analyzed and assessed for its impacts, also is supported by a League of California Cities "Implementation Guide" issued contemporaneously with consideration and enactment of AB 1600. The League of Cities was one of the stakeholders consulted throughout the process and one of the supporters of the Legislature's unanimous approval of AB 1600. Two of the questions and the League's answers in this Implementation Guide are particularly relevant to

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[43] See, *People v. Cruz* (1996) 13 Cal.4th 764, 774, ftnt. 5 which provides in relevant part, "As we have explained, "it is well established that reports of legislative committees and commissions are part of a statute's legislative history and may be considered when the meaning of a statute is uncertain [citations]…The rationale for considering committee reports when interpreting statutes is similar to the rationale for considering voter materials when construing an initiative measure. In both cases, it is reasonable to infer that those who actually voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it [citations].

[44] Noticeably absent from apparent involvement in this major bill\ were any organizations representing mobilehome park owners, manufactured housing builders or dealers, mobilehome park residents, or related groups, which may indicate their assumption that the bill did not impact mobilehome parks, or at least installations of manufactured homes in existing parks.

interpreting AB 1600 and the MFA to not authorize the imposition of impact fees based on the issuance or mere "approval" of a building permit:

> 6. What is "imposing a fee as a condition of approval of a development project"?
>
> The Committee believes that the phrase "imposing" a fee as a "condition of approval" limits the application of this part of the bill to discretionary approvals given to individual projects, such as subdivision maps, use permits, zoning changes, etc., since these discretionary approvals may be (a) approved (b) denied, or (c) conditionally approved.
>
> Ministerial permits and permits such as building permits are usually not "conditionally" approved. Rather the city or county reviews the permit application for design, safety, and compliance with uniform codes. Most fees collected with building permits are either (a) those that cover the city's or county's administrative costs, to which the bill specifically states it does not apply, (b) fees that were established on a uniform basis by ordinance or resolution for all similar projects, or *(c) fees that were imposed as a condition of a prior discretionary approval but are charged or collected at the building permit stage. However, the payment of these fees is not a condition of approval at the building permit stage, but is rather a condition which must be complied with as part of completing the application for the building permit.* Accordingly, determinations will generally not be required at the building permit stage. (Underline emphasis in original, italic emphasis added)

Thus, even the League of Cities advised its member cities, such as Desert Hot Springs, that the development impact fees authorized by the MFA, as enacted in AB 1600, are "imposed as a condition of prior discretionary approval", but may be collected at the building permit stage. In the case of Palm View Estates Park, the County in approving the construction of the park prior to the City's annexation, did not impose any impact fees on spaces in the Park for which the City assumed the authority to collect as a result of the annexation.

In addition, the City has not made, nor had any opportunity to make, any discretionary approvals with respect to the Park; since initial construction of the Park, the only City actions have been approval of ministerial review and issuance of installation permits and accessory structure building permits as the MPA local enforcement agency.[45] At the time the County approved the original construction of the Park, it did not impose any impact fees for construction of the park, a status of the Park which the City expressly assumed in its July 11, 1988, letter to the Park operator.[46]

[45] Whether or not the city may impose another development impact fee on manufactured housing installations in an existing park under its general constitutional police powers is not a question relevant to this Decision, since the only impact fee in question is that developed and enacted under the MFA. If the City sought to enact an independent impact fee under only its constitutional police powers, among other things, it would have to demonstrate a reasonable relationship between the fee and the manufactured home installation's burdens on the community. *Nollan v. California Coastal Commission* (1987) 483 U.S. 825.

[46] See Footnote 13, *supra*.

The Mobilehome Parks Act and the City's Ordinance

Statutory Scheme

The prior section of this Decision holds that the City's development impact fee cannot be imposed pursuant to the MFA on the building permit necessary for installation of a manufactured home in an existing mobilehome park on a previously-unused space. However, it may be determined in a different forum that the City's impact fees may be imposed consistent with the MFA or, in the alternative, that the City may impose development impact fees pursuant to its constitutional police powers. The next threshold question then becomes whether either the MFA authority or the constitutional municipal affairs authority, or both, is expressly or impliedly preempted by the MPA, including the MPA regulations.

Health & S.C. section 18300 of the MPA provides, in relevant part,

> 18300. (a) This part applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part. Except as provided in Section 18930, the Department may adopt regulations to interpret and make specific this part and, when adopted, the regulations shall apply to all parts of the state…
>
> … (f) Every city, county, or city and county, within its jurisdiction, shall enforce this part and the regulations adopted pursuant to this part, as they relate to manufactured homes, mobilehomes, or recreational vehicles, and to accessory buildings or structures located in both of the following areas:
> (1) Inside of parks where the city, county, or city and county has assumed responsibility for enforcement of both this part and Part 2.3 (commencing with Section 18860).
> (2) Outside of parks.
>
> (g) This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:
> (1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations… within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for mobilehome parks….
>
> (h) (1) A city, including a charter city, county, or city and county, shall not require the average density in a new park to be less than that permitted by the applicable zoning ordinance, plus any density bonus, as defined in Section 65915 of the Government Code, for other affordable housing forms.
> (2) A city, including a charter city, county, or city and county, shall not require a new park to include a clubhouse. Recreational facilities,

recreational areas, accessory structures, or improvements may be required only to the extent that the facilities or improvements are required in other types of residential developments containing a like number of residential dwelling units…. (emphasis added)

Several different issues have been raised by the parties with respect to whether or not the imposition of development impact fees pursuant to either the MFA or general constitutional municipal affairs authority are preempted by the MPA, particularly the provisions above. Underlying this basic question is a critical issue that demands special rules of analysis: the City is a charter city.

Charter City Status

The City asserts that, as a California charter city, it has independent authority to adopt and enforce all laws related to its municipal affairs, citing Article XI, Section 7, of the California Constitution. The City asserts that the laws of a charter city prevail even over inconsistent state laws, unless preempted by state legislation on matters of statewide concern.[47] Thus, even for charter cities, local legislation in conflict with general laws is void if those laws are matters of statewide concern resulting in preemption.

The City's Charter states that the City "shall have full power and authority to adopt, make, exercise and enforce all legislation, laws and regulations with respect to municipal affairs, subject only to such limitations and restrictions as may be provided in this Charter and in the Constitution of the State of California," and further states,"[i]n the event of any conflict between the provision of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control". Thus, the City is correct in arguing that, because of its charter status, it needs no statutory authority to assess DIF's inside a park.

In order to determine whether a charter city ordinance is preempted, a two-step process must be undertaken:

- First, any city may enact ordinances and regulations not in conflict with the general state laws, but if an otherwise valid local ordinance conflicts with state law, it is preempted and is void. A conflict exists if the ordinance "duplicates, contradicts, or enters an area fully occupied by general state law, either expressly or impliedly.[48]
- In the case of a charter city, two further questions must be asked: (1) does the ordinance actually conflict with state law, and, if so, does the subject matter involve a municipal affair or one of statewide concern.[49]

"Contradiction"

Is there a "contradiction"? "A local ordinance contracts state law when it is inimical to or cannot be reconciled with state law."[50] In the instant matter, the City charges a development impact fee, for the benefit of the whole community, and imposes that fee as a condition of receipt of a manufactured home installation permit.

[47] Calif. Constitution, article XI, section 5(b).
[48] *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th, 725, 747,
[49] *Hernandez v. City of Sacramento* (2007) 147 Cal.App.4th, 891.
[50] *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th, 893, 898.

The "reasonable exercise of [a local government's] police powers" is strictly limited to itemized matters by subdivisions (g) and (h) of that section. Finally, even the fees which may be charged for construction or for installation of a manufactured home in a mobilehome park are not left to local calculation or variance: Health & Safety Code sections 18503 and 18613 expressly limit the fees that may be charged to those established by the Department or lesser amounts which can be charged by local governments if their cost of enforcement is less.[51] Based on those two areas of law imposed by the MPA, there appears to be a clear contradiction.

"Express Preemption"

Is there express preemption? The City argues that the burden is on the State to claim that a general state law preempts a local ordinance. It further argues that in order to make a finding of express preemption, there must be an express statement by the Legislature that it intends a state law to fully occupy an area, citing *Valley Vista Services, Inc., v. City of Monterey Park* (2004) 118 Cal.App.4th 881, 887; and that the analysis requires a review of the legislative intent, which is best analyzed through the statutory language, citing *Big Creek Lumber v. County of Santa Cruz*, *supra*, (hereinafter, "*Big Creek Lumber*").

In the *Big Creek Lumber* decision, the county enacted zoning ordinances barring timber harvesting and related activities in certain areas, whereas the state's Forest Practice Act (Cal. Pub. Resources Code §§ 4511, et seq., "FPA"), prohibited counties "from regulating the conduct of timber operations". In reviewing the applicable statute[52], and determining that the language was susceptible to more than one reasonable interpretation, the court employed several tests.

Does the statute contemplate the exercise of local fee authority?

Under the FPA, the court ruled in *Big Creek Lumber* that the state law "expressly preserves and plainly contemplates the exercise of local authority", listing a variety of specific permissible local actions.[53] However, as the Department has argued, Health & Safety Code section 18300(a) is a blanket preemption, stating that the MPA "applies to all parts of the state and supersedes any ordinance enacted by any city, county, or city and county, whether general law or chartered, applicable to this part" (emphasis added), and further makes the Department's regulations applicable "in all parts of the state". Subdivision (f)(1) requires local governments,

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[51] 18503. The Department by administrative rule and regulation shall establish a schedule of fees relating to all construction, mechanical, electrical, plumbing, and installation permits. The fees shall apply to and be paid to the enforcement agency. Fees established for construction, mechanical, electrical, and plumbing permits shall be reasonably consistent with the current edition of the Uniform Building Code as published by the International Conference of Building Officials, the Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials, and the National Electrical Code as published by the National Fire Protection Association.

18613. [With respect to the installation of a manufactured home in a mobilehome park]… (f) The Department shall establish a schedule of fees for the permits required by this section commensurate with the cost of the enforcement of this section and the regulations adopted pursuant to this section. Where a city, county, or city and county is responsible for the enforcement, the city, county, or city and county may establish a schedule of fees not to exceed the actual cost of enforcement and not to exceed those fees established by the Department where the Department is the enforcement agency. Permit fees and reinspection fees shall be paid to the enforcement agency by the permittee.

[52] Public Resources Code, section 4516.5(d) states: "Except as provided in subdivision (e), individual counties shall not otherwise regulate the conduct of timber operations…or require the issuance of any permit or license for these operations."

[53] *Big Creek Lumber*, 38 Cal.App.4th, at 1134.

as enforcement agencies, to enforce the MPA and its regulations inside of parks. It is difficult to imagine a clearer preemption, and a clearer distinction from *Big Creek Lumber*'s holding.

Furthermore, unlike *Big Creek Lumber*, the exercise of local authority, while contemplated, is expressly limited both by subdivisions (g) and (h) of Health & Safety Code section 18300, as well as by the installation fee restrictions in Health & Safety Code sections 18503 and 18613. The City relies on an Opinion of the Attorney General[54] which allowed a city to require a business license and impose a "business license fee" to raise general revenues. The park owner objected on grounds of MPA preemption, and the Attorney General did not rule on whether the MPA occupied the field. It held, instead, that the city was authorized to "tax" businesses for revenue and enforce those taxes through the license requirement.[55] This very old opinion is not applicable to the issue at hand for a variety of reasons, including questionable validity in today's fiscal environment where such a fee for general revenues would have to be enacted as a tax; because a fee consistent with the MFA is defined as "an exaction other than a tax or special assessment",[56] and because the licensing requirement in no way interferes with or contradicts the MPA.

The Department also generally argues that the limited grant of reserved power to local entities is by its implication a denial of the grant of any greater jurisdiction.[57]

Does the statute comprehensively cover the subject area?

The second *Big Creek Lumber* test is whether the state laws' "terminology is not 'so overshadowing that it obliterates all vestiges of local power as to a subject where municipalities have traditionally enjoyed a broad measure of autonomy [citations]'."[58] The Department has provided testimony and argument that the MPA and its regulations govern every aspect of mobilehome park construction, maintenance, occupancy, design and use of mobilehome parks, and the installation of manufactured homes. As noted in the evidence and *supra*, this includes fees that may be charged for manufactured home installations, forms that must be used, standards for installation, and reporting requirements.

The City asserts, as an alternative theory, that a "development impact fee" benefiting the community around the park is not expressly preempted, but that only matters within the park are preempted. The City argued that the impact fee is not a matter (such as zoning and land use) preempted by the MPA, but is derived from independent authority designed for the general health, safety and welfare of the whole community. This alternative theory fails when one looks at the context of the MFA and the City's DIF ordinance in juxtaposition with the MPA's comprehensive restrictions, with exceptions, on "zoning and land use matters." With regard to the MFA, Chapter 5 (commencing with section 66000) is part of Title 7 of the Government Code, entitled ""Planning and Land Use", as well as Division 1 of that Title, entitled "Planning and Zoning". It follows other chapters entitled "Local Planning" (Chapter 3, commencing with Gov. C. § 65100), "Zoning Regulations" (Chapter 4, commencing with Gov. C. § 65800), and "Review and Approval of Development Projects" (Chapter 4.5, commencing with Gov. C. § 65920).[59]

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[54] 40 Ops. Cal. Atty. Gen 241 (1962).
[55] *Ibid*.
[56] Government Code section 66000(a), definition of "fee".
[57] *Danville Fire Protection Dist. V. Duffel Financial & Construction Co* (1976) 58 Cal.3d 241, 247.
[58] *Big Creek Lumber*, 38 Cal.App.4th, 1153.
[59] It should be noted for emphasis that, in addition, all of these "planning" sections also involve discretionary approvals, with conditions, rather than ministerial review and issuance of building permits conditioned on paying a fee for community-wide benefits.

The City's DIF ordinance also has the same context: it is found in Title 17 of the Desert Hot Springs Municipal Code, entitled "Zoning". The City cannot have it both ways, even for the sake of argument.

In addition, carving out such an exception would make a mockery, if not surplusage, of the provisions in subdivision (a) of Health & S. Code section 18300, providing for superseding "…any ordinance…applicable to this part…". What could be more "applicable" to the MPA than an installation of a manufactured home inside a park? Merely twisting the context to focus the fee's benefit to community infrastructure does not disengage it from being charged with regard to an installation and does not overrule the Legislature's intent; only in fiction, in *Alice in Wonderland*, may Humpty Dumpty say , "When I use a word, my dear, that word means whatever I want it to mean*."*

Does the legislative history of the MPA support express preemption?

Not only does the legislative history of the MFA not support its development impact fees being applicable to installation of manufactured homes in an existing mobilehome park, but as identified by the Department and general legislative history, the MPA's preemption has been amended and strengthened over time since the MPA's enactment, and local government authority to act within the substantive area of mobilehome parks has been continuously weakened and more restricted, rather than expanded.

Reversal of Early Narrow Preemption. In 1963, an Opinion of the Attorney General[60] held that because Health & S.C .section 18010, the predecessor statute to Health & S.C. section 18300, stated that it superseded local ordinances "applicable to the provisions of this part", rather than "applicable to this part, the preemption only cover in the eighty sections of the MPA. Subsequently, the Legislature amended the section, deleting the words "the provisions of" and, consistent with the Attorney General's advice, broadened the scope of the preemption to any matter applicable to the MPA.

Repeal of Local Authority over Park Standards. An early version of Health & S.C. section 18300(g) provided broad authority for local governments to regulate a variety of standards within mobilehome parks. An amendment in Statutes of 1983, Chapter 1076, significantly narrowed the local government's authority, leaving only certain matters outside of parks. The following represents the prior language (in strike-out) and new language (in underline):

> 18300 (g)(1) [the MPA shall not prevent local governments, within reasonable exercise of their police powers, from doing any of the following:] "…or from adopting rules and regulations by ordinance or resolution prescribing ~~standards of lot, yards, or park areas, landscaping,~~ park perimeter walls, or enclosures, signs, access or vehicular parking or from prescribing the prohibition of certain uses for mobilehome parks..

Restrictions on Local Government Planning Authority: Another amendment to Health & S.C. section 18300, in subdivisions (h)(1) and (h)(2) by the Statutes of 1985, Chapter 210, prohibited local governments from requiring the average density in the new park from being less than that permitted by the applicable zoning ordinance for other affordable housing forms, and further prohibited local governments from requiring a new park to include various recreational facilities except to the extent that these are required in other types of residential developments containing a similar number of dwelling units.

[60] 41 Ops.Cal.Atty.Gen. 28 (1963)

Repeal of Local Government Review and Approval of Lot Line Changes. Statutes 2001, Chapter 434, amended Health & S.C. section 18610.5 to remove the requirement for prior "written authorization of the local planning agency" prior to enforcement agency approval of lot line adjustments within a park, leaving only a requirement that notice be given to the local government of proposed changes.

An analogous shift away from limited local authority to express general preemption was found to exist in *Briseno v. City of Santa Ana* (1992) 6 Cal.4th 1378. In that decision, the Court found that the State Housing Law[61] originally allowed local ordinances related to occupancy standards, but the State Housing Law evolved to where local ordinances are required to conform to state standards (which also are developed by the Department). Not only is this evolution and conclusion analogous to the instant situation vis-à-vis the MPA, but the Court's additional rationale also is applicable. Under the MPA, local governments have specific limited authority reserved under Health & S.C. section 18300 (g) and (h). In *Briseno*, the Court noted that the Legislature also left some local authority in Health & S.C. sections 17958.5 and 17958.7 and concluded:

> [I]f the Legislature had not intended for the Uniform Housing Code to generally preempt local regulations, sections 17958.5 and 17958.7 would have little meaning. Stated differently, it makes little sense to prescribe a narrow set of circumstances in which local entities can override state law if those entities are already free to override state law with impunity.[62]

Does the MPA comply with the *Sherwin-Williams* tests for preemption?

In *Sherwin-Williams v. City of Los Angeles* (1993) 4 Cal.4th 893, the Supreme Court required that the challenged ordinance be compared to the statute in order to determine whether there was duplication, contradiction, or it entered an area fully occupied by the state law.

The City states that there is no "duplication" because the DIF ordinance explicitly addresses fees on new development to finance the cost of public facilities that are required by that new development, whereas the MPA does not address public facility fees at all. However, this effort at sleight of hand—focusing on the purpose of the fees rather than its imposition and impact—ignores the express provisions of the MPA. Not only does the MPA expressly supersede "any ordinances…applicable to this part", but the MPA also expressly addresses fees for installation[63] and also expressly limits the installation fees to the cost determined by the State related to installation or a lower cost for cities if they processing and inspection cost is less.[64]. Thus, there is clear "duplication" of installation fees in the MPA and the City's DIF ordinance.

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[61] Division 13, Part 1.5, commencing with section 17910 of the Health & Safety Code.

[62] *Briseno v City of Santa Ana*, 6 Cal.4th at 1383.

[63] Health & Safety Code sections 18503 (general fees) and 18613 (installation fees); see also, Health & Safety Code section 18502.5(b), "Notwithstanding any maximum fees set by this part, the department may, by regulation, set fees charged by the department for all permits and for the department's activities mandated by this part…." (emphasis added)

[64] Health & Safety Code section 18613(f), "The department shall establish a schedule of fees for the [installation] permits required by this section commensurate with the cost of the enforcement of this section and the regulations adopted pursuant to this section. Where a city, county, or city and county is responsible for the enforcement, the city, county, or city and county may establish a schedule of fees not

The City further argues that there is not a "contradiction" because the MPA does not address "impact caused by development" and the provisions of the DIF ordinance and MPA differ in scope and substance. However, in its flat preemption of "any ordinance, the Legislature has considered community impacts by addressing authority for zoning in Health & S.C. section 18300(g)(1), visual impacts in Health & S.C. section 18300(g)(1), parking impacts in Health & S.C. section 18300(g)(1), density of use in Health & S.C. section 18300(h)(1), shoreline and waterway impacts and access in Health & S.C. section 18406, abatement of nuisances in Health & S.C. section 18402, wastewater and sewage discharges in Health & S.C. section 18554, and allowing local government imposition of fire protection in excess of the Department's requirements in Health & S.C. section 18609. It has not, on the other hand, granted authority to local governments to finance external public facilities for general public health and welfare with manufactured home installation fees, creating a contradiction.[65]

Finally, the City attempts to distinguish the clear express preemption found to exist by the recent decision in *County of Santa Cruz v. Waterhouse* (2005) 127 Cal.App.4th 1483, is not applicable because that case dealt only with a "zoning matter", rather than development impact fees. As discussed above, that assertion is completely belied by both the purpose of the DIF ordinance—to benefit the entire community—and by the actual location of both the MFA and the City's DIF ordinance in their respective areas of law dealing directly with "zoning and land use" matters.

The City also misreads *Waterhouse* by asserting its focus was to promote uniformity in construction and installation standards, and therefore was concerned only with physical construction of manufactured homes. However, while the Court acknowledges those legislative goals, the immediately following paragraph in that decision states, "In addition to the legislative goals of the MPA impliedly demonstrating full occupation of the field, the Legislature expressly states its intent that the MPA preempt local regulations".[66] While the goals and purposes of the MFA and the City's DIF ordinance are admirable and a positive benefit for the community as a whole, they do not justify interfering in the Legislature's express intent to carve out a different statutory scheme for mobilehome parks. Because the MPA does not specifically mention DIF's, that does not contravene the Legislature's expressed intent to preempt "any local ordinances".

A significant effort was made by the City to use the doctrine of *in pari materia* to impel harmonization of the MFA and MPA as two statutory schemes with similar general beneficial purposes. However, adopting this doctrine and imposing it on the MPA would require treating the express preemption language as surplusage, would ignore the Legislature's express limitations on a localities exercise of police power within a mobilehome park, and is not sustained by any authority.

"Implied Preemption"

Even if there were no express preemption, is there implied preemption? As stated in *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485, "[i]n determining

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to exceed the actual cost of enforcement and not to exceed those fees established by the department where the department is the enforcement agency…." (emphasis added)

[65] The City asserts repeatedly that we should employ the doctrine of *in pari materia*, that when two legislative acts have a similar general purpose, both should be reconciled so as to uphold both, if reasonably possible, citing *Western Mobilehome Assoc. v. County of San Diego* (1971) 16 Cal.App.3d 941, 949. It is difficult to fathom the "similar general purposes" when the City also has argued that the MPA's preemptive scope is so narrow as to be limited to specified in-park activity.

[66] 127 Cal.App.4th, at 1491.

whether the Legislature has preempted by implication to the exclusion of local regulation, we must look to the whole purpose and scope of the legislative scheme." Implied preemption occurs when: (1) general law so completely coves the subject as to clearly indicate the matter is exclusively one of state concern; (2) general law partially covers the subject in terms clearly indicating a paramount state concern that will not tolerate further local action; or (3) general law partially covers the subject and the adverse effect of a local ordinance on transient citizens of the state outweighs the possible municipal benefit.

Is there "complete coverage" of the MPA subject matter?

The City argues that the coverage is not "complete" because, even though a long list of provisions covers a wide variety of physical, operational, and fiscal issues, the MPA does not expressly specify "impact fees". This argument is specious, because the Legislature provided the all-inclusive restriction on local government ordinances in Health & S. C. section 18300(a) and, as discussed above, strengthened the preemption by making the preemption applicable "to this part", rather than "to the provisions of this part", negating the limitation in preemption found to exist by the Attorney General in an earlier opinion.

The City also argues that the coverage is not "complete" because the MPA does not address "impacts caused by development". Again, as discussed previously, this argument ignores the careful balance imposed by the Legislature, establishing statewide protections for mobilehome park residents and homeowners, while allowing local government limited but adequate ability to protect and enhance their communities. Local governments have zoning authority, can establish reasonable densities (presumably consistent with current or planned community facilities), impose fire and flood protection requirements, require in-park parking and recreational facilities consistent with surroundings zoning, etc. However, as further discussed above, even that balance consistently has been tinkered with by the Legislature in a manner that has reduced local government authority rather than increasing it.

Is there "partial coverage" with a clear indication of paramount state concern not tolerating further local action?

If it were determined that the MPA provided only "partial coverage" of the area of mobilehome park operation, construction, maintenance, and use, the Legislature's findings and explicit statutory direction to supersede all local ordinances is a clear indication of paramount state concern not tolerating further local action. And, again, given the trend to reduce, rather than enhance, local authority in this area, the Legislature's clear indication is that the statewide concerns have not tolerated some local government efforts to impose themselves in these areas.

Impact of Charter City Authority

As previously discussed, even though we have found that the City's ordinance is contradictory to the state's MPA regulations, and that the state's MPA regulations both expressly and impliedly preempt the area of mobilehome park fees and regulation, an addition question to be addressed is whether the subject matter involves a municipal affair or one of statewide concern.

It has been said that the terms "statewide concern" and "municipal affair" "represent "Janus-like, ultimate legal conclusions rather than factual descriptions and that the task to distinguish between them is to "identify a convincing basis for legislative action originating in

extramunicipal concerns".[67] Is the state's regulation of mobilehome parks and manufactured home purchases in those parks a statewide concern that trumps a city's interest in generating revenue for community facilities? In particular, is the state's interest in restricting the ability to charge fees to mobilehome park residents and manufactured home buyers a critical statewide interest?

The findings in the MPA reflect concerns about "high costs" and "substantial investment" in manufactured homes, as well as assuring "general welfare and a decent living environment"[68] The Legislature also found that the "standards and requirements" for construction, maintenance, occupancy use and design" of mobilehome parks "should guarantee park residents maximum protection of their investment and a decent living environment."(emphasis added)[69]

However, the Legislature has expressed its concern about the costs of purchasing manufactured homes and rents in mobilehome parks in a plethora of other ways. In the Mobilehome Residency Law, it acknowledges local government authority to impose rent controls on private owners, restricts fees, prevents inappropriate repair requirements, and otherwise protects mobilehome park residents and homeowners from unnecessary costs.[70]

The Legislature's findings which provide guidance to the Department in its various statewide financial assistance, policy development, and codes and standards enforcement activities to promote decent, safe, and affordable housing opportunities also expressly recognize the special needs of manufactured home buyers and mobilehome park residents. It has expressly stated, *inter alia*:

> The Legislature finds and declares that the subject of housing is of vital statewide importance to the health, safety, and welfare of the residents of this state….[71]
>
> To provide a decent home and suitable living environment for\ every California family is the basic housing goal of state government.…The Legislature also recognizes the need to provide assistance to persons and families of low and moderate income and very low income households to purchase manufactured housing and to cooperatively own the mobilehome parks in which they reside and the need to increase the supply of manufactured housing affordable to persons and families of low and moderate income and very low income households….[72]
>
> The Legislature finds and declares that manufactured housing, by virtue of its production costs and sales prices can provide a source of decent, safe, and affordable shelter for persons and families of low and moderate income…The Legislature finds and declares that, if California is to effectively meet the housing needs of persons and families of low and moderate income, it must encourage increased manufactured housing production, new manufactured

[67] California Fed. Savings & Loan v. City of Los Angeles (1991) 54 Cal.3d 1, 17-18.
[68] Health & Safety Code section 18250.
[69] Health & Safety Code section 18251.
[70] Civil Code sections 798, et seq.
[71] Health & Safety Code section 50001.
[72] Health & Safety Code section 5003(b).

housing developments, and the purchase of new manufactured housing by persons and families of low and moderate income.[73]

… The Legislature finds and declares as follows: (1) That manufactured housing and mobilehome parks provide a significant source of homeownership for California residents, but increasing costs of mobilehome park development and construction, combined with the costs of manufactured housing, the costs of financing and operating these parks, the low vacancy rates, and the pressures to convert mobilehome parks to other uses increasingly render mobilehome park living unaffordable, particularly to those residents most in need of affordable housing.[74]

It is clear that the Legislature has clearly and repeatedly evinced its intention that the ability to purchase a home for a mobilehome park, and to continue to live in the mobilehome park, are matters of statewide concern and that ensuring that the costs of these opportunities are reasonable and affordable also are matters of statewide concern. These clearly both trump and contradict the City's concern for using manufactured home buyers as a special source of income to construct community facilities when other means, fair to all the persons in the community with access to those facilities, might be undertaken, even if they require approval from all the residents of Desert Hot Springs rather than merely from new residents.

Adequacy of Department's Grounds for Revocation

As the facts indicate, on January 3, 2012, the Department issued a formal notice of intent to revoke the City's local enforcement agency authority effective February 15, 2012, indicating two grounds for revocation:

(1) "The City Conditions Approval of an Installation Permit of a Manufactured Home Inside a Pre-Existing Park Upon Payment of the City's DIF Fees"; and

(2) "The City Has Failed to Forward Statutory Permit to Operate Fees to The Department".

With respect to the former, the Department stated the cure is "the IMMEDIATE cessation and desistance from further assessment of DIF fees against renters or lessees of lots or spaces inside a pre-existing mobilehome park".[75] With respect to the latter, the Department required payment of fees owed to the State for prior years in the amount of $7,654.00 before February 14, 2012; and, in addition, "(1) a written plan and calculation of estimated fees owed to the State for 2011, 2012, [and] 2013, based on the current number of Parks situated in the City's jurisdiction; (2) the name and contact information for the City's person who will be responsible to receive training and to have the knowledge of the City's statutory and regulatory MPA LEA duties and who will produce the calculation noted in item 1 and be responsible for ensuring payment to the Department within thirty (30) days of receipt by the City."

[73] Health & Safety Code section 50007.5

[74] Health & Safety Code section 50780

[75] While the Notice of Revocation letter referred to assessing the DIF's "against renters or lessees of lots or spaces", for the reasons set forth in this Decision, the assessment of DIF's against any person installing a manufactured home on a space or lot in a mobilehome park is both void and a violation of the City's local enforcement agency responsibilities.

A revocation may be imposed pursuant to Health & S.C. section 18300 which provides, in relevant part:

> (c) (1) In the event of nonenforcement of this part or the regulations adopted pursuant to this part by a city, county, or city and county, the Department shall enforce both this part and Part 2.3 (commencing with Section 18860) and the regulations adopted pursuant to this part and Part 2.3 (commencing with Section 18860) in the city, county, or city and county, after the Department has given written notice to the governing body of the city, county, or city and county, setting forth in what respects the city, county, or city and county has failed to discharge its responsibility, and the city, county, or city and county has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice.

The Development Impact Fee Imposition Issue

As the facts demonstrate, the City assumed the authority and responsibility to enforce the MPA within its jurisdiction as the "local enforcement agency". It assumed responsibility to enforce the MPA laws and regulations, and also, at the time of assumption, had to demonstrate the ability to properly enforce these laws and regulations. In addition, whether or not as a local enforcement agency, the City is mandated to enforce the MPA within mobilehome parks.

As the facts further demonstrate, the City enacted a development impact fee ordinance and is imposing it on the installation of manufactured homes in existing mobilehome parks on spaces not previously occupied. Consistent with the determination of the first two parts of this Decision, imposition of that impact fee is a violation of Health & S.C. section 18300(f) as well as being void due to the MPA preemption.

In addition, the City, as the MPA local enforcement agency, conditions approval and issuance of an MPA application for a permit to install manufactured homes on payment of the development impact fee. The issuance of the installation permit is a ministerial act, requiring only compliance with the Department's installation standards and payment of the Department's installation permit fees. Requiring payment of a development impact fee is not authorized by the Department's MPA laws and regulations. The City's authority in processing this MPA permit is no greater nor less than the Department's. Since the City, as a local enforcement agency reviewing issuance of the installation permit, is essentially "standing in the shoes" of the Department, it cannot concurrently act as the City Building Department and impose its unique municipal requirements not authorized by the MPA on an applicant for a State permit (as opposed to a local building permit). In addition, to the mobilehome park development impact fee being void and not authorized by the MPA as a separate fee, the impact fee also exceeds the fee for installation permits authorized by the MPA and implementing regulations.

By charging this development impact fee and mandating its payment as a condition of issuance of the installation permit, the City has, and continues to, violate its statutory obligations as a local enforcement agency. As long as the City, as a local enforcement agency, continues to impose the development impact fee requirement, or requires its payment as a condition for issuance of a permit to install a manufactured home in an existing park, that constitutes "nonenforcement of" the MPA and the State has adequate grounds to revoke its authority as a local enforcement agency.

Failure to Perform Administrative Tasks

Under the section related to failure to forward State fees, the Department has cited several purported violations. With respect to the failure to forward State fees, as required by subdivision (b) of Title 25, Calif. Code of Regulations, section 1012,, the evidence supports the fact that the City sought assistance from the Southern California Department Office in how to calculate the correct amount and thereafter tendered payment of the full amount within the requisite time, as well as identifying the person responsible.

The Department contends that the past failure to pay the State fees, until demand was made for them by the Department, constitutes independent grounds for revocation of the permit. Revocation on that basis would be inconsistent with the statutory authority governing revocation. Health & Safety Code section 18300(d) clearly provides authority only in the event that a notice of violation is provided and a city fails to comply; there is no basis for revocation merely for prior "bad acts" or negligence in enforcement:[76] Health & S.C. section 18300 states, in relevant part, the following:

> (f) In the event of nonenforcement of this part or the regulations…the Department shall enforce both this part … and the regulations adopted pursuant to this part … after the Department has given written notice to the governing body of the city… setting forth in what respects the city, … has failed to discharge its responsibility, and the city… has failed to initiate corrective measures to carry out its responsibility within 30 days of the notice. (emphasis added)

The Department also required City to provide a "written plan" regarding proper payment of future State fees and a contact person to receive training regarding the MPA and who is responsible for calculating and paying those fees. The evidence indicates that the City initiated and exchanged telephone and email contacts with Department manager Sal Poidomani in the Riverside Office, by at least Shannon Buckley and Bruce Nearman, seeking payment information and assistance. While there is no "written plan" in evidence at this point, given the adversarial nature of this matter, it is likely that a more collegial relationship may arise in the future involving both requests for and provision of technical assistance. Whether they, or the Director of Community Development, Martin Magana, is ultimately responsible, the City has substantially attempted to perform its obligations in this regard and the State does not have adequate grounds to revoke the City's local assistance agency status for failure to perform specified administrative tasks.

The State also argues that the City's local enforcement agency status should be revoked for a variety of other reasons, including the failure to use proper Department forms, including, possibly, the Mobilehome Installation Acceptance form and other Department documents, and a failure to forward Permits to Operate from which the fees were calculated. However, the City properly objected due to lack of specificity and notice and, in addition, the evidence is not conclusive in this regard. The Department also states that the City must provide a "written schedule on how the City will become educated and versed on the LEA's duties pursuant to the MPA". However, the only "written plan" in the Department's Notice of Revocation related to the calculation of the State fees.

[76] See also, Title 25, Cal. Code of Regs, section 1005.5, allowing an opportunity for compliance prior to revocation.

The Department's authority to revoke local enforcement agency status on these additional grounds is rejected for two reasons. First, the City was not provided specific notice and an opportunity to correct these alleged violations, as required by Health & Safety Code section 18300(f). Secondly, as the State's employee, Mr. Sal Poidomani, testified, Health & Safety Code section 18306 requires the Department to perform evaluations of local enforcement agencies' compliance with the MPA.[77], but the Department has not performed such evaluations "in the recent pass or on a regular basis"[78]. Thus, State does not have adequate grounds to revoke the City's local assistance agency status for failure to perform specified administrative tasks.

DISPOSITION

For the foregoing reasons, the following is the decision of the Hearing Officer:

The City's Appeal is denied and Department's Notice of Revocation is sustained with respect to the City's continuing violation mandating payment of a development impact fee as a condition for approval of an installation permit for a manufactured home in a mobilehome park.

The City's Appeal is granted and the Department's Notice of Revocation is not sustained with respect to the failure to perform specified administrative actions due to the City's substantial compliance.

The effective date of the Department's revocation is stayed until April 6, 2012, either to allow the City to comply with the Department's demand to repeal that portion of the City's ordinance applying the development impact fee to installation of manufactured housing on spaces not previously occupied in existing mobilehome parks or to take such other appropriate action which may include, among other things, initiating a judicial challenge of the denial of its appeal on the grounds related to imposition of the development impact fee or returning local enforcement agency jurisdiction to the Department.

Dated March 28, 2012

_____

Ronald S. Javor, Hearing Officer

[77] 18306. (a) The Department shall evaluate the enforcement of this part and regulations adopted pursuant to this part by each city, county, or city and county which has assumed responsibility for enforcement.

(b) In performing this evaluation, the Department shall have the following authority:

(1) To examine the records of local enforcement agencies and to secure from them reports and copies of their records at any time. However, if the Department requires duplication of these records, it shall pay for the costs of duplication.

(2) To carry out any investigations it deems necessary to ensure enforcement of this part and the regulations adopted pursuant thereto.

[78] Transcript, pp. 126-129.

Attachment A: Ruling on Motions

City's Objections to HCD Exhibit List (Attachment C, February 27, 2012, Submission)

1/14/2011 "Memo to Darren Proulx from Chris Herrrin outlining past history of park and past County Development Fees". City's objection is "relevance" and "unclear what expertise and/or authority Chris Herrin has to reach any conclusions regarding Palm View Estates.

Overruled as to relevance. Since the third paragraph of City's November 17, 2011, City has argued that the imposition of DIF's on all new development is common practice in cities throughout California. This document addresses county development fees. Overruled as to "expertise and/or authority". This author and this research were discussed by Mr. Waterman in the hearing without objection (Transcript pages 93-97).

8/24/11 document entitled "Palm View Estates". City's objection is "vague and ambiguous".

Objection sustained.

9/27/2011 "Email from Brad Harward, CSA Admin. II, Codes and Standards, asking Legal Affairs Division to look into the alerts noted at the links for the Desert Sun". City's objection appears to be the title, not the substance.

Objection sustained as to the title, however the document itself is admissible as to notice to the Department regarding the DIF situation.

9/27/2011 "Desert Sun News Article regarding DIF". City's objection is relevance and hearsay: "The newspaper article appearing in the Desert Sun merely contains the arguments of the parties, which are subject to dispute. The facts cannot be determined from the article."

Objection overruled as to relevance: the article provides notice of a dispute as to the imposition of DIFs. Objection overruled as to hearsay: hearsay is permissible in an informal hearing if corroborating other evidence.

9/27/2011 "Desert Sun News Article regarding DIF". City's objection is relevance and hearsay: "The newspaper article appearing in the Desert Sun merely contains the arguments of the parties, which are subject to dispute. The facts cannot be determined from the article."

Objection overruled as to relevance: the article provides notice of a dispute as to the imposition of DIFs. Objection overruled as to hearsay: hearsay is permissible in an informal hearing if corroborating other evidence.

2011 "Palm View Estates Power Point presented to DHS City Council". City's objection is relevance.

Objection overruled. The document clearly is relevant to the process and substance of DIF's being charged with respect to Palm View States.

[undated] "Municipal Code for City of La Quinta re: DIF" Objection: The ordinance provided appears to be related to the MSHCP and not DIFs generally.

Objection overruled: grounds for objection are unclear.

[undated)] "Municipal Code for Cathedral City re DIF" Objection: The ordinance provided appears to be related to the MSHCP and not DIFs generally.

Objection granted: by their terms, these ordinances related to "Multiple Species Habitat Conservation Plans", not general development impact fees.

[undated] "HCD List of Parks in Desert Hot Springs" [Exhibit R-8] Objection: Relevance-the document does not show the number of empty lots in the Palm View Estates Mobilehome Park.

Objection overruled: If the calculation of State fees had been at issue in the Hearing, the number of parks and spaces in each would have been relevant. (25 Cal. Code of Regs. Sec. 1008)

[undated] "Environmental Initial Study conducted by DHS Development Department regarding annexation of County property into the City limits". Objection: relevance.

Objection sustained.

2/15/2012 Emails from Lisa Campbell providing case law, dated February 15, 2012. City's objection: "It is beyond the scope of the hearing officer in this hearing to rule on, and therefore to consider evidence related to, the validity of the development impact fee ("DIF") or compliance with the Mitigation Fee Act ("MFA"). The MFA provides the means and timing for challenging DIF, and it does not appear that the Department has even standing to do so. Other laws govern challenges to the validity of ordinances as well."

Objection sustained in part: the three documents (opinions) proffered by the Department cannot be used to challenge the general validity of the DIF or its compliance with the MFA; however, they may be used to demonstrate the validity of application of the City's DIF to manufactured home installations as being outside the scope of the MFA and police power authority, as well as any similarities or differences vis-à-vis the school impact fee statutes and their history. As to "standing", the City raised the validity of the DIF application to manufactured housing installations as a defense to the revocation of local enforcement agency status, and therefore the Department has the right to challenge that validity.

[undated-introduced at 2/26 Appeal Hearing] [Exhibit R-2] Letter from Jim Waterman to City regarding payment of DIFs under protest. Objection: The letter is undated and unsigned. Relevance-the City has stipulated that it charges DIFS on all new mobilehomes located in all mobilehome parks in the City, under the authority granted by the Fee At and the City's Municipal Code."

Objection sustained as to the information in the letter, but overruled as to the witness's testimony that a copy of the letter was provided.

2/23/12: Email from Lisa Campbell requesting three items related to annexation matters. Objection: Relevance

Objection sustained.

2/23/12: Email from Lisa Campbell requesting: A copy of the City's general plan at the time the Park was annexed into the City's jurisdiction in approximately 1988. Objection: Relevance.

Objection sustained. The only possible relevance relates to the approval of the DIF ordinance (See City of Desert Hot Springs Ordinance No. 659, "Year 2001 Development Impact Fee ("DIF") Ordinance"), and the validity of the DIF enactment is irrelevant in this hearing.

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