

# *Land Development & Regulatory Compliance*

While regulators and the regulated community grapple with the long-term implications of COVID-19 on the design, construction, and operation of buildings, and integration with public spaces that may need to be incorporated into new developments at the entitlement stage, the virus is starting to have an immediate impact on the ability of project sponsors to timely complete their projects at the local, state, and federal approval levels.

At the federal level, recent direction from the Federal Office of Personnel Management encourages federal agencies to release preliminary guidance as to how their respective agencies will respond to an outbreak and a resulting reduction in workforce availability. Based on prior guidance, however, some agencies already had limited the ability for federal agency employees to telecommute on a regular basis. With guidance from the CDC regarding triggers for self-quarantine, federal agencies will need to rethink how they make accommodations for reduced staff availability while at the same time responding to other Executive Orders imposing streamlined and expedited permit review. This inherent conflict threatens to leave some projects in limbo indefinitely, much like the prior Federal government shut-downs and emergency incidents (e.g., fires and floods) in which staff were reassigned and/or unavailable to timely complete projects or respond to compliance issues.

Various state agencies, county, municipal governments and special districts are also feeling the pressure to develop emergency response plans and address the uncertainty created by COVID-19. As the entitlement process depends on public interactions, meetings, and hearings, the real estate development industry is particularly vulnerable just as it was during

the massive wildfires in California over the past several years. During those tragic incidents, court and agency closures and hearing cancellations hindered timely project delivery. This conflict between meeting regulatory deadlines on the one hand and minimizing potential exposure to COVID-19 is already starting to create challenges for developers and builders trying to expedite the delivery of projects before the next economic downturn.

From a practical perspective, the real estate industry needs to prepare for and anticipate the potential for indefinite delays due to this latest public health crisis. Developers, landowners, and investors may want to use this as an opportunity to strengthen transactional documents, as well as entitlement approvals and development agreements with municipalities to accommodate the uncertainty. For example, purchase and sale agreements, development agreements, and other instruments may need to provide for even longer feasibility periods and later outside dates. Similarly, force majeure provisions should clearly account for governmental agency delays as a basis for extending performance obligations, and indemnification provisions in project approvals may need to carve out potential liabilities due to exposure to public health hazards. Developers should also work with the respective land use authorities to extend permit expiration dates to account for any permitting and construction delays. In short, to minimize risk and financial loss related to COVID-19, the real estate development industry needs to be more proactive than ever.