The Revolution That Wasn't: Us Supreme Court Refuses to Hear California Court of Appeal Case Upholding Inclusionary Zoning in West Hollywood

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I. INTRODUCTION

Against the backdrop of a deepening affordable housing crisis in California, the U.S. Supreme Court recently declined to review a decision of the California Court of Appeal upholding the City of West Hollywood's inclusionary zoning ordinance. The ordinance was challenged by a developer, 616 Croft Ave LLC (the "Developer"), who, after declining to provide the affordable housing units required by the ordinance, paid an in-lieu fee under protest. The Developer filed a lawsuit, claiming that the City's ordinance is an unconstitutional condition/exaction and that the burden was on the City to prove the "reasonableness" of the fee under the Mitigation Fee Act and other authorities. The trial court ruled for the City and, in a published opinion, the court of appeal affirmed.[2]

The court treated the Developer's unconstitutional condition/exaction argument as a facial challenge to the ordinance and resolution adopting the fee schedule. The court held that such challenge was time-barred. Turning to the Developer's as applied challenge under the Mitigation Fee Act, the court held that the Act did not apply here. Relying on the California Supreme Court's decision in *California Building Industry Association v. City of San Jose*[3], the court held that the in-lieu fee was not an exaction, but rather a regulation of land use. The court of appeal further found that the in-lieu fee's purpose is not to defray the cost of increased demand on public services resulting from the Developer's project, but rather to combat the overall lack of affordable housing. The court of appeal upheld the judgment in favor of the City.

This article explains that *Croft* is not the revolution suggested by the Developer's petition for certiorari and the six amicus briefs that argued for review by the nation's high court. *Croft* closely followed *San Jose*, which upheld a nearly identical inclusionary ordinance in the City of San Jose. Inclusionary zoning is nothing new. Inclusionary zoning ordinances have been adopted in more than 170 California cities and counties, and hundreds more jurisdictions nationwide.

As explained in greater detail in Section VIII, these inclusionary ordinances have made a difference. In West Hollywood, whose program dates back to 1986, in-lieu fees have helped finance the construction of 437 affordable units. Developers of market rate units have built another 322 deed-restricted affordable units. These results have been multiplied at the state level, where inclusionary zoning ordinances are credited with producing 30,000 affordable housing units in the past decade alone. Nationwide, inclusionary zoning programs have resulted in more than 170,000 units of affordable housing.

The fact that inclusionary zoning only produces affordable units if there is market rate development to pay for them shows that inclusionary ordinances have not caused development to come to a grinding halt. Nor has there been any retreat on the policy front. If anything, the California Legislature has doubled-down on inclusionary zoning. As

clarified in Section IX, the 2017 the California Legislature adopted a bill establishing a permanent, ongoing source of funds dedicated to affordable housing development,[4] and other bills encouraging local agencies to adopt inclusionary policies.[5] There is evidence that moving families from poverty-blighted neighborhoods leads to improved health and higher incomes for those families. This article argues that in light of the trends in law and policy supporting it, the time has come for more developers to embrace inclusionary zoning.

II. WEST HOLLYWOOD ADOPTED AN INCLUSIONARY ZONING ORDINANCE

The City of West Hollywood first implemented an inclusionary zoning program in 1986, shortly after the City's incorporation. Its current inclusionary zoning ordinance (the "Ordinance") was adopted in 2001.[6] The Ordinance is chaptered under the heading, "Affordable Housing Requirements and Incentives," and is part of the City's zoning code.[7] The Ordinance regulates land use by requiring new residential development to include low and moderate income units, or pay a fee in lieu of providing inclusionary units.[8] The purpose is to ensure that future residential development accommodates existing and projected needs for affordable housing.[9] It also seeks to integrate affordable housing units with market rate housing, and situate affordable housing near public and commercial services.[10]

The Ordinance aims to achieve diversity in housing opportunities and to encourage the production of housing units to accommodate disabled and senior residents, both of which groups comprise a relatively high proportion of lower, fixed-income households.[11] It is premised on the City's own desire to bring about more affordable housing, and to comply with the City's obligations under state law to accommodate the City's share of anticipated population growth in the region.[12] The City's Ordinance states that it is "one means of meeting its commitment to encourage housing affordable to all economic groups, and to meet its regional fair share requirements for the construction and rehabilitation of housing affordable to low and moderate income persons."[13]

The Ordinance has broad application. It applies to the "construction of all residential units" and certain common interest conversions.[14] Exemptions are limited to following: (1) construction of a single family dwelling, or (2) projects to be operated by non-profits where all the units are for affordable housing.[15] Thus even a small multi-family residential project, such as, for example, a four unit condominium, is subject to the requirements of the Ordinance.

To help ensure the viability of inclusive development, the Ordinance offers developers density bonuses and concessions. Density bonuses can be up to 35% and may result in more market rate units than would otherwise be permitted in the zone.[16] Concessions allow for deviations from otherwise-applicable development standards in order to accommodate additional units and reduce overall costs.[17] Available concessions include an additional story, and reduction of required setbacks, open space, parking spaces, and other requirements.[18] Additional provisions aim to ensure that the affordable, or "inclusionary," units are actually occupied by income-qualified households and remain affordable. There are restrictions on sale and resale of units.[19] For example, lower income inclusionary units may be sold at a price that is no more than two and one-half times 65% of the median income of the City.[20] Moderate income inclusionary units may be sold at a price that is no more than two and one-half times the median income of the city.[2] Both prices are subject to an adjustment factor based on the number of bedrooms in the unit.[22] In addition, the developer is required to give to the City or the City's designee a right of first refusal to purchase the affordable units.[23]

Developers of residential projects with 10 or fewer units may choose to pay a fee in lieu of providing the required affordable housing units on site.[24] This is up to the developer. It is not the City's preference. The incentives and concessions described above demonstrate the City's desire that developers *not* avail themselves of the "escape hatch" represented by the in-lieu fee, but rather make available integrated, affordable housing in their own development projects.

West Hollywood's in-lieu fee is intended to provide a source of funds sufficient to facilitate the production of affordable units that the developer otherwise would provide as part of the project.[25] The fee is calculated in compliance with a fee schedule established, and periodically revised, by the City Council.[26] The amount of the fee is based on the subsidy required to build affordable units in the City.[27] The schedule sets a dollars-per-square-foot figure, which is multiplied by a project's total square footage to yield the total in-lieu fee.[28]

The funds are placed into the City's Affordable Housing Trust Fund to be used exclusively for projects that have a minimum of 60% of the dwelling units affordable to low and moderate income households, with at least 20% of the units available to low income households.[29] Only tax-exempt nonprofit corporations seeking to create or preserve affordable housing are eligible to apply for funding from the City's trust fund.[30] The funds may be used for predevelopment costs, land or air rights acquisition,

administrative costs, gap financing, or to lower the interest rate of construction loans or permanent financing.[31]

III. A DEVELOPER OBJECTED TO THE APPLICATION OF WEST HOLLYWOOD'S INCLUSIONARY ZONING ORDINANCE TO THE DEVELOPER'S PROJECT

A Developer applied to the City for approval of a project consisting of the demolition of two existing single family homes on two adjacent lots and the construction of an 11-unit condominium complex in their place. The project was subject to the City's inclusionary zoning ordinance. Rather than provide affordable housing as part of the project, the Developer voluntarily chose to pay the in-lieu fee.[32] In 2005, the City approved the Developer's application, subject to a number of conditions, including that the Developer pay the in-lieu fee according to the City Council-approved fee schedule in effect when the Developer obtained a building permit. The Developer agreed to these conditions.

Project approval was originally set to expire two years from the City's approval, in 2007, unless significant construction had commenced. Due in part to the economic downturn that began in 2007, the Developer did not begin construction before the anticipated expiration date, and the Developer repeatedly requested extensions. The City granted these requests.

The Developer did not apply for building permits until 2011. The City provided the Developer with a revised fee schedule. The schedule showed that the in-lieu housing fee multiplier, $24.68 per square foot, had nearly doubled since 2005. Applying this fee to the Developer's 21,896 square foot project yielded an in-lieu fee of $540,393.28. The Developer paid this and other fees under protest. The Developer also included a written request for an administrative appeal to the City Council. Eventually, the Developer filed suit for relief from the fees paid under protest and a writ petition to compel the Council to grant an appeal hearing. The City Council heard the appeal, and upheld most of the fees, including the in-lieu fee. The Developer amended its lawsuit to add a cause of action for administrative mandate, which was severed for early trial pursuant to the parties' stipulation.

Under the California Constitution, a municipality has broad authority, under its general police power, to regulate the development and use of real property within its jurisdiction to promote the public welfare.[33] As the California Supreme Court has stated, "a party challenging the facial validity of a legislative land use measure ordinarily bears the burden of demonstrating that the measure lacks a reasonable relationship to the public welfare."[34] This typically presents a high bar to those challenging local zoning. To avoid this, the Developer's complaint alleged that the inclusionary zoning provisions of the City's municipal code, including the requirement that a developer provide affordable units or pay an in-lieu fee, is "facially invalid" under a pair of United States Supreme Court cases, *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*.[35] The Developer also raised an "as-applied" claim. The Developer alleged that the City failed to demonstrate a "reasonable relationship" between the City's requirements and increased needs for affordable housing caused by new development generally or by the Developer's project in particular. The Developer's complaint also asserted other grievances under the City's municipal code and state law, including the Mitigation Fee Act.[36]

IV. THE LAW OF UNCONSTITUTIONAL CONDITIONS

The so-called *Nollan/Dolan* test applies a heightened level of constitutional scrutiny. It asks whether an "essential nexus" and "rough proportionality" are shown to exist between an exaction, imposed as a condition of development, and the impact of that development.[37]

The *Nollan/Dolan* test has been applied on prior occasions to overturn exercises of government's authority to control land use. In *Nollan*, the California Coastal Commission granted a permit to appellants to replace a small bungalow on their beachfront lot with a larger house upon the condition that they allow the public an easement to pass across their beach, which was located between two public beaches.[38] *Nollan* held that the lack of an "essential nexus" between the condition and the original purpose of the building restriction showed that the Commission was attempting to take property without paying just compensation in violation of the Fifth Amendment.[39]

In *Dolan*, the City of Tigard, Oregon conditioned the approval of a permit to expand a plumbing and electric supply store building and pave the parking lot on the landowner dedicating of a portion of her property for flood control and traffic improvements.[40] *Dolan* held that the "essential nexus" requirement was satisfied, but made the test harder: the city was also required to make an individualized determination that there was "rough proportionality" between the required dedications on the one hand and the impact of the proposed development on the other.[41]

The reach of the *Nollan/Dolan* unconstitutional exactions doctrine was extended in *Koontz v. St. Johns River Water Management District*.[42] The United States Supreme Court held that the "essential nexus" and "rough proportionality" test applies not only to exactions requiring the conveyance of interests in land, but also to exactions requiring the payment of money.[43]

V. THE TRIAL COURT UPHELD WEST HOLLYWOOD'S INCLUSIONARY ZONING ORDINANCE, AND, IN A PUBLISHED OPINION, THE COURT OF APPEAL AFFIRMED

The Developer's lawsuit was filed suit in Los Angeles Superior Court. After a bench trial on the Developer's petition for writ of mandate, the trial court ruled against the Developer. The Developer voluntarily dismissed its other causes of action, and the trial court entered judgment in favor of the City.

In a published opinion, the California Court of Appeal affirmed. The court addressed the Developer's arguments based on the unconstitutional conditions/exactions doctrine. The court held that the Developer's facial challenge to the Ordinance was time barred.[44] The court based that holding on the fact that the City adopted the Ordinance in 2001 and approved the fee schedule, as modified, in June of 2011.[45] But the Developer did not bring its challenge until, at the earliest, December of 2011, well after the expiration of the 90-day statute of limitations.[46]

The court also turned back the Developer's as-applied challenge. The court rejected the Developer's argument that the Mitigation Fee Act requires the City to prove reasonableness. The Act, the court stated, applies only where (1) there is "a monetary exaction," and (2) that exaction is imposed to "defray[] all or a portion of the cost of public facilities related to the development project."[47] Neither precondition was satisfied here. Relying on the California Supreme Court's decision in *San Jose*, the court held that the in-lieu fee was not an exaction. Like the similar inclusionary zoning requirements that had been challenged in *San Jose*, the "restriction is an example of a municipality's permissible regulation of the use of land under its broad police power."[48] The court observed that the Developer was challenging an in-lieu fee rather than the inclusion of affordable housing units in their development.[49] But the court found that the reasoning in *San Jose* compelled the same result here: if the set aside requirement in San Jose is not an exaction, then neither is West Hollywood's in-lieu fee, which is an alternative to the on-site affordable housing requirement.[50]

The court further held that the Mitigation Fee Act's second precondition—that the challenged fee have the "purpose" of defraying certain costs—likewise was not satisfied. The court reasoned that, as reflected in the language of the Ordinance itself, the purpose of West Hollywood's in-lieu fee is not to defray the cost of increased demand on public services resulting from the Developer's project, but rather to combat the overall lack of affordable housing.[51] So long as such land use regulation does not constitute a physical taking or deprive the property owner of all viable economic use of the property, the restriction would not violate the takings clause.[52] That, the court added, seems "especially" appropriate when the regulation, like the one here, "broadly applies nondiscretionary fees to a class of owners because the risk of the government extorting benefits as conditions for issuing permits to individuals is unrealized."[53]

The court of appeal acknowledged that the City's ordinance required a developer who chose to build the required affordable units to give the City a right of first refusal.[54] But it did not follow that the Developer was subject to an exaction. The Developer did not build any affordable units; rather, the Developer chose to pay the in-lieu fee.[55] Any challenge to the ordinance's right of first refusal would be a facial challenge, which was time barred.[56] In any event, the court concluded, "the Mitigation Fee Act does not apply to the in-lieu fee."[57] The court of appeal rejected the Developer's other grounds for shifting the burden of proving "reasonableness" to the City.[58]

The court then turned to whether the fees charged were "reasonable" in relation to the goal of ensuring affordable housing. The court rejected the Developer's argument that the City was required to prove, "dollar for dollar," that "the fee it charged [the Developer] was proportional to the negative impact th[is] development had on the demand for affordable housing."[59] The Developer misunderstood the purpose of West Hollywood's inclusionary requirement. The requirement did not seek to impose a fee based on the impact of each development. Rather, it was designed to increase the amount of affordable housing and disperse it throughout the community.[60] The court of appeal stated that the appropriate inquiry is whether the City's "fee schedule itself is reasonably related to the overall availability of affordable housing in West Hollywood."[61] Here the Developer did not "challenge the City's method in creating the fee schedule."[62] Even if it had, any such challenge would be barred by the statute of limitations.[63] The court further observed that the Developer could have brought an as-applied challenge disputing the City's mathematical calculation of the individual fee imposed on it, but the Developer made no such claim.[64] In the final pages of its opinion, the court of appeal rejected petitioners' remaining challenges, and affirmed the judgment in favor of the City.

VI. DESPITE THE DEVELOPER'S CERT PETITION AND SIX AMICUS BRIEFS URGING REVIEW, THE U.S. SUPREME COURT DECLINED TO HEAR THE CASE

The Developer petitioned for review by the California Supreme Court. After that petition was denied, the Developer petitioned for certiorari review by the U.S. Supreme Court. Six amicus briefs were filed, all urging the nation's high court

to take up the case. The Court denied the Developer's cert petition on October 30, 2017.

VII. THE DECISION IN *CROFT* IS NOT A REVOLUTION IN EITHER JURISPRUDENCE OR IN ZONING PRACTICE

In light of the number of amicus briefs filed in support of the Developer's cert petition, one might have thought the sky was falling. Not so. The California Court of Appeal's decision in *Croft* was hardly a revolution. *Croft* was foreshadowed by *San Jose*, which was decided the year before. The City of San Jose has an inclusionary zoning ordinance nearly identical to West Hollywood's. The Supreme Court upheld San Jose's ordinance against a facial challenge based on the unconstitutional conditions/exactions doctrine. In doing so, the Court rejected the theories later advanced by the Developer against the City of West Hollywood. *Croft* is nothing but a logical extension of *San Jose*.

West Hollywood and San Jose are not the only cities that have inclusionary zoning ordinances. The state legislature has declared that "there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which families of low or moderate income can afford."[65] To address this problem, the Legislature has mandated that cities and counties take specific steps to promote the creation of affordable housing.[66] In response to this mandate, inclusionary zoning ordinances have been enacted by more than 170 California cities and counties.[67] Nationwide, inclusionary zoning programs in various forms operate in as many as 800 jurisdictions in twenty-five states and the District of Columbia.[68] As an alternative to providing affordable housing, half of these programs allow the developer to pay an in-lieu fee.[69]

VIII. INCLUSIONARY ZONING HAS HELPED CREATE HUNDREDS OF AFFORDABLE HOUSING UNITS IN WEST HOLLYWOOD, AND THOUSANDS OF UNITS THROUGHOUT THE STATE AND NATION

West Hollywood's inclusionary zoning program was first adopted in 1986.[70] Since then, the program has collected $35.6 million in fees. Approximately 80% of this amount has come from the City's in-lieu fee that was challenged in *Croft*. The fees have enabled the City to offer loans to non-profit housing providers, resulting in the development of eighteen projects with a total of 437 permanently affordable units. Non-profits use loans from the City as the local match required by state and federal funding programs for increased priority consideration. There is more demand for affordable housing funds than state and federal programs can provide. The local match is needed for a project to be awarded funds.

In addition to 437 affordable units financed with proceeds from West Hollywood's in-lieu fee, pursuant to the City's inclusionary zoning ordinance, another 322 deed-restricted affordable units have been constructed by for-profit developers.[71] Together these two categories of housing now constitute approximately 3% of the City's total housing stock, and approximately 20% of new units built since the City was incorporated in 1984.

They serve a significant need.[72] Forty percent of the City's households are very low or low income, earning less than 80% of Area Median Income.

A statewide study by the Non-Profit Housing Association of California found that from 2000-2006, approximately 4,700 affordable units were financed with in-lieu fees.[73] That study found that during the same period another 17,000 affordable inclusionary units were constructed.[74] In 2017, when the Legislature adopted Assembly Bill 1505, it found that inclusionary housing ordinances have provided affordable housing to over 80,000 Californians, and have produced an estimated 30,000 affordable housing units in the past decade.[75]

Nationwide, more than 300 cities and counties with inclusionary zoning programs report raising a total of $1.7 billion in impact or in-lieu fees for the creation of affordable housing.[76] It is not clear how many affordable units have been financed and built with this money. Nonetheless, these cities and counties report that, mostly excluding the units financed with fees, inclusionary zoning programs have resulted in a total of more than 170,000 units of affordable housing.[77]

IX. DESPITE CRITICISMS, INCLUSIONARY ZONING IS A POLICY CHOICE THAT IS HERE TO STAY; DEVELOPERS SHOULD EMBRACE IT

Inclusionary zoning is the subject of many criticisms. A familiar criticism is that, by raising the cost of market rate development, such programs wind up restricting housing supply and thereby make housing less affordable.[78] The counterexample of Houston, Texas is often given because it has no zoning controls and lots of affordable housing, giving rise to an inference that lack of zoning controls leads to an adequate supply of affordable housing. Commentators have also expressed disappointment at the numbers of inclusionary units that have been produced in individual jurisdictions, arguing that inclusionary ordinances have not been sufficiently effective.[79] Other commentators observe that details of inclusionary zoning programs vary from jurisdiction to jurisdiction, and that success depends on the details of program design so it is difficult to gauge success on an overall basis.[80] And still others, practitioners and scholars alike, continue to question inclusionary zoning's legality.[81]

The winds in California are blowing in a different direction, however. Judicial support for inclusionary zoning, exemplified by court decisions in *San Jose* and *Croft*, is only part of the story. Additional support is coming from the legislative branch. In 2017, the Legislature enacted a number of bills aimed at increasing the supply of affordable housing. Some are in the de-regulatory vein. For example, Senate Bill 35 provides that if a developer submits to a local government an application for a multifamily housing development that satisfies specified standards, the application will not be subject to discretionary approval, but rather to a streamlined, ministerial approval process.[82] But other bills add regulation. These either establish a permanent source of funds dedicated to affordable housing development, or further encourage local agencies to adopt inclusionary policies. Assembly Bill 1505 authorizes cities and counties to require, as a condition of the development of residential rental units, that development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate income, lower income, very low income, or extremely low-income households.[83] In other words, it expressly authorizes inclusionary rental housing. Senate Bill 2 imposes a fee on real estate transactions to fund affordable housing development, programs to assist homeless people, and long-range development planning in cities and counties.[84] Senate Bill 540 authorizes cities and counties to create pre-planned zones for affordable housing projects, 30% of the units of which must be sold or rented to persons and families of moderate income, 15% to lower income, and 5% to very low income.[85]

In any event, just how much, if any, housing production may be crowded out by inclusionary zoning is not clear. And inclusionary zoning programs advance policy goals beyond affordability. They encourage the creation of affordable housing near market rate housing, which has the added benefit of integrating households of different income levels into the same neighborhoods and buildings.[86] An experiment moving families from neighborhoods blighted by poverty has yielded positive results. The "Moving to Opportunity" program, sponsored by the Department of Housing and Urban Development during the 1990s, randomly assigned low income families with children living in public housing projects to receive housing vouchers that required them to move to more affluent neighborhoods. The adults experienced better mental and physical health.[87] Children who moved before the age of thirteen went on to have incomes 31% higher than those who remained.[88] These integrative benefits are in addition to the volume of affordable housing that has been built.

None of this could have happened without market rate development. The obligations of inclusionary zoning, including the payment of affordable housing in-lieu fees, are obligations with which private for-profit developers have learned to live.[89] Market rate housing and affordable housing are being produced as a result. And private for-profit developers are still making money. It is time for more developers to embrace inclusionary zoning.

Endnotes

1 A shorter version of this paper was previously published under the same title in the California Lawyers Association, Real Property Section E-Bulletin of February, 2018. The author wishes to thank West Hollywood City Attorney Mike Jenkins of Best Best & Krieger, LLP and Pete Noonan, Manager, Rent Stabilization and Housing, City of West Hollywood for sharing information regarding inclusionary zoning in West Hollywood and review of drafts of this paper, and Christina Sansone of the Sansone Law Firm, Corinne "Corie" Calfee of Opterra Law, Inc., and David Lanferman of Rutan & Tucker, LLP for their editorial assistance.

2 *616 Croft Ave., LLC v. City of West Hollywood*, 3 Cal. App. 5th 621 (2016).

3 *Cal. Bldg. Indus. Ass'n v. City of San Jose*, 61 Cal. 4th 435 (2015).

4 S.B. 2 §§ 3¬–4, 2017–2018, Reg. Ses. (Cal. 2017).

5 A.B. 1505 § 1, 2017–2018, Reg. Ses. (Cal. 2017); S.B. 540 § 2, 2017–2018, Reg. Ses. (Cal. 2017).

6 West Hollywood, Cal., Mun. Code ("WHMC") ch. 19.22.

7 *Id.*

8 WHMC §19.22.030.

9 WHMC §19.22.010(A).

10 *Id.*

11 *Id.*

12 WHMC §19.22.010(B).

13 *Id.*

14 WHMC §19.22.020(A).

15 WHMC §19.22.020(B).

16 WHMC §19.22.050(D).

17 WHMC §19.22.050(E) and (F).

18 *Id.*

19 WHMC §19.22.090.

20 WHMC §19.22.090(B)(4).

21 WHMC §19.22.090(B)(5).

22 WHMC §§19.22.090(B)(4) and (5) and 19.90.020 (defining "bedroom factor").

23 WHMC §19.22.090(C).

24 WHMC §19.22.040(A).

25 WHMC §19.22.040(D).

26 WHMC §19.22.040(B).

27 City Council of West Hollywood Staff Report, Fee Adjustment Hearing, at 5 n.5 (Mar. 18, 2013).

28 *See* WHMC §§19.22.020, 19.22.030(B), 19.22.040(B) and (D).

29 WHMC §19.22.040(E).
30 *Id.*
31 *Id.*
32 At the time of the Developer's application, the option of paying an in-lieu fee was made available to developers of residential projects of up to 20 units.
33 *San Jose*, 61 Cal. 4th at 455.
34 *Id.* at 455–56.
35 *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).
36 Cal. Gov. Code §§66000-66008.
37 *San Jose*, 61 Cal. 4th at 457–58.
38 483 U.S. at 828.
39 *Id.* at 837.
40 512 U.S. at 377, 379.
41 *Id.* at 391.
42 *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).
43 *Koontz*, 570 U.S. at 612.
44 *616 Croft Ave., LLC v. City of West Hollywood*, 3 Cal. App. 5th 621, 627 (2016).
45 *Id.*
46 *Id.* (citing Cal. Gov. Code §65009(c)(1)(B) and (C)).
47 *Id.* at 628 (citing Cal. Gov. Code §66001(b)).
48 *Id.* (quoting San Jose, 61 Cal. 4th at 457).
49 *Id.*
50 *Id.* at 628–29.
51 *Id.* at 629.
52 *Id.*
53 *Id.*
54 *Id.*
55 *Id.* at 629–30.
56 *Id.*
57 *Id.*
58 *Id.* at 630–31.
59 *Id.* at 631.
60 *Id.*
61 *Id.* at 631–32.
62 *Id.* at 632.
63 *Id.*
64 *Id.* at 631 n.6.
65 Cal. Health & Safety Code §50003(a).
66 Cal. Gov. Code §65583(c)(1) and (2).
67 *San Jose*, 61 Cal. 4th at 441.
68 Emily Thaden & Ruoniu Wang, *Inclusionary Housing in the United States: Prevalence, Impact, and Practices*, 11 (Lincoln Inst.of Land Pol'y, Working Paper WP17ET1, 2017), http://www.lincolninst.edu/publications/working-papers/inclusionary-housing-united-states; *see also* Dan Bertolet & Alan Durning, *Inclusionary Zoning: The Most Promising—Or Counter-Productive—of All Housing Policies*, Sightline Institute (Nov. 29, 2016, 6:30 AM), http://www.sightline.org/2016/11/29/inclusionary-zoning-the-most-promising-or-counter-productive-of-all-housing-policies/ (asserting that nearly 500 municipalities across North America have adopted inclusionary zoning rules of one kind or another).
69 Thaden, *supra* note 64, at 42.
70 Telephone Interview with Pete Noonan, Manager, Rent Stabilization & Housing, City of West Hollywood (Jan. 2018).
71 *Id.*
72 *Id.*
73 Non-Profit Housing Association of Northern California, *Affordable by Choice*, 11 (2007), http://nonprofithousing.org/wp-content/uploads/IHIReport.pdf.
74 *Id.*
75 A.B. 1505 § 3(a), 2017–2018, Reg. Ses. (Cal. 2017).
76 Thaden, *supra* note 64, at 31.
77 *Id.*
78 *See, e.g.*, Robert C. Ellickson, *The Irony of Inclusionary Zoning*, 54 S. Cal. L. Rev. 1167 (1981); The Urban Institute, *Expanding Housing Opportunities Through Inclusionary Zoning: Lessons from Two Counties*, 50–51 (U.S. Dep't of Hous. and Urban Dev., Office of Policy Dev. and Research, 2012), https://www.huduser.gov/portal/publications/HUD-496_new.pdf.
79 *See, e.g.*, Urban Institute, *supra* note 74, at 51.
80 Bertolet, *supra* note 64 (arguing that developers will avoid building in communities with inclusionary zoning that do not provide benefits, or "offsets," such as modest upzoning, to developers to help them absorb the cost of affordable housing).
81 *See, e.g.*, David P. Lanferman, *Inclusionary Zoning in California*, 29 Cal. Real. Prop. J. No. 2, p.[please insert page # on which article begins] (2011); Tim Iglesias, *Maximizing Inclusionary Zoning's Contributions to Both Affordable Housing and Residential Integration*, 54 Washburn L.J. No. 4, p.585 (2015); Gerald S. Dickinson, *Inclusionary Takings Legislation*, 62 Vill. L. Rev. 135 (2017).
82 S.B. 35 § 3, 2017–2018, Reg. Ses. (Cal. 2017)
83 A.B. 1505 § 1.
84 S.B. 2 §§ 3–4.
85 S.B. 540 § 2.
86 Heather L. Schwartz et al., *Is Inclusionary Zoning Inclusionary?* (RAND Corporation 2012), https://www.rand.org/content/dam/rand/pubs/technical_reports/2012/RAND_TR1231.pdf (Homes built pursuant to inclusionary zoning programs tend to be dispersed throughout jurisdictions, located in low-poverty neighborhoods, assigned to relatively low-poverty public schools, and assigned to schools performing better than schools in the same jurisdiction that do not serve homes built pursuant to inclusionary zoning programs.).
87 Jens Ludwig et al., Long-Term Neighborhood Effects On Low-Income Families: Evidence From Moving To Opportunity (Nat'l Bureau of Econ. Res., Working Paper No. 18772, 2013), http://www.nber.org/papers/w18772.pdf.