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## Important Ruling: Municipal Residential Growth Caps Invalid If They Conflict With Fair Share Housing Allocations

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On March 12, 2010, the Alameda County Superior Court filed a decision and order setting aside the City of Pleasanton's residential growth cap ordinance. *Urban Habitat Program et al. v. City of Pleasanton*, Case No. RG06-293831.

The case found that City ordinances and its housing element violated the Regional Housing Needs Allocation ("RHNA") accommodation requirements mandated by state law. The RHNA allocates to the cities within a region their "fair share" of housing needs and purports to require them to take such steps as may be necessary to bring about construction of the housing, including housing for low and moderate income families.

A substantial majority of local jurisdictions in California have run chronic deficits in meeting their RHNA quotas and have flaunted that failure with impunity. In Pleasanton's case—as in many others—the local agencies adopt provisions intended to look like compliance but that are strait-jacketed with procedural and "further study" requirements that somehow never get met.

The court noted that the number of units allowable under the housing cap was considerably less than Pleasanton's RHNA obligation, a condition that had persisted for many years. The court observed:

It is self-evident that the City cannot comply with the state statute requiring the City to accommodate its RHNA when the City is not permitted by its local law, Measure GG, to allow the number of housing units to be built that would satisfy the RHNA. Slip Op. p.6.

*Based on that finding, the Court found the local ordinances void as preempted by state law.*

Shortly before the hearing in the case, the City enacted what it had hoped to have been a curative ordinance, authorizing approval of a project that exceeded the growth cap subject to the developer going through a "good cause" exception requiring preparation of a specific plan. The judge caustically observed that the so-called safety valve would result in processing that would last from one year "to forever." Slip Op. p.4.

Despite the fact that this is a trial court opinion, it will send a profound shiver of doubt through municipalities that rely on growth caps as a means of avoiding their RHNA requirements. It is particularly telling in its summary rejection of the measures typically adopted in an effort to provide a saving clause and an appearance of good faith compliance for those ordinances.

As such, it will be significant for developers, property owners and even lenders who are dealing with communities that impose growth caps significantly below their RHNA allocations—and the court's opinion could provide significant leverage in dealing with those communities. This court, for one, simply refused to buy the typical avoidance subterfuge so often adopted by municipalities.

Developers, property owners and lenders who are taking over properties in foreclosure should be informed of this decision promptly to take advantage of its implications.

Finally, given the proclivities of most of the panels on the First Appellate District to which the case will be appealed, it stands a very good chance of being upheld.

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