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March 29, 2019

VIA E-MAIL AND U.S. MAIL

Honorable Teresa Barrett, Mayor
and Members of the Petaluma City Council
City of Petaluma
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Re: Councilmember Bias In Connection With Safeway Fuel Center Project

Dear Mayor Barrett and Members of the City Council:

We write to you regarding the issue of councilmember bias Safeway Inc. has raised in connection with its proposed Fuel Center Project ("Project") located at 335 S. McDowell Blvd. ("Property") in the City of Petaluma ("City"). By way of introduction, for nearly 20 years, my practice has centered on land use and local government law. I am a shareholder in Miller Starr Regalia's Walnut Creek office and a member of the firm's Land Use Department. Prior thereto, I served as City Attorney for the City of Walnut Creek. A copy of my professional resume is attached hereto as **Exhibit A**.

Based on my role with the City of Walnut Creek and nearly two decades of experience in the field, I believe Safeway has raised credible issues of councilmember bias in this matter. This is based not only on an analysis of the relevant caselaw, but recent first-hand experience disqualifying a councilmember for bias in the City of Lafayette under similar factual circumstances as those present here.[1] Accordingly, the appropriate—indeed, required—remedy would be for the remaining councilmembers with demonstrable bias to recuse themselves from the City's ongoing processing of the Project or deny the appeal. This is not a close call.

[1] The City of Lafayette disqualification is addressed in further detail below.

FACTS

The Petaluma City Council consists of seven members, of which two of the members, Councilmember Gabe Kearney and Councilmember Kathy Miller, have recused themselves from any further review of the Project. Four members – Mayor Teresa Barrett, Vice Mayor Kevin McDonnell, Councilmember Mike Healy, and Councilmember D'Lynda Fischer (collectively, the "Councilmembers") – have thus far elected not to recuse themselves from the matter. Based on our review of the documentation and understanding of the facts, however, as detailed below, we believe these Councilmembers' words and actions demonstrate bias and warrant their recusal as well.

Mayor Teresa Barrett

Mayor Barrett has expressed her opposition to the Project since 2013 and appears to have used her position on the Bay Area Air Quality Management District ("BAAQMD") Board of Directors to lobby against it. Further, the Mayor has used profanity in referring to Safeway and, moreover, was in regular email contact with Project opponents reiterating her opposition to the Project.

By way of example, though by no means an exhaustive representation of all instances of bias, at a March 3, 2014 hearing to consider a moratorium on gas stations, Mayor Barrett stated: "I don't like this (Safeway) project. I don't like that it's right next to these sensitive receptors." She also directed Staff to investigate whether the Project would qualify as a "drive-thru" so as to be disallowed under the City Code. Mayor Barrett has also referred to Safeway employees and consultants speaking during public comment as "Safeway shills." Further, in correspondence with Project opponents, she has said "I do not support the idea of putting this project in this place . . .." and has urged opponents not to give up on appealing the Project as "this is NOT a win for Petaluma." As a final example, during her successful race for Mayor in 2018, Ms. Barrett emailed her campaign manager that she was making her opposition to the Project known personally to constituents as she walked door-to-door, but refused to provide a formal written response on Facebook out of fear she would have to recuse herself from voting on the Project.

Vice Mayor Kevin McDonnell

Vice Mayor McDonnell has also been outspoken in his opposition to the Project. He made his opposition known to the local newspaper when campaigning, in a candidate forum, on his campaign website, and on social media. In response to a questionnaire from Bike Petaluma, then-City Council candidate McDonnell wrote: "When developments come through the Planning process, we must create incentives to move away from cars. They only create pollution and traffic."

Councilmember Mike Healy

Councilmember Healy's opposition to the Project has been more focused on creating and erecting legislative hurdles to the Project's approval and implementation. For example, at an August 19, 2013 City Council hearing, Councilmember Healy questioned whether there were legislative changes that could be made in advance of the Project coming through, claiming the Project would set a "dangerous precedent," and noting that competitor gas station owners in Petaluma had retained local counsel and that the issue was "not going away lightly." Councilmember Healy was also the driving force behind both the proposed moratorium against gas stations and the proposed fee increase on gas stations. He proposed an urgency ordinance that would bar the processing of any gas station application pending adoption of legislation to provide discretionary approval on that application. Councilmember Healy then stated this would give Safeway an opportunity to convince the City Council that it would be a good thing for the community, noting that may be a "difficult thing for them to do."

Aside from attempting to erect legislative hurdles, Councilmember Healy has also made his opposition known to key persons with political influence in the community. For example, he was in regular contact with Petaluma City Schools staff regarding the Project both prior to and after the Planning Commission hearing.[2] He was also routinely in contact with Petaluma City School's Chief Business Official regarding the Project and, in one particular instance, exchanged correspondence mocking a petition in support of the Project. As a further example, in an email exchange with Stephen Gale of the Sonoma County Democratic Party Central Committee ("SCDPCC") regarding the opening of its 2018 campaign headquarters in the same shopping center as the Project, Councilmember Healy wrote:

> "I don't get the impression that the SCDPCC has any idea of the steaming pile of horse poop of a local political mess it has stepped into with the choice of this HQ. The building you will be using is scheduled to be torn down soon for a Safeway fueling center 100 feet from an elementary school serving a 90%+ Hispanic population. The parents, the school district & the neighborhood are all outraged. Yet Safeway & the landlord persist. I will not be attending the grand opening or having anything to do with the HQ while it is in operation. Many in Petaluma will regard this choice of HQ as a slap in the face."

As a final example, Councilmember Healy also authored an op-ed article in opposition to the Project.

[2] Along those lines, it is worth noting that Planning Commission action on the Project was continued from its May 8, 2018 hearing to June 26, 2018 at the request of Petaluma City Schools.

Councilmember D'Lynda Fischer

Councilmember Fischer has also been vocal in her opposition to the Project on social media and in exchanges with constituents. In fact, on her campaign website, she clearly stated: "I oppose the future development of fossil fuel gas stations and will work to change our zoning code to reflect this position."

PROCEDURAL DUE PROCESS AND APPLICABLE LEGAL STANDARDS

The Councilmembers' comments on and opposition to the Project in light of their potential role on its appeal must be framed in the proper legal context because they directly impact Safeway's procedural due process rights.

The Due Process Clause of the U.S. Constitution provides that "nor shall any state deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, section 1. The equivalent provision in the California Constitution provides that "[a] person may not be deprived of life, liberty, or property without due process of law . . . ." Cal. Const. art. I, section 7. Code of Civil Procedure section 1094.5 similarly mandates that a project applicant receive a fair hearing. *See, e.g., Applebaum v. Board of Directors*, 104 Cal.App.3d 648, 657-58 (1980) (biased decision-makers are constitutionally impermissible and even the probability of unfairness is to be avoided).

Numerous cases address whether procedural due process—the requirement that public entities conduct hearings in a fair manner with neutral and unbiased decision-makers— is provided when a member of an adjudicatory body considering a discretionary, quasi-judicial decision is, or may be, biased against a party. *See, e.g., Woody's Group, Inc. v. City of Newport Beach*, 233 Cal.App.4th 1012, 1022-23 (2015) (member of city council "strongly opposed" to planning commission decision appealed the commission's decision to the council); *Nasha v. City of Los Angeles*, 125 Cal.App.4th 470, 483 (2004) (member of planning commission wrote article "attacking" project under consideration; member held biased, and commission's decision reversed); *Gai v. City of Selma*, 68 Cal.App.4th 213, 219 (1998) (member of personnel commission investigating officer's discharge should have recused himself because he was actually biased against officer); *Clark v. City of Hermosa Beach*, 48 Cal.App.4th 1152, 1173 (1996) (city council member should have recused himself because proposed project had "direct impact" on the "quality of his own residence"); *Mennig v. City Council*, 86 Cal.App.3d 341, 351 (1978) (members of city council who became personally "embroiled" in conflict with police chief should have recused themselves on question of discipline of police chief).

The courts have repeatedly held that procedural due process applies in the land use context. *See, e.g., Woody's Group, Inc. v. City of Newport Beach, supra*, 233 Cal.App.4th at 1021-23; *Clark v. City of Hermosa Beach, supra*, 48 Cal.App.4th at 1170-73; *Nasha v. City of Los Angeles, supra*, 125 Cal.App.4th at 483-84. Procedural due process always requires a level playing field, the so-called

"constitutional floor" of a fair hearing in a fair tribunal—in other words, a fair hearing before a neutral and unbiased decision-maker:

> "[I]n order to prevail on a claim of bias violating fair hearing requirements, Nasha must establish 'an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims.' " [citation] A party seeking to show bias or prejudice on the part of an administrative decision maker is required to prove the same "with concrete facts: '[b]ias and prejudice are never implied and must be established by clear averments.' "
>
> *Nasha v. City of Los Angeles, supra*, 125 Cal. App. 4th at 483 (quoting *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236)).

Thus, to prevail on a procedural due process claim, actual bias is not required. Instead, such contention must simply be established by showing that there is "an unacceptable probability of actual bias" on the part of those who have actual decision-making power over the issue at hand.

RELEVANT CASES ADDRESSING BIAS

Nasha v. City of Los Angeles, one of several leading cases in this area, made clear that allowing a biased decision-maker to participate in a discretionary decision is enough to invalidate the decision. There, a city planning director approved a five-residence development project. A neighbor and a conservancy appealed the decision to the planning commission.

Prior to the hearing by the commission, however, one of the planning commission members wrote an unsigned article in a local homeowner's association newsletter advocating "a position against the project" because he perceived the project to be a threat to wildlife migration patterns. He also spoke against the project at a neighborhood association meeting, while asserting that "I feel I can make a fair and impartial decision regarding this matter."

The developer subsequently sought a writ of mandate to overturn the planning commission decision, but the trial court denied it. The court of appeal reversed, concluding the planning commission's decision was "tainted by bias and must be vacated," with directions to the trial court to issue an order to the planning commission to reconsider the appeal before "an impartial panel." The *Nasha* court held the developer had established "an unacceptable probability of actual bias" on the commission member's part.

In particular, the court was persuaded that the newsletter article alone constituted the singular concrete fact necessary to prove an "an unacceptable probability of

actual bias." The article was printed in the court's decision and the court added the italics to signify the troubling language:

> "MULTIVIEW DRIVE PROJECT THREAT TO WILDLIFE CORRIDOR [¶] A proposed project taking five legal lots totaling 3.8 acres for five proposed large homes with swimming pools served by a common driveway off Multiview Drive is winding its way through the Planning process. [¶] After wildlife leaves Briar Summit heading eastward they must either head south towards Mt. Olympus or north to the slopes above Universal City. *The Multiview Drive site is an absolutely crucial habitat corridor.* Please contact Paul Edelman with the Conservancy at 310/ . . . or Mark Hennessy who lives adjacent to the project at 323/ . . . if you have any questions."
>
> (Emphasis in original).

Thus, the court did not care that the article was unsigned when it appeared in the newsletter. Moreover, the offending portion is somewhat generic in content and tone, which indicates the very low bar with respect to the evidence required to establish an "unacceptable probability of actual bias," which, as noted above, is the relevant legal standard, not actual bias.

The evidence of probable bias was more extensive in *Clark v. City of Hermosa Beach*. There, a city council member was held to be biased in connection with a vote denying a condominium project where the council member: (1) prior to being elected had opposed a prior iteration of the project and had appealed the project approval from the planning commission to the city council; (2) resided in an apartment in proximity to the project site; and (3) had demonstrated hostility to the project applicants by urinating on their property and periodically making loud noises in the immediate vicinity of the applicants' property disrupting their quiet enjoyment.

The court held that the combined effect of these factors was sufficient evidence to warrant a conclusion that the council member could not be an impartial decision-maker and that the council's decision was tainted by his participation. The *Clark* case is farther along the spectrum from *Nasha* in terms of the quantum of evidence a court has relied on to conclude there was impermissible bias. It is useful to note, however, that the courts evaluate all types of indications when determining whether evidence shows an "unacceptable probability of actual bias."

City of Fairfield v. Superior Court addressed a planned unit development permit for a new shopping center. There, the city council scheduled a hearing to consider the adequacy of the project's environmental impact report and to determine whether to grant the permit. At the outset of the hearing, the developer's attorney requested that the mayor and one councilmember disqualify themselves from participation on the grounds of bias and filed two declarations in support of the request. Both councilmembers refused to disqualify themselves and voted with a three-member

majority to deny the project. Without waiting for an answer to its complaint alleging that the bias of the councilmembers denied the developer a fair hearing, the developer sought to depose the councilmembers.

The *Fairfield* decision focused on whether, under Code of Civil Procedure section 1094.5, the mayor and the councilmember could be deposed about the mental deliberations that led to their decision to vote against the project. Importantly, the city's zoning ordinance did not prescribe any specific standards for the grant of a planned unit development permit and thus the proceedings before the city council did not turn upon the adjudication of disputed facts or the application of specific standards to the facts found. As a result, "the few factual controversies were submerged in the overriding issue of whether construction of the shopping center would serve the public interest" because in a city of Fairfield's size at the time, the council's decision on the location and construction of a shopping center could significantly influence the nature and direction of future economic growth as an issue of local policy.

The court acknowledged in dicta that a councilmember may discuss issues of vital concern with his constituents and state his views on matters of public importance. The court qualified this point, however, by noting that most of the comments at issue occurred in the context of a political campaign, where candidates should have some freedom to express their policy views about matters of importance in the community.

The *Fairfield* decision did not discuss, much less consider and analyze, the concept of common law bias. And while *Nasha v. City of Los Angeles* did not discuss or distinguish *Fairfield*, the court in *Clark v. City of Hermosa Beach* did. It construed *Fairfield* narrowly, as tolerating general comments about local policy only, as distinguished from comments about a specific project.

Nasha and *Clark* are on point and deal squarely with the constitutional legal requirement for unbiased decision-makers in this context. In contrast, however, *Fairfield* was focused largely on the council's mental deliberations and whether discovery on that subject could appropriately be conducted. In addition, *Fairfield* did not address common law rules against constitutionally impermissible bias and was focused heavily on city policy issues rather than adjudicative fair hearing rights.

In sum, the common law rule against bias has been framed in terms of probabilities, not certainties. The law does not require the disappointed applicant to prove actual bias. Rather, a common law conflict of interest will exist where there is concrete evidence that a decision-maker has by words, actions, or otherwise demonstrated an "unacceptable probability of actual bias" prior to conducting an adjudicatory public hearing on a project.

ANALYSIS

As elected officials, councilmembers have a sworn duty to uphold the Constitution. The oath of office states:

> "I [] do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter . . . ."

Once sworn into office, the Councilmembers became voting members of a legislative body charged with fairly considering the Project under the law. And the law requires Councilmembers to be unbiased on a wide range of subjects—including the Project—or to recuse themselves in the event "concrete facts" undermine their neutrality, as they objectively do here.

"The language of the law is replete with synonyms for fairness: due process, equal protection, good faith, harmless error are all ways of expressing our commitment to fairness."

Woody's Group, Inc. v. City of Newport Beach, *supra*, 233 Cal.App.4th at 1016 (emphasis added).

While the law does not require proof of actual bias, there must not be "an unacceptable probability of actual bias" on the part of municipal decision-makers. *Nasha v. City of Los Angeles, supra*, 125 Cal.App.4th at 483. Probable bias alone is enough to show a violation of the due process right to fair procedure.

Safeway is entitled to due process, including a fair hearing in a fair tribunal before neutral and unbiased decision-makers. However, the concrete facts here indisputably show that the Councilmembers have crossed the legal threshold of "an unacceptable probability of actual bias," which is all that is needed to require their recusal.

As shown by the voluminous evidence in the record, the Councilmembers have demonstrated long-held and persistent opposition to the Project, some as early as 2013. They have committed extensive time and effort in opposing the Project. Among other things, this includes encouraging constituent opposition to the Project, proposing legislative hurdles to the Project, campaigning on a platform of opposition to the Project, seeking to influence third-parties such as BAAQMD, SCDPCC and staff against the Project, and expressing opposition in various forums, including on social media, in the newspaper, during public hearings, and in private email exchanges. Such evidence of opposition is akin to the type of words and actions

deemed to constitute bias in *Woody's Group*, *Nasha*, *Clark*, and our recent City of Lafayette matter, which we addressed in letters to the city dated November 30, 2018, December 5, 2018, January 14, 2019, January 22, 2019, and February 28, 2019.[3]

The same result is warranted here. The evidence of bias Safeway has identified is well-documented in the record. While a councilmember may have the right to make general comments about local policy, an applicant for an adjudicative land use permit has a constitutionally protected right to a fair hearing. Safeway plainly cannot obtain such a hearing.

A court would evaluate concrete facts already in the record to determine whether a councilmember's words and actions evidence an unacceptable probability of bias. Here, any single instance of each of the Councilmember's documented words and actions alone is sufficient evidence of bias under the controlling legal standard established in *Nasha*. Yet taken together, each of the Councilmembers has demonstrated an extensive pattern of behavior more than sufficient to meet and exceed the legal threshold of an "unacceptable probability of actual bias." The evidence shows the Councilmembers long made up their minds that the Project must be denied. Councilmembers Gabe Kearney and Kathy Miller appropriately recused themselves, even though the remaining Councilmembers have demonstrated more extensive and demonstrable opposition to the Project. The remaining Councilmembers should also follow their oath of office by recusing themselves or denying the appeal.

CONCLUSION

For all of the foregoing reasons, we believe the Councilmembers are required to recuse themselves or deny the appeal of the Project.

Sincerely,

MILLER STARR REGALIA

Bryan W. Wenter /kli

Bryan W. Wenter, AICP

BWW:sgr:kli

cc: Claire Cooper, CMC, City Clerk [cityclerk@ci.petaluma.ca.us]

[3] Our letters are available here https://www.lovelafayette.org/city-hall/city-departments/planning-building/zoning-regulations-handouts/terraces-2018-addendum and here https://www.lovelafayette.org/city-hall/quick-links/hot-topics/terraces-of-lafayette/terraces-2018-documents.

EXHIBIT A

MILLER STARR REGALIA

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PRACTICE AREAS

Entitlement

Land Use & CEQA

Litigation

Transactional

Bryan advises and represents clients on a wide range of complex land use, environmental compliance, and government law issues. He is a regular contributor to industry publications, speaks on land use issues, and has been widely quoted in the news media. Bryan is principal author of Miller Starr Regalia's Land Use Developments Blog.

Bryan Wenter is a shareholder in Miller Starr Regalia's Walnut Creek office and a member of the firm's Land Use Department. His practice centers on land use and local government law, with a focus on obtaining and defending land use entitlements for a wide range of complex development projects including, in-fill, mixed-use, residential, retail/commercial, and industrial.

He represents and provides strategic advice to developers, homebuilders, landowners, and public agencies in all aspects of land use, including obtaining approvals of general plan amendments, specific plans, planned development zoning and re-zoning, subdivision maps, conditional use permits, and variances. He also assists his clients in connection with California Environmental Quality Act (CEQA) compliance, securing vested rights, drafting land use initiatives and referenda, exactions and impact fees, water supply, eminent domain, land use due diligence, and negotiating, drafting, and obtaining approval of various agreements, including development agreements, affordable housing agreements, and subdivision improvement agreements. In addition, he has substantial experience with the Permit Streamlining Act, Coastal Act, affordable housing, redevelopment, annexations, Geologic Hazard Abatement Districts, Business Improvement Districts, Community Facilities Districts, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Telecommunications Act, surplus property disposition, and easements and boundary disputes.

Bryan previously served as City Attorney and Assistant City Attorney for the City of Walnut Creek. In representing Walnut Creek, Bryan advised the City Council, Planning Commission, City Manager, department heads, and staff on all aspects of municipal law, including the Planning and Zoning Law, Subdivision Map Act, CEQA, elections, public finance, public contracts, constitutional matters, Ralph M. Brown Act, Public Records Act, Political Reform Act, telecommunications, ethics, conflicts of interest, risk management, and code enforcement.

Bryan recently served on the editorial board for The Municipal Law Handbook, published by the League of California Cities. He is a member of the American Bar Association (ABA) and served on the executive committee of ABA's Section of State and Local Government Law. He is past chair of the Section's Land Use Planning &

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Zoning Committee and co-chair of its Exactions and Impact Fees Subcommittee. He served as the secretary/treasurer of the American Planning Association's Planning & Law Division and as the division's newsletter editor, as well as the Legislative Director of the Northern California Chapter of the American Planning Association.

Bryan is principal author of Miller Starr Regalia's Land Use Developments blog.

Bryan is a member of the American Institute of Certified Planners (AICP).

Prior to law school, Bryan served as a U.S. Peace Corps volunteer in Papua New Guinea.

EDUCATION

J.D., University of North Carolina School of Law (2002)

- Notes & Comments Editor, *North Carolina Journal of International Law and Commercial Regulation*
- Gressman-Pollitt Award for Outstanding Oral Advocacy

M.R.P., University of North Carolina (2002)

B.A., *magna cum laude*, University of Oregon (1995)

- Phi Beta Kappa

PRESS & MEDIA

"Lafayette council member recuses herself from proposed housing project discussions," *East Bay Times*, by Jon Kawamoto, March 2, 2019 (quoted)

"Lafayette's divisive Deer Hill housing proposal is back — again," *East Bay Times*, by Jon Kawamoto, January 24, 2019 (quoted)

"Calif. Real Estate Regulations To Watch In 2nd Half Of 2018," *Law360*, by Andrew McIntyre, July 6, 2018 (quoted)

"Real Estate Cases To Watch In The 2nd Half Of 2018," *Law360*, by Andrew McIntyre, July 5, 2018 (quoted)

"High Court May Clarify Decades-Old Procedural Takings Issue," *Law360*, by Andrew McIntyre, March 13, 2018 (quoted)

"High Court Could Clarify Takings Law In Beachfront Dispute," *Law360*, By Andrew McIntyre, March 1, 2018 (quoted)

"Conservative Group Backs Lawsuit Against WeHo Over Affordable Housing," *WEHOville*, by Staff, November 4, 2016 (quoted)

"Affordable housing legal dispute likely headed for U.S. Supreme Court," *Northern California Record*, by John Breslin, October 4, 2016 (quoted)

"Pleasant Hill: County, recreation district spar in court," *East Bay Times*, by Lisa P. White, August 1, 2016 (quoted)

"Pleasant Hill recreation district sues county," *East Bay Times*, by Lisa P. White, March 24, 2016 (quoted)

"Danville council shouts down cell tower proposal," *Danville San Ramon*, by Kalama Hines, November 19, 2015 (quoted)

"California Court Will Hear Developer Challenge to Low-income Housing Rules," *California Lawyer*, by Michael Rosen Molina, May 2015 (quoted)

"Council Approves Eminent Domain For Arena Project,' *Capital Public Radio News*, by Bob Moffitt, January 8, 2014 (quoted)

"City of Sacramento Approves Eminent Domain Plan for Downtown Arena Project," *Fox40*, by Ian McDonald, January 7, 2014 (quoted)

"Walnut Creek: Could historic designation delay new Rossmoor events center plans?" *East Bay Times*, by The Street, July 24, 2012 (quoted)

"Half Baked? Oakland pot advocates hope to pass a resolution to legalize recreational marijuana by targeting East Bay soccer moms. And it might just work…," *Diablo Magazine*, by John Geluardi, September 17, 2010 (quoted)

"The Death of C3 Cannabis Collective. The inside story of a medical cannabis dispensary's last days and how the City of Walnut Creek ignored pleas of mercy and shut it down," *East Bay Express*, by Eric Kiefer, April 21, 2010 (quoted)

ASSOCIATIONS

American Bar Association, Section of State & Local Government Law

- Executive Committee (2011–2012)
- Council (2008–2011)
- Chair, Land Use Planning and Zoning Committee (2008–2011)
- Vice-Chair, Land Use Planning and Zoning Committee (2006–2008)
- Co-Chair, Exactions and Impact Fees Subcommittee (2005–present)

American Planning Association, Northern California Chapter

- Legislative Director (2008–2011)

American Planning Association, Planning and Law Division

- Secretary/Treasurer (2006–2008)
- Newsletter Editor (2005–2007)

League of California Cities

- Municipal Law Handbook Editorial Board (2011–2013)
- Member, Housing, Community & Economic Development Policy Committee (2008–2009)

AWARDS & RECOGNITION

Super Lawyers Northern California (2015-2018)

Super Lawyers Northern California Rising Star (2009)

MILLER STARR REGALIA

- Jefferson Fordham Up & Comers Award, ABA Section of State & Local Government Law (2006)

PUBLICATIONS

"Justices will weigh takings law state court exhaustion requirement," *Daily Journal*, September 26, 2018

"Billionaire vs surfers case may go to high court," *Daily Journal*, March 6, 2018

"Opinion: Easing building rules near transit key for needed housing," *East Bay Times*, February 9, 2018

"Why The Proposed Calif. Land Use Law Is Deeply Flawed," *Law360*, September 28, 2017 (co-authored with Arthur Coon)

"Missed Opportunity In Takings Decision," *Daily Journal*, July 13, 2017

"Damaging A Neighbor's Trees Can Be Very Costly In Calif.," *Law360*, February 10, 2017

"Affordable Housing Law Passes Muster, for Now," *Daily Journal*, March 2, 2016

"Who Pays For New Schools, Fair Housing And Clean Air? Recent Developments In Exactions And Impact Fees," *Urban Lawyer*, Vol. 42, No. 3, July 2010 (co-authored with W. Andrew Gowder, Jr.)

"Recent Developments In Land Use, Planning And Zoning Law: Exactions And Impact Fees," *Urban Lawyer*, Vol. 41, No. 3, Summer 2009 (co-authored with W. Andrew Gowder, Jr.)

The RLUIPA Reader: Religious Land Uses, Zoning, and the Courts, American Bar Association and American Planning Association, 2009 (chapter co-author)

"Recent Developments In Land Use, Planning And Zoning Law: Exactions And Impact Fees," *Urban Lawyer*, Vol. 40, No. 3, Summer 2008 (co-authored with W. Andrew Gowder, Jr.)

"California Voters Split Over Eminent Domain Initiatives," *Central California Builder*, July 2008

"California Land Use Law: A Quarter Century of Key Legal Developments," *California Real Property Journal*, Vol. 24, No. 3, Fall 2006 (co-authored with Cecily T. Talbert and Daniel J. Curtin, Jr.)

SPEECHES & PRESENTATIONS

"East Bay Multi-Family: Migrating Millennials, Navigating Approvals, and New Opportunities," Urban Land Institute – San Francisco, Walnut Creek, CA, April 24, 2018

"Senate Bill 827: Everything You Need to Know About the Landmark Bill Proposing Denser Housing Around California Transit Hubs," Contra Costa County Bar Association Real Estate Section, Walnut Creek, CA, April 20, 2018

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"Fixing the Housing Crisis: Innovations in Design, Construction and Law," Panelist, Stanford Professionals in Real Estate (SPIRE) 7th Annual Real Estate and Law (REAL) Symposium, Palo Alto, CA, February 8, 2018

"Developments in California Cannabis Law," Moderator, Contra Costa County Bar Association, November 17, 2017

"Property Rights, Takings, Exactions, and More: A Legal and Practical Update for Planners," APA California 2017 Conference, Sacramento, CA, September 24, 2017

"East Bay Trends 2017: Office, Tech and Housing Beyond the Cycle," Moderator, ULI San Francisco, June 29, 2017

"Annual Land Use Update," Marin County Planning Directors, San Rafael, CA, 2008–2016

"Annual Land Use Update," Contra Costa County Planning Directors, Pleasant Hill, CA, 2006–2016

"Looming Land Use Constitutional Issues," American Bar Association Real Property, Trusts and Estate Annual Meeting, Chicago, IL, July 31, 2015

"Planning for Pot," APA California 2010 Conference, Carlsbad, CA, November 3, 2010

"On Beyond CEQA: California Land Use Law," 2010 Appellate Judicial Attorneys Institute, Burlingame, CA, October 27, 2010

"AICP Exam Prep Workshop," San Jose State University, San Jose, CA, 2008–2013

"Bettman Symposium: Championing the General Plan," American Planning Association 2007 National Planning Conference, Philadelphia, PA, April 15, 2007

"Planning Law Review," American Planning Association, Audio/Web Conference, June 28, 2006

"Exactions and Takings Law," American Planning Association 2007 National Planning Conference, San Antonio, TX, April 25, 2006

COURT ADMISSIONS

California

Connecticut (inactive)

Massachusetts (inactive)

District of Massachusetts

Ninth Circuit

Northern District of California