

MEMORANDUM



RANCHO PALOS VERDES

TO: RANCHO PALOS VERDES CITY COUNCIL
FROM: CITY MANAGER *[Signature]*
DATE: OCTOBER 27, 2010
SUBJECT: ADMINISTRATIVE REPORT NO. 10-43

- I. CITY MANAGER AND DEPARTMENT REPORTS (See Attachments)**
 - A. City Manager**
 - B. Finance & IT Department**
 - C. Public Works Department – No report this week**
 - D. Community Development Department**
 - E. Recreation & Parks Department**

- II. CORRESPONDENCE AND INFORMATION RECEIVED (See Attachments)**
 - A. Tentative Agendas**
 - B. Channel 33 Programming Schedule**
 - C. Channel 35 Programming Schedule**
 - D. Crime Report**
 - E. Correspondence**

October 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1 <i>7:30 am—Mayor's Breakfast @ Coco's (Wolowicz/ Campbell)</i>	2
3	4	5 <i>7:00 pm—City Council Meeting @ Hesse Park</i>	6	7	8	9
10	11	12 <i>7:00 pm—Planning Com- mission Meeting @ Hesse Park</i>	13	14	15	16
17	18	19 <i>6:00 pm—NIMS Executive Training in Fireside Room</i> <i>7:00 pm—City Council Meeting @ Hesse Park</i>	20 <i>12:00 pm—Mayor's Lunch @ The Depot (Wolowicz)</i> <i>1:30 pm—Sanitation District Meeting (Long)</i>	21 <i>9:30 am—12:30 pm—Great Shake Out Earthquake Drill @ Community Room</i> <i>7:00 pm Emergency Prep Committee Meeting</i> CANCELLED	22	23
24	25 <i>7:00 pm—Traffic Safety Committee Meeting—Hesse Park</i>	26 <i>7:00 pm—Planning Com- mission Meeting @ Hesse Park</i>	27	28	29	30
31 <i>12:00 pm—2:00 pm— Halloween Spooktacular—RPV City Hall</i> <i>CCCA Fall Seminar—Santa Barbara—Wolowicz</i>				CCCA Fall Seminar - Santa Barbara—Wolowicz		

November 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2 <i>ELECTION DAY</i>	3	4 <i>7:00 pm—City Council Meeting @ Hesse Park</i>	5 <i>7:30 am—Mayor's Breakfast @ Coco's (Wolowicz/Misetich)</i>	6
7	8	9 <i>7:00 pm—Planning Commission Meeting @ Hesse Park</i>	10	11 <i>CLEAN UP DAY—(City Hall Closed)</i> <i>7:30 pm—LA West Vector Meeting (Stern)</i> <i>7:00 pm Emergency Prep Committee Meeting—RESCHEDULED from 11/18</i>	12	13
14	15	16 <i>7:00 pm—City Council Meeting @ Hesse Park</i>	17 <i>12:00 pm—Mayor's Lunch @ The Depot (Wolowicz)</i> <i>1:30 pm—Sanitation District Meeting (Long)</i> <i>7:00 pm—FAC Meeting—Community Room</i>	18 <i>8:00 am—Regional Law Enforcement Committee Meeting @ RH City Hall</i>	19	20
21	22	23 <i>7:00 pm—Planning Commission Meeting @ Hesse Park</i>	24	25 <div style="border: 1px solid black; padding: 2px; display: inline-block;"><i>Thanksgiving Holiday—City Hall Closed</i></div>	26	27
28	29	30 <i>7:00 pm—Adjourned CC Meeting @ Hesse (Tentative)</i>				

December 2010

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3 <i>7:30 am—Mayor's Breakfast @ Coco's</i>	4
5	6 <i>6:00 PM—Holiday Party— (Location TBD)</i>	7 <i>7:00 pm—City Council Meeting @ Hesse Park</i>	8 <i>7:00 pm—Traffic Safety Committee Meeting— Community Room</i>	9	10	11
12	13	14 <i>7:00 pm—Planning Commis- sion Meeting @ Hesse Park</i>	15 <i>12:00 pm—Mayor's Lunch @ The Depot</i> <i>1:30 pm—Sanitation District Meeting</i>	16 <i>7:00 pm—Emergency Prep Committee Meeting— Community Room</i>	17	18
19	20	21 <i>7:00 pm—City Council Meeting @ Hesse Park</i>	22	23	24 <i>City Hall Closed</i>	25
26	27	28	29	30	31	
	<i>Winter Holiday Break—City Hall Closed</i>					



Rancho Palos Verdes

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CAROLYN LEHR, CITY MANAGER 
DATE: OCTOBER 27, 2010
SUBJECT: WEEKLY ADMINISTRATIVE REPORT

CITY HALL CLEAN UP DAY

There are a few holidays throughout the year when most government offices are closed, but that are not paid holidays for our City staff. One such holiday is Veterans' Day, which falls on Thursday, November 11th. This holiday tends to be very quiet, because most people expect City Hall to be closed. In the past, we have used this holiday as a City Hall Clean-Up Day and I am proposing to do the same this year. On this day, City Hall offices would be closed to the public, but the staff would still report to work and use the uninterrupted time to clean and organize their files and work areas. Clean up days provide an opportunity for the staff to get to those "housekeeping" projects that we never seem to have the time to tackle during our normal workday schedule. Because it is a legal holiday as defined in the Municipal Code and no construction work is allowed to take place; however, the City will still be conducting building inspections on that day. If any Council member has an objection to Veterans' Day being used as Clean-Up Day, please let me know by Friday, November 5th.

MEMORANDUM



RANCHO PALOS VERDES



TO: CAROLYN LEHR, CITY MANAGER *CL*

FROM: DENNIS McLEAN, DIRECTOR OF FINANCE AND INFORMATION TECHNOLOGY

DATE: OCTOBER 27, 2010

SUBJECT: WEEKLY ADMINISTRATIVE REPORT

UPDATE - HESSE PARK – CITY COUNCIL AND PALNNING MEETING BROADCASTS

The broadcast and re-broadcasts of City Council and Planning Commission meetings have experienced several audio and video technical challenges over the last couple of months, including lost audio and impaired video. I'm pleased to advise you that a collaborative effort led to the improvement of both audio and video production yesterday afternoon. I would like to thank Paul Williams, the Cox broadcast technician, Richard Rosenzweig, Cox's consulting engineer, Ted Vegvari of PVNET and Emilio Blanco, the City Maintenance Superintendent. The five of us worked together for 2 ½-3 hours while troubleshooting and changing several configurations that improved both audio and video broadcasts. It's City staff's goal to help the Cox broadcast technician communicate problems to Cox technical and management staff more quickly in the future. I expect that everyone will immediately notice improved video broadcast clarity. I also expect that audio issues (i.e. short audio gaps) will improve as well.

I offer several suggestions for everyone that participates in both City Council and Planning Commission meetings. It's important that you speak directly into the microphone from a constant distance of about one foot. You can actually hear yourself, as amplified, in the room when you are speaking from the correct distance. Similarly, we'll need to encourage members of the public to adjust the microphone as they approach the podium to speak. I have instructed the Cox broadcast technician to immediately advise staff to stop the meeting when broadcast video and/or audio is interrupted to allow for technical corrections to be made. I ask that the chairs of the meeting immediately honor the request to enable normal broadcast quality.

UPDATE –TOA HELICOPTER ROUNDTABLE

As reported two weeks ago, Staff of the City of Torrance has conducted helicopter noise roundtable meetings during the last several months regarding its Zamperini Field (TOA) operations. At its meeting last night, the City Council of the City of Torrance approved Staff's recommendation to form a sub-committee to consider helicopter operations, including local helicopter routes surrounding the Airport. As described two weeks ago, I expect to make a request to the sub-committee to abandon the South Crenshaw helicopter route from TOA.

On a related note, I received a complaint from Beverly Ackerson regarding excessive general aviation and helicopter aircraft noise last Sunday and Monday. I've attached my

FINANCE AND INFORMATION TECHNOLOGY DEPARTMENT WEEKLY REPORT

October 27, 2010

Page 2

email reply that serves to provide everyone with steps to take regarding aircraft noise. Of course, the City does not regulate air space; therefore, we can only serve as a liaison regarding complaints.

Dennis McLean

From: Dennis McLean [dennism@rpv.com]
Sent: Wednesday, October 27, 2010 3:03 PM
To: [REDACTED]
Cc: 'SMegerdichian@TorranceCA.gov'
Subject: 10/24 & 10/25/2010 aircraft noise complaint

Hi Beverly

It's my understanding that you experienced excessive general aviation and helicopter noise attributable to flights at low altitudes last Sunday and Monday. I have discussed your report with Shant Megerdichian, Facilities Manager, the City of Torrance & he offers the following:

- 1) Continue to attempt to get the aircraft number when you experience future excessive noise incidents. If you are unable to ID the aircraft, consider noting the color, markings and shape. Note the time, as you did with the last report.
- 2) You may either file a report with the Torrance Noise Abatement hotline at (310) 784-7950 or by emailing Shant directly at SMegerdichian@TorranceCA.gov. Assuming the aircraft is based at Torrance Zamperini Field, the City of Torrance will attempt to contact the aircraft owner and encourage neighborly flying at appropriate altitudes in accordance with an agreement that was entered into between the City and helicopter aircraft owners.

I have also provided the link to the LAX WebTrak system that provides real-time flight information.

<http://www331.webtrak-lochard.com/webtrak/lax4>

I think the system could be helpful to you and your neighbors. With the system, you can usually identify the airport of origin, the current flight altitude and sometime the aircraft N number. If it's a Torrance airport flight of origin, you can provide the information as with your complaint as described above.

Thanks,

Dennis McLean
Director of Finance and Information Technology

 City of Rancho Palos Verdes
Finance and Information Technology
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dennism@rpv.com - (310) 544-5212 p – (310) 544-5291 f



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TO: Carolyn Lehr, City Manager 
FROM: Joel Rojas, Community Development Director 
DATE: October 27, 2010
SUBJECT: Weekly Administrative Report

Planning Commission Follow-Up Agenda

Attached is the follow-up agenda for the Planning Commission meeting on October 26, 2010.

Applications of Note

Attached is a table with a summary of the applications of note that were submitted to the Department between October 20, 2010 and October 26, 2010.

Attachments

PC follow-up agenda for October 26, 2010
Applications of Note



FOLLOW-UP AGENDA

**RANCHO PALOS VERDES PLANNING COMMISSION
TUESDAY, OCTOBER 26, 2010
FRED HESSE COMMUNITY PARK, 29301 HAWTHORNE BOULEVARD**

**REGULAR MEETING
7:00 P.M.**

SCHEDULING NOTES

REQUESTS TO SPEAK ON AN ITEM MUST BE SUBMITTED TO THE COMMUNITY DEVELOPMENT DIRECTOR PRIOR TO THE COMPLETION OF THE REMARKS OF THE FIRST SPEAKER ON THE ITEM. NO REQUEST FORMS WILL BE ACCEPTED AFTER THAT TIME.

PURSUANT TO ADOPTED PLANNING COMMISSION PROCEDURE, UNLESS THE PLANNING COMMISSION AGREES TO SUSPEND ITS RULES, NO NEW BUSINESS WILL BE HEARD AFTER 11:00 P.M. AND NO ITEM WILL BE HEARD PAST MIDNIGHT. ANY ITEMS NOT HEARD BECAUSE OF THE TIME LIMITS WILL BE AUTOMATICALLY CONTINUED TO THE NEXT COMMISSION AGENDA.

NEXT P.C. RESOLUTION NO. 2010-33

CALL TO ORDER: 7:06 P.M.

FLAG SALUTE: LED BY COMMISSIONER TETREAULT

ROLL CALL: ALL PRESENT

APPROVAL OF AGENDA: APPROVED AS PRESENTED

COMMUNICATIONS:

City Council Items: DIRECTOR ROJAS REPORTED THAT AT THE OCTOBER 19, 2010 CITY COUNCIL MEETING, THE CITY COUNCIL INITIATED A CODE AMENDMENT TO IMPLEMENT PROGRAMS IDENTIFIED IN THE CITY'S 2008 HOUSING ELEMENT.

Staff: STAFF DISTRIBUTED 5 LETTERS AND 1 GEOLOGICAL REPORT ON ITEM #1.

Commission: VICE CHAIR TOMBLIN REPORTED THAT HE RECEIVED A CALL FROM A RESIDENT RAISING CONCERNS WITH THE EXTERIOR LIGHTING OF THE CITY'S MIRANDELA PROJECT. THE DIRECTOR REPORTED THAT THE CURRENT LIGHTING IS

CONSTRUCTION LIGHTING THAT IS TEMPORARY.

COMMENTS FROM THE AUDIENCE (regarding non-agenda items): **NONE**

CONSENT CALENDAR:

NONE

CONTINUED BUSINESS:

NONE

PUBLIC HEARINGS:

1. HEIGHT VARIATION, GRADING & EXTREME SLOPE PERMIT (CASE NO. ZON2009-00170): 54 Rockinghorse Road / Colaruotolo (LM)

Request: A request to construct an after-the-fact 71 square foot addition to the first floor and a 2,343 square foot basement beneath the existing 3,478 square foot residence. The overall height of the residence will measure 24'-0" as measured from the highest existing ridgeline (elev. 217.93') to the lowest finished grade adjacent to the foundation/slab (elev. 193.93'). The project also includes a new deck in the rear yard that will extend a maximum of 6'-0" beyond the top of a previously existing extreme slope. Additional after-the-fact grading approval for a new retaining wall with a maximum height of 20'-0" along the south property line and 1,799 cubic yards of cut and fill is required for the construction of the basement and fill in the rear yard.

ACTION: REVIEWED THE PROJECT PROPOSAL, OPENED THE PUBLIC HEARING, DISCUSSED THE MERITS OF THE PROJECT, AND CONTINUED THE PUBLIC HEARING TO DECEMBER 14, 2010 (7-0).

2. FLOOR AREA RATIO CODE AMENDMENT: City (ES)

Request: A request to review the possibility of establishing a maximum structure size for Residential property through a Floor-Area-Ratio (FAR).

ACTION: REVIEWED AND DISCUSSED THE FOUR ALTERNATIVES PRESENTED BY STAFF FOR ESTABLISHING A FLOOR AREA RATIO (FAR) OR SOME SIMILAR MAXIMUM STRUCTURE SIZE, DIRECTED STAFF TO PROVIDE ADDITIONAL INFORMATION AND CONTINUED THE PUBLIC HEARING TO JANUARY 11, 2011 (7-0).

NEW BUSINESS: **NONE**

APPROVAL OF MINUTES: **NONE**

ITEMS TO BE PLACED ON FUTURE AGENDAS:

3. PRE-AGENDA FOR THE MEETING ON NOVEMBER 9, 2010

ACTION: ACCEPTED

ADJOURNMENT: 10:27 P.M.

The next meeting is scheduled for Tuesday, November 9, 2010, 7:00 P.M. at Hesse Park.

Americans with Disabilities Act: In compliance with the Americans with Disabilities Act of 1990, if you require a disability-related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call the Community Development Director at 310 544-5228 at least 48 hours prior to the meeting.

Notes:

1. Staff reports are available for inspection at City Hall, 30940 Hawthorne Boulevard during regular business hours, 7:30 A.M. to 5:30 P.M. Monday – Thursday and 7:30 A.M. to 4:30 P.M. on Friday. The agenda and staff reports can also be viewed at Hesse Community Park, 29301 Hawthorne Boulevard during the Planning Commission meeting.
2. Materials related to an item on this Agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection at the front counter of the Planning Division lobby at City Hall, which is located at 30940 Hawthorne Boulevard, Rancho Palos Verdes during normal business hours as stated in the paragraph above.
3. You can also view the agenda and staff reports at the City's website www.palosverdes.com/RPV.
4. Written materials, including emails, submitted to the City are public records and may be posted on the City's website. In addition, City meetings may be televised and may be accessed through the City's website. Accordingly, you may wish to omit personal information from your oral presentation or written materials as they may become part of the public record regarding an agenda item.



Applications of Note as of October 27, 2010

Case No.	Owner	Street Address	Project Description	Submitted
VRP2010-00052	JACQUELINE SANICOLA	31021 GANADO DR	View Preservation Permit regarding foliage located at 3505 Coolheights Dr. (Griegg)	10/26/2010
<i>View Preservation Permit</i>				
ZON2010-00378	BARR SEGAL	37 SAIL VIEW AVE	ATF Fence, Wall & Hedge Permit for hedge along rear property line	10/26/2010
<i>Fence, Wall & Hedge Permit</i>				

T:\Forms\Applications of Note.rpt



RANCHO PALOS VERDES

MEMORANDUM

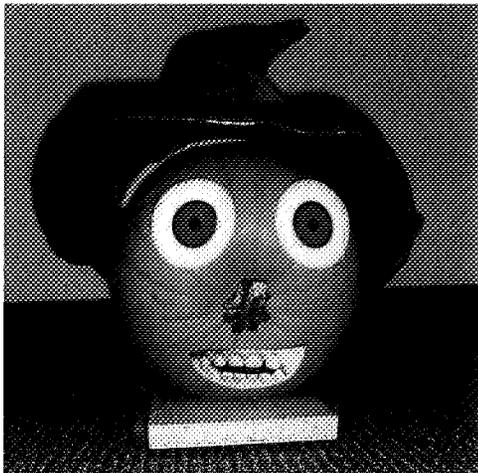
TO: CAROLYN LEHR, CITY MANAGER 

FROM: TOM ODOM, INTERIM DIRECTOR, RECREATION AND PARKS / DEPUTY DIRECTOR, PUBLIC WORKS 

DATE: OCTOBER 27, 2010

SUBJECT: ADMINISTRATIVE REPORT

Halloween Spooktacular!



Staff and residents are busy preparing for the Halloween Spooktacular! This free, community oriented event will feature fun activities for the whole family and is scheduled to take place on Sunday, October 31, from noon-2:00pm at City Hall. The event will feature:

- Pumpkin Races (Visit the City website for race rules!)
- Pet & Kid Costume Parade
- Best Pumpkin Pie Contest!
- Best Carved Pumpkin Contest
- Other activities will include children's games, face painting, balloon and bubble fun, Halloween kid crafts, and Monster Mash music!

Founders Park

- Wednesday through Friday, Partisan Entertainment will be filming at the park.

Hesse Park

Recreation Class Rentals:

- Exercise & Fitness Classes (MPR - Multipurpose Room): Monday - Wednesday
- Parent Participation Preschool Classes (ACT - Activity Room): Monday, Wednesday
- Music for Preschoolers Class (FSR – Fireside Room): Monday
- Duplicate Bridge Classes (MPR): Monday, Friday
- Lite Impact Aerobic Dance Classes (MPR): Monday, Wednesday
- Mommy & Me Classes (ACT): Tuesday, Thursday
- Bones for Life Class (MPR): Tuesday
- Tai Chi Chuan Classes (MPR): Wednesday, Saturday
- Suika Preschool Class (ACT): Friday
- Basics of Fine Arts Class (ACT): Saturday
- Suzuki Method for String Instruments Classes (ACT): Saturday

Community Groups/Private Rentals:

- AYSO Region 10 Girls Soccer Practices & Games (Soccer Field): Monday – Saturday
- Peninsula Girl Scout Meeting (FSR): Monday
- Angels of Hope Meeting (FSR): Tuesday
- AYSO Board Meeting (ACT): Tuesday
- Peninsula Seniors Weekly Lecture (FSR): Wednesday
- RPV Seniors Bridge Club Meeting (MPR): Thursday
- Pony League Baseball Games (Baseball Field): Sunday

Ladera Linda

Recreation Classes:

- Adult Exercise Class (MPR) Monday, Wednesday, Friday
- Adult Tap Class (RM. G): Tuesday
- Creative Energy Youth Dance Classes (MPR) Monday-Saturday

Point Vicente Interpretive Center / Los Serenos de Point Vicente Docents

Activities/Information:

The Docent Strategy Committee met Wednesday to discuss future goals for the organization.

REACH

On Monday, REACH participants enjoyed a Halloween party and tour at the Point Vicente Interpretive Center. For their evening meal, participants prepared a plethora of ghoulish delights.

On Friday, REACH hosted a Halloween dance for developmentally disabled young adults from the South Bay.

Ryan Park

Recreation Class Rentals:

- Fit N Fun Youth Sports Classes (Grass Field): Monday, Tuesday, Wednesday
- Suika Preschool Classes (ACT): Monday, Wednesday, Friday
- Kids Music N Motion Class (ACT): Tuesday

Community Groups/Private Rentals:

- US Youth Volleyball League Practice and Games (Grass Field): Thursday, Saturday
- Pony League Baseball Games (Baseball Field): Saturday

TENTATIVE AGENDAS

November 16, 2010

Closed Session: Indian Peak

Mayor's Announcements: Frank Zerunyan, Calif. Contract Cities Assn.

City Manager Report:

New Business:

Consent

Future Agenda Items Update Report
Award Contract Renewal – Animal Control
Annual Renewal of Commercial Hauler Agreements

Public Hearings

Regular Business

Grandview/Lower Hesse Park Improvements
Revision to Employee Health Plans
Lower Pt. Vicente POU & General Plan Consistency Discussion
Draft Response Letter to State Dept. of Parks & Recreation
Presentation of Draft Emergency Operations Plan

November 30, 2010

6:00 P.M. Adjourned Reg. Mtg. – Committee/Commission Interviews (Tentative)

Mayor's Announcements:

City Manager Report:

New Business:

Consent

Public Hearings

Regular Business

Civic Center Master Plan
Appt. of Committee/Commission Members

December 7, 2010

6:00 P.M. Adjourned Reg. Mtg. – Committee/Commission Interviews (Tentative)

Mayor’s Announcements:

Council Reorganization: Selection of Mayor & Mayor Pro Tem

City Manager Report:

New Business:

Consent

Public Hearings

Adoption of Ordinance - New Uniform Building Code
CDBG Proposed FY11-12 Program
License Agmt w/Annenberg–Constr. of Parking Lot/Site Improv.-Lower Pt. Vicente

Regular Business

Code Amendment Initiation Request – Foliage in Side Yard
Adoption of Emergency Operations Plan
Review Procedure for Temporary Banner Signs
Appt. of Committee/Commission Members

December 21, 2010

Mayor’s Announcements:

City Manager Report:

New Business:

Consent

Status Report on Tactical Goals
Adjustments to Parking Citation Fees

Public Hearings

Regular Business

Updated NCCP Preserve Management Agmt. between City and PVPLC
RPV Leadership Academy
Mayor’s Appt. of Council Members to Intergovernmental Orgs. & Assocs.
Noise Ordinance

January 4, 2011 (General Plan Workshop)

Mayor's Announcements:

City Manager Report:

New Business:

Consent

Border Issues

Public Hearings

Draft General Plan

Regular Business

January 18, 2011

Mayor's Announcements:

City Manager Report:

New Business:

Consent

Public Hearings

Regular Business

Future Agenda Items

- 1) Trees in public ROW
- 2) Sheriff Substation within Civic Center
- 3) Quasi-judicial Decision Guidelines (Stern)
- 4) Permitting of Above-Ground Facilities in the Right-of-Way (Lynch)
- 5) Gifts to City - From Estates and Planned Giving (Long)
- 6) Citywide Sewer Fee
- 7) Skate Park



RPVTV Channel 33 Programming Schedule Guide

Sign up for the RPV ListServ to get the updated program guide sent right to your Inbox!

Week of 11/01/10 - 11/07/10
Monday through Sunday

6:00 AM - 6:30 AM	Sit and Be Fit - Low Impact Fitness	3:30 PM - 4:00 PM	L.A. COUNTY Programming - October Wrap up
6:30 AM - 7:00 AM	Cardio Strength Stretch - Moderate to Rigorous Exercise Routines	4:00 PM - 4:30 PM	Playing the Field: PTF on PTF
7:00 AM - 7:30 AM	Community Connection: Local FIRST Extravaganza	4:30 PM - 5:00 PM	Playing the Field: Pick Your Bat!
7:30 AM - 8:00 AM	L.A. COUNTY Programming - October Wrap up	5:00 PM - 5:30 PM	Sit and Be Fit - Low Impact Fitness
8:00 AM - 8:30 AM	Playing the Field: PTF on PTF	5:30 PM - 6:00 PM	Cardio Strength Stretch - Moderate to Rigorous Exercise Routines
8:30 AM - 9:00 AM	Playing the Field: Pick Your Bat!	6:00 PM - 6:30 PM	Palos Verdes Coordinating Council: Understanding Measure P
09:00 AM - 9:30 AM	Community Connection: RPV Traffic Safety with Officer Knox	6:30 PM - 7:00 PM	Palos Verdes Coordinating Council (continued)
9:30 AM - 10:00 AM	City Talk: The ASAP Squad Car, Lomita Sheriff's Update	7:00 PM - 7:30 PM	Peninsula Seniors: Dave's Garage, Classic Car Collection
10:00 AM - 10:30 AM	Palos Verdes Coordinating Council: Understanding Measure P	7:30 PM - 8:00 PM	Peninsula Seniors (continued)
10:30 AM - 11:00 AM	Palos Verdes Coordinating Council (continued)	8:00 PM - 8:30 PM	High School Football: Lawndale vs. Palos Verdes High School
11:00 AM - 11:30 AM	High School Football: Lawndale vs. Palos Verdes High School	8:30 PM - 9:00 PM	Lozenge vs. Peninsula High School (continued)
11:30 AM - 12:00 PM	Lozenge vs. Peninsula High School (continued)	9:00 PM - 9:30 PM	High School Football: Leuzinger vs. Palos Verdes High School
12:00 PM - 12:30 PM	Peninsula Seniors: Cabrillo Aquarium Bobbie Hedges	9:30 PM - 10:00 PM	Lawndale vs. Peninsula High School (continued)
12:30 PM - 1:00 PM	Peninsula Seniors (continued)	10:00 PM - 10:30 PM	The City of Rancho Palos Verdes City Council Meeting Recorded November 8, 2010
1:00 PM - 1:30 PM	Palos Verdes High School: Peninsula vs. Leuzinger	10:30 PM - 11:00 PM	RPV City Council (Continued)
1:30 PM - 2:00 PM	Palos Verdes High School (continued)	11:00 PM - 11:30 PM	RPV City Council (Continued)
2:00 PM - 2:30 PM	Palos Verdes High School (continued)	11:30 PM - 12:00 AM	RPV City Council (Continued)
2:30 PM - 3:00 PM	Palos Verdes High School (continued)	12:00 AM - 1:00 AM	RPV City Council (Continued)
3:00 PM - 3:30 PM	Community Connection: Local FIRST Extravaganza	1:00 AM - 6:00 AM	Community Announcements



PVPTV35 Programming Schedule Guide
Week of 11/1/10 to 11/07/10

Monday, Nov. 1

3:00PM

Palos Verdes Library Dist.

6:00PM

PVP Coordinating Council

7:00PM

PVPUSD Board Meeting

Tuesday, Nov. 2

7:00PM

City of RHE: 2010 City Celebration

Wednesday, Nov. 3

7:30PM

City of PVE City Council Meeting 10/26/10

Thursday, Nov. 4

7:00PM

City of RPV City Council Meeting - LIVE

Friday, Nov. 5

6:00PM

PVP Land Conserancy Nature Walk

Saturday, Nov. 6

10:00AM

City of RPV City Council Meeting 11/4/10

7:00PM

City of RPV Planning Commission 9/28/10

Sunday, Nov. 7

7:00PM

City of RPV City Council Meeting 11/4/10

**LOS ANGELES COUNTY SHERIFF'S DEPARTMENT- LOMITA STATION
REPORTED CRIMES & ARRESTS BETWEEN 10/17/10 & 10/23/10**

LOMITA:

CRIME	FILE #	RD	DATE	TIME	LOCATION	METHOD OF ENTRY	LOSS	ADDITIONAL INFORMATION
GRAND THEFT AUTO	10-03781	1713	10/20/10	1152	25800 BLOCK NARBONNE AVE	UNKNOWN	10 NISSAN ALTIMA 4DR, WHT	SUSPECT(S) UNKNOWN. LOCATION TYPE- PARKING LOT
GRAND THEFT (COMMERCIAL)	10-03819	1710	10/13/10-10/18/10	UNK	1800 BLOCK LOMITA BL	UNKNOWN	MONEY	S- BELIEVED TO BE AN EMPLOYEE
ARRESTS: NARCOTICS-3,VEHICLE LAWS-3,SPOUSAL ABUSE-2,INDECENT EXPOSURE-1,PROSTITUTION-10,VIOLATION OF PROTECTIVE ORDER-1								
POSSESSION OF COUNTERFEIT MERCHANDISE-1								

RANCHO PALOS VERDES:

CRIME	FILE #	RD	DATE	TIME	LOCATION	METHOD OF ENTRY	LOSS	ADDITIONAL INFORMATION
GRAND THEFT (RESIDENTIAL)	10-03755	1730	10/17/10-10/18/10	1400-0800	26600 BLOCK INDIAN PEAK RD	UNLOCKED GATE	AIR CONDITIONING CONDENSER	SUSPECT(S) UNKNOWN
BURGLARY (SHOPLIFTING)	10-80083	1746	10/17/10	1200	28900 BLOCK WESTERN AVE	ENTRY DOOR	"CASSADORES" TEQUILA	S- MH, BLACK LEATHER JACKET, WHITE T-SHIRT, BROWN PANTS
RESIDENTIAL BURGLARY	10-03778	1730	10/19/10-10/20/10	0900-0900	26600 BLOCK FON DU LAC RD	FRONT DOOR, FORCED	2 SHOWER HEADS	SUSPECT(S) UNKNOWN.
GRAND THEFT (BICYCLE)	10-03800	1734	10/21/10	0800-1700	28100 BLOCK PEACOCKRIDGE RD	BIKE LOCKS, CUT	2 MOUNTAIN BIKES	S- MH, BASEBALL CAP
GRAND THEFT (VEHICLE)	10-03798	1734	10/21/10	0215-0230	6300 BLOCK RIO LINDA DR	UNLOCKED VEHICLE	IPOD, HEADPHONES, CAR CHARGER	S- MW S2- MW, BLACK BACKPACK LOCATION TYPE- RESIDENTIAL DRIVEWAY
GRAND THEFT (VEHICLE)	10-03801	1730	10/21/10	0215	5800 BLOCK FLAMBEAU RD	UNLOCKED VEHICLE	CELLPHONE, CAMERA, IPOD	S- 2MW, BACKPACKS LOCATION TYPE- RESIDENTIAL DRIVEWAY
RESIDENTIAL BURGLARY	10-03821	1745	10/22/10	UNK	30600 BLOCK PALOS VERDES DR E	DOOR JAM, PRIED	AC CONDENSOR (RECOVERED)	SUSPECTS ARRESTED
GRAND THEFT AUTO	10-03828	1730	10/22/10-10/23/10	2100-0700	5300 BLOCK LITTLEBOW RD	UNKNOWN	00 LINCOLN TOWNCAR, 4DR, IVY, 4MOH578	SUSPECT(S) UNKNOWN. LOCATION TYPE- RESIDENTIAL GARAGE
RESIDENTIAL BURGLARY	10-03835	1744	10/11/10-10/23/10	1100-1000	2900 BLOCK CROWNVIEW DR	FRONT DOOR, PRIED	FREEZER, 2 DISHWASHERS, GRILL, OVEN, MICROWAVE, COOKTOP,	SUSPECT(S) UNKNOWN. WHITE VAN SEEN AT LOCATION.
ARRESTS: DUI-1,VEHICLE LAWS-2,VANDALISM-1,SPOUSAL ASSULT-2								

ROLLING HILLS:

ARRESTS: DRUNK IN PUBLIC-1

ROLLING HILLS ESTATES:

CRIME	FILE #	RD	DATE	TIME	LOCATION	METHOD OF ENTRY	LOSS	ADDITIONAL INFORMATION
GRAND THEFT (VEHICLE)	10-03785	1724	10/20/10	0800-1500	27100 BLOCK SILVER SPUR RD	UNKNOWN	CATALYTIC CONVERTER	SUSPECT(S) UNKNONW. LOCATION TYPE- RESIDENTIAL STREET.
COMMERCIAL BURGLARY	10-03818	1724	10/21/10	1445	BLOCK PENINSULA CENTER	ENTRY DOOR	3 "GREY GOOSE" VODKA, 4 "COURVIDISER" COGNAC, 1 "VEUVE CLICQUOT", 3 "CLICQUOT BRT", 4 "HENESEY" COGNAC, 4 "MONET & CHANDON", 1 CHAMPAGNE, 1 "NECTAR IMPERIAL", 2 MISC MEAT PACKS, 5 12PAC "BUDWEISER"	S- MB, 40'S, 510, 180 LAST SEEN IN BLK NESSAN ALTIMA, TENN PLATE # 135-HJH SUSPECTED TO HAVE TAKEN FROM THE STORE BEFORE.
ARRESTS: PETTY THEFT-1								

SAN PEDRO:

CRIME	FILE #	RD	DATE	TIME	LOCATION	METHOD OF ENTRY	LOSS	ADDITIONAL INFORMATION
VEHICLE BURGLARY	10-03769	1750	10/19/10	0030-1310	1200 BLOCK BIG CANYON PL	PASSENGER DOOR, LOCK PRIED	UNKNOWN	SUSPECT(S) UNKNONW. LOCATION TYPE- RESIDENTIAL DRIVEWAY.
VEHICLE BURGLARY	10-03826	1750	10/23/10	0400-0835	900 BLOCK W. 1ST ST	PASSENGER WINDOW, SMASHED	PURSE	S- MH, 18-21, 510, THIN BUILD, ALL BLACK CLOTHES LOCATION TYPE- PARKING LOT
ARRESTS: POSSESSION OF BURGLARY TOOLS-1, TRESPASSING-1								

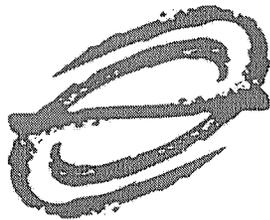
PALOS VERDES PENINSULA:

CRIME	FILE #	RD	DATE	TIME	LOCATION	METHOD OF ENTRY	LOSS	ADDITIONAL INFORMATION
VEHICLE BURGLARY	10-03827	1753	10/22/10-10/23/10	1200-0945	3600 BLOCK ESTATES LN	DRIVER SIDE WINDOW, SMASHED	UNKNOWN	SUSPECT(S) UNKNONW.
NO ARRESTS								

Paying for Pollution:
Proposition 26 and its Potential Impacts on
State Environmental and Public Health Protections in California

Cara Horowitz
Sean B. Hecht
M. Rhead Enion

October 26, 2010



EMMETT CENTER ON
CLIMATE CHANGE AND
THE ENVIRONMENT

EVAN FRANKEL
ENVIRONMENTAL LAW
& POLICY PROGRAM
UCLA SCHOOL OF LAW

This report is a product of the Evan Frankel Environmental Law and Policy Program and the Emmett Center on Climate Change and the Environment at UCLA School of Law. The authors are grateful to UCLA Law professors Ann Carlson, Timothy Malloy, Kirk Stark and Jonathan Zasloff for invaluable support and advice. All errors are our own.

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Executive Summary

This report considers the potential effect of Proposition 26, which appears on the November 2, 2010 California ballot, on the state's environmental and public health protections. With very little time remaining before the election, controversy rages over whether the passage of Proposition 26 would make it harder for the state to fund environmental protection programs and other public benefit programs.¹

Proposition 26 proposes to expand the definition of a "tax" under California law. As a result of this expansion, some fees and other charges imposed by the state or by cities or counties could no longer be enacted by a simple majority vote of the Legislature. Instead, a 2/3 supermajority vote would be required—the same vote now required to pass a budget or a new tax.

We have taken a careful look at the measure's language and its impacts on environmental and public health programs in California, and have concluded that Proposition 26 would erect significant barriers to funding many of these programs in the future. This could have substantial and wide-ranging impacts on implementation of the state's health, safety and environmental laws.

We find that Proposition 26 would:

- **Undercut the principle that polluters should pay for harms they cause.** Proposition 26 would change a basic principle of state law allowing government to charge polluters up-front fees for the external costs they impose on the public, such as health risks and environmental harms. Proposition 26 would make it harder, for example, to impose some regulatory fees on hazardous products to address their adverse health effects on communities.
- **Likely repeal at least two product sustainability laws.** This year, the Legislature enacted AB 2398 and AB 1343, which would fund product stewardship programs to prevent bulky products and harmful chemicals from entering landfills. Proposition 26 would likely repeal these laws unless the Legislature reenacts them in compliance with Proposition 26's stringent 2/3 supermajority requirement.
- **Create a new barrier to ensuring that existing environmental and public health fees keep up with changing needs or with inflation.** Legislative changes or updates to existing fees, which currently fund many environmental and public health programs, would require a 2/3 supermajority vote to enact unless they fall into one of the Proposition's exceptions. The scope of the exceptions is both narrow enough and vague enough to risk the future of many fees.

- **Undermine the establishment of stable funding streams for key state environmental efforts, like the Green Chemistry Initiative and the Global Warming Solutions Act, that have already been enacted but that are not yet well funded.** The state currently uses regulatory fees—the type that would be transformed into taxes by Proposition 26—to help pay for its environmental and public health programs. Proposition 26 would make it harder to impose or revise fees to fund these programs in the future. For example, it would threaten future regulatory fees to fund the state’s new Green Chemistry Initiative, which is aimed at controlling exposure to hazardous chemicals.
- **Affect even revenue-neutral measures in unforeseeable ways.** Proposition 26 requires a 2/3 vote not just on revenue bills, but on any legislation that results in a single person paying more tax. The Proposition’s language is worded quite broadly, transforming into a tax *any* change in statute that “results in *any taxpayer paying a higher tax.*” And under the Proposition’s new definition of “tax,” a bill that would cause even one business to pay a higher regulatory fee could be subject to the 2/3 vote requirement. It therefore could be read to define as a tax, for example, a proposal to reduce California taxpayers’ burden to pay for public health protection by charging a polluting industry for that protection.

What does Proposition 26 propose?

Since the passage in 1978 of Proposition 13, California law has held that a majority vote is insufficient to enact a tax increase. Instead, no tax proposed for the purpose of increasing revenue may be adopted without the approval of two-thirds of the Legislature or of the people. Current law, however, distinguishes between taxes and regulatory fees, allowing the government to impose charges on some businesses and products in order to help to offset the public health or environmental impact of those businesses' activities. (A fee imposed on the sale of lead paint, used to help fund community programs to avoid and treat lead poisoning in children, is a well-known example of these types of fees.) These fees can be passed with a simple majority vote under current law.²

Proposition 26 proposes to expand the definition of a "tax" so that more state laws would require a two-thirds supermajority vote to pass, rather than a simple majority. It would amend the State's constitution to define as a tax "any levy, charge, or exaction of any kind imposed by the State," with a few enumerated exceptions discussed below. It would then require that "[a]ny change in state statute which results in any taxpayer paying a higher tax" be enacted only through a two-thirds vote of both houses of the Legislature. These changes would make it harder to enact regulatory fees similar to those the state currently uses to fund many of its environmental and public health programs.

The Proposition would also redefine local government "taxes." While the fiscal

implications of this provision of the Proposition would likely be significant, this paper's analysis is limited to impacts on State government's environmental and public health protections.

Notably, the Proposition would require a two-thirds vote on *any* legislation that "results in *any taxpayer paying a higher tax*," whether or not the measure increases total revenue to the State. This would alter current law, which now requires a two-thirds vote for changes only in laws aimed at raising new revenue. Proposition 26 would therefore threaten even revenue-neutral measures in unforeseeable ways. For example, a proposal to require a polluting industry to pay for public health protections in order to reduce California taxpayers' burden related to harms caused by that industry would likely require a 2/3 supermajority vote.

Moreover, Proposition 26 would explicitly repeal any measure passed since January 1, 2010, that imposes taxes (as newly defined), unless the Legislature reenacts those measures with a 2/3 supermajority vote.

Finally, in any litigation over whether a particular measure is legally a "tax," Proposition 26 would change the burden of proof so that it would be the government's burden to show that a measure is a valid charge, rather than the challenger's burden to show it unlawful. Thus, all government fees, charges, and exactions would begin in court with a presumption of invalidity.

Would Proposition 26 significantly limit the environmental and public health fees that the State can now enact with a simple majority vote?

Under current law, the California Supreme Court has made clear that state and local governments may impose regulatory fees—with only a majority vote—on industries that cause adverse environmental or health impacts, in order to deter or respond to the harm caused by those industries. Such fees are now permissible even when they “do not constitute payment for a government benefit or service” bestowed upon the payor and “neither reimburse the state for special benefits conferred on [those manufacturers] nor compensate the state for governmental privileges granted to those manufacturers.”³

It is likely that Proposition 26 would change this longstanding rule. It would amend the state’s constitution to define as a tax “any levy, charge, or exaction of any kind imposed by the State,” with a few enumerated exceptions.

Any fee that falls into one of these exceptions would not be considered a tax. While these exceptions rescue some types of regulatory fees from the two-thirds vote requirement, such as fees for licenses, permits, inspections, and other closely drawn activities, the exceptions are vague and their application to many regulatory fees is questionable at best.

Importantly, these exceptions appear to depart from the principle, described above and embraced by the California Supreme Court, that fees may legitimately go beyond mere payments for government benefits received in order to defray the actual costs to communities from activities causing pollution, hazardous products, or other ills.⁴ As discussed above, existing law allows fees to fund the full cost of programs even where those fees “neither reimburse the state for

Proposition 26: Definition of “tax” and enumerated exceptions

(b) As used in this section, “tax” means any levy, charge, or exaction of any kind imposed by the State, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.

(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

(3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of a violation of law.

special benefits conferred on [those manufacturers] nor compensate the state for governmental privileges granted to those manufacturers.”⁵ But Proposition 26 does the opposite: it requires that fees be limited to the reasonable costs to the State of conferring benefits, granting privileges, or providing products and services to the charged business.

The lead-paint fee, mentioned above, demonstrates the importance of this change. To address the very serious problem of childhood lead poisoning in California, in 1991 the state enacted a fee imposed on manufacturers of products sold in California, such as lead paint, that contribute to lead poisoning in children. It used the fee to pay for community health programs, like lead screenings, that detect and treat children suffering from lead poisoning. The fee was challenged in court as an unlawful tax, but the California Supreme Court held that the fee was a valid regulatory fee, not a tax.⁶ The Court held that fees may legitimately “require[] manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community.”⁷

In our view, this lead-paint fee would have been struck down as an impermissible tax under Proposition 26’s restrictions. It is certainly a state exaction, and it does not appear to fall into any of the Proposition’s enumerated exceptions. As the Supreme

Court explicitly recognized in its decision, the lead-paint exaction was not merely a “reimbursement” or “compensation” to the State for benefits conferred by the State *on the manufacturers themselves*, as the Proposition 26 exceptions require.⁸ Rather, the public benefited from the fee, the size of which was determined by the reasonable costs of the public-benefit program. The charge was not incident to a license, permit, investigation, inspection, or any other enumerated state activity; nor was it a fine or penalty imposed by the judicial branch.

For another real-world example of an affected fee, see the sidebar on the State’s Oil Spill Prevention and Administration Fund.

Even for fees that arguably may fall within one of the exceptions, both government and businesses will face costly litigation and lingering uncertainty over whether the exceptions apply in any given case. The litigation costs borne by government would be especially significant because of the changes in burdens of proof that Proposition 26 would enact. As discussed above, the Proposition would make it the government’s burden to prove that any given measure is a valid charge and not a tax, rather than the challenger’s burden to prove the measure unlawful.

For these reasons, Proposition 26 would pose a significant new barrier to adopting fees aimed at protecting California’s environment and public health.

What State environmental and public health fees are at issue?

The lead-paint fee and oil-spill-response fee, discussed above, are just two of many similar fees that Proposition 26 would convert into taxes.

Regulatory fees play a critical role in funding environmental and public health programs in California—one that would be difficult to replace through other types of funding, such as fines or penalties. The

independent Legislative Analyst writes that “[g]enerally, the types of fees and charges that would become taxes under the measure are ones that government imposes to address health, environmental, or other societal or economic concerns.”⁹ Such fees include fees to mitigate hazardous wastes, regulate pesticide use, protect air and water quality, and fund environmental cleanups.

Moreover, “the state currently uses these types of regulatory fees to pay for most of its environmental programs.”¹⁰ For example, the California Department of Toxic Substances Control, which is tasked with protecting Californians from hazardous

wastes, estimates that \$128 million (or 65%) of its \$197 million annual budget is funded by regulatory fees of the type that Proposition 26 would impact.¹¹ Agencies as wide-ranging as the Department of Fish and Game, the Air Resources Board, the Environmental Protection Agency, and the State Water Resources Control Board rely on fees to help fund their programs.

Real world example: California’s oil-spill response fund

The state’s Oil Spill Prevention and Administration Fund, created in 1990 and funded by a nickel-per-barrel fee on off-loaded oil, is used to pay for measures like oil spill prevention programs; research into spill control technology; and maintenance of emergency equipment and facilities used to clean up oil spills.¹⁵ The Fund is in dire financial straits. According to the Department of Fish and Game, the Fund will run a deficit of about \$8 million in each of the next three years and will be unable to cover its costs beginning in 2011-2012.¹⁶

To replenish the Fund, Assemblyman Jared Huffman introduced AB 234 this past legislative session. The bill proposed increasing the authority of the fund’s administrator to charge as much as six cents a barrel, up from the current limit of a nickel. It also proposed updating the fee each year to keep up with inflation. The bill passed through both houses of the Legislature with a simple majority, but not a 2/3 supermajority. Because current law considers the regulatory exaction to be a fee, not a tax, this vote was sufficient for passage. The fee increase would have entered into effect but for the Governor’s veto last month.

Because the Fund’s financial troubles persist, Assemblyman Huffman has vowed to reintroduce his bill next year, under a new Governor. If Proposition 26 passes, will he be required to muster a 2/3 supermajority in each house of the Legislature, rather than a majority?

In our view, there is a strong likelihood that the answer is yes. The bill imposes a charge, and none of the exceptions to the Proposition’s definition of a “tax” would likely apply. The charge is not used to pay for a permit, license, or other enumerated benefit, and the size of the charge is not directly related to the cost to the state of providing a benefit to the oil companies charged. Undoubtedly, the law would face a serious, costly, time-consuming, and potentially losing legal battle if it were to pass next year with anything less than a 2/3 supermajority vote—something it has failed to win thus far.

In sum, Proposition 26 would pose a barrier to helping ensure a future stream of revenue for oil spill prevention, response and cleanup programs.

To better understand Proposition 26’s effects on regulatory fees, we distinguish among the following categories: existing fees imposed before January 2010, existing fees imposed since January 2010, and future fees.

Existing fees imposed before January 2010

There would likely be little immediate change for existing regulatory fees based on statutory authority that predates January 2010. We do not expect that Proposition 26 would apply retroactively to invalidate fees adopted before its passage.¹²

Over time, however, the state would find itself hamstrung in its ability to raise some existing fees in order to keep up with changing needs, inflation, or other factors. Where the Legislature did not originally vest authority to adjust fees in a regulatory agency, this result will be especially likely. If the size of existing fees is set by statute, the fees’ real value will erode over time because of inflation—and the legislature

may find it more difficult to adjust those fees to keep up with inflation or other changing circumstances. For an example of such difficulties, see the sidebar on the state’s Oil Spill Prevention and Administration Fund.

In addition, where existing fees contain sunset provisions or otherwise require future legislative reenactment or reapproval, Proposition 26 would create barriers to reapproval.

Table 1 lists some existing funds that depend, in part, on fees that would likely have required a two-thirds vote, had Proposition 26 been in place at the time of their enactment.

Table 1

Fund	Description
California Used Oil Recycling Fund	Encourages the proper disposal or recycling of used oil through educational programs, incentive payments, and other measures. Funded via a charge per quart levied on oil manufacturers.
Underground Storage Tank Cleanup Fund	Provides money to regional water quality control boards for emergency responses to storage tank leaks. Funded via a \$0.014 charge per gallon of petroleum stored.
Pesticide Regulation Fund	Supports California's pesticide regulatory program. Funded in part by an assessment on sales of agricultural-use pesticides.
Air Pollution Control Fund	Funds programs and measures to reduce air pollution and smog and to educate the public. Funded from a variety of regulatory fees on emitters of air pollution.
Oil Spill Administration Fund	Supports oil spill prevention and emergency response readiness measures. Funded by a \$0.05 per barrel fee on crude oil and petroleum products unloaded at California marine terminals.

Existing fees imposed since January 2010

A second class of fees falls into what we call the “Zone of Repeal.” Proposition 26 explicitly repeals any measure passed since January 1, 2010, that imposes taxes (as newly defined), unless the Legislature reenacts those measures with a 2/3 supermajority vote.

At least two measures, and perhaps many more, fall into this category. Two sustainability laws, AB 2398 and AB 1343,

would fund product stewardship programs to prevent bulky carpet products and harmful paint chemicals from entering landfills. Both were passed this year by the Legislature, signed by the Governor, and are set to go into effect. Proposition 26 would likely repeal both laws unless the Legislature reenacts them in compliance with Proposition 26’s stringent 2/3 supermajority requirement—a bar neither of them was able to meet when first passed.

Future fees

Third, we have considered impacts to new funding streams for environmental and public health programs that are not yet funded. Proposition 26 would make it more difficult to achieve new, stable, up-front funding for environmental programs aimed at addressing harms caused by industry to the environment and public health.

For example, California’s Green Chemistry Initiative was enacted in 2008. Its goal is to protect the public from exposure to dangerous chemicals. It requires the Department of Toxic Substances Control (DTSC) to devise a scheme, by next year, for regulating hazardous chemicals in the state. But this mandate is essentially unfunded, and the Green Chemistry Initiative presents DTSC “with a challenge of heroic proportions but no additional resources.”¹³ The Senate Environment Committee has therefore acknowledged that for the Green Chemistry Initiative to be a success, “it is probably inescapable that future legislation needs to more fully

consider a fee-based program.”¹⁴ Any new fee-based program that would seek to impose costs on industry that go beyond the benefits received by industry under the program would likely require a 2/3 supermajority vote under Proposition 26.

California’s Global Warming Solutions Act, or AB 32, is another high-profile program under which the State may impose future regulatory fees. To the extent that future AB 32 fees go beyond amounts necessary to compensate the state for benefits conferred *on industry alone*, those fees could potentially be reclassified as taxes under the Proposition 26 regime. But because the State legislature enacted AB 32 in 2006, well before Proposition 26’s effective date, and authorized the imposition of regulatory fees, we believe the Proposition’s impact on those fees is unclear. At a minimum, we expect that industry would mount a challenge to future AB 32 fees if Proposition 26 were to pass.

Conclusion

Many of California's environmental and public health programs depend on regulatory fees for funding. Proposition 26 would pose a significant new barrier to adopting regulatory fees that are aimed at requiring businesses to pay up front for the environmental and public health costs imposed by their practices or products in California. Its passage would make it harder to adjust many current fees to keep up with inflation; would likely repeal two existing sustainability laws; and would pose a barrier to developing new funding streams for unfunded environmental and public health programs.

Endnotes

¹ See, e.g., Dan Morain, "As Prop. 23 dives, money goes elsewhere," SACRAMENTO BEE, Oct. 17, 2010 (available at <http://www.sacbee.com/2010/10/17/v-print/3108147/as-prop-23-dives-money-goes-elsewhere.html>); Wade Crawfoot, "Prop 26: Another election-year attack on the environment you need to know about," *SFGate.com* City Brights Blog, Oct. 13, 2010 (available at http://www.sfgate.com/cgi-bin/blogs/wcrowfoot/detail?entry_id=74441); Maureen Gorsen, Opinion, "Yes on 26—Supermajority isn't an obstacle to protecting state environment," SACRAMENTO BEE, Oct. 5, 2010 (available at <http://www.sacbee.com/2010/10/05/3079804/supermajority-isnt-an-obstacle.html>); Jean Ross, "Why Prop 26 is the Polluters Protection Act of 2010," CALBUZZ, Oct. 4, 2010 (available at <http://www.calbuzz.com/2010/10/why-prop-26-is-the-polluters-protection-act-of-2010/>); Artem Raskin, "Prop 26 Pits Corporate Interest 'Goliaths' Against Public Interest 'Davids'," CALIFORNIA PROGRESS REPORT, Aug. 25, 2010 (available at <http://www.californiaprogressreport.com/site/?q=node/8098>).

² See *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal.4th 866 (1997).

³ *Id.* at 875.

⁴ *Id.* at 877.

⁵ *Id.* at 875.

⁶ *Id.* at 878.

⁷ *Id.* at 877.

⁸ *Id.* at 875.

⁹ Legislative Analyst's Office, Proposition 26 analysis at 58.

¹⁰ *Id.*

¹¹ Dept. of Toxic Substances Control 2010-2011 budget; pers. comm. with Lawrence Lingbloom, Chief Consultant Assembly Natural Resources Comm. (Oct. 19, 2010).

¹² 7 WITKIN, Summary 10th (2005) Const. Law, § 634, p. 1034.

¹³ Timothy F. Malloy, "Structural Challenges to Chemical Policy Reform: The Case of California's Green Chemistry Statute," at 16 (on file with author).

¹⁴ Senate Committee on Environmental Quality, A.B. 1879 analysis at 11.

¹⁵ 14 Cal. Code Regs. § 870.21.

¹⁶ Dep't of Fish & Game, 2009–10 Budget: Monthly Fund Condition: Fund 320—Oil Spill Prevention and Administration Fund.

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<u>Channel Name</u>	<u>Channel Number</u>
National Geographic	108

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