ALSTON & BIRD

LAND USE MATTERS

A PUBLICATION OF ALSTON & BIRD'S LAND USE GROUP

January 2023

Land Use Matters provides information and insights into legal and regulatory developments, primarily at the Los Angeles City and County levels, affecting land use matters and new CEQA appellate decisions.

LEARN MORE ABOUT OUR LAND USE GROUP

City of Los Angeles

City Council Adopts Processes and Procedures Ordinance

On December 6, 2022, the City of Los Angeles City Council adopted the Processes and Procedures Ordinance amending the Los Angeles Municipal Code (LAMC) and establishing Chapter 1A of the LAMC to comprehensively reorganize the administrative processes and procedures related to zoning and land use entitlements. As reported in the April 2021 edition of *Land Use Matters*, the Processes and Procedures Ordinance is a component of a larger City Planning initiative to update the city's Zoning Code as part of the Community Plan Update program. The Processes and Procedures Ordinance itself does not propose any new development standards or regulations governing use of land. Instead, it focuses on creating a clear set of administrative procedures that will be used to consider and process requests for Zoning Code entitlements. January 23, 2023 is the effective date of the ordinance, and the operative date is July 22, 2023.

AB 2097 Parking Reduction Implementation Memorandum

City Planning has released the memorandum for implementing Assembly Bill (AB) 2097 that provides guidance to staff and applicants for preparing and reviewing applications for discretionary and ministerial projects. AB 2097 went into effect on January 1, 2023 and prohibits a public agency from imposing minimum parking requirements for residential, commercial, and other development projects within one-half mile of major transit stops. The bill does not apply to hotel, motel, bed and breakfast, inn, or other transient lodging except when a portion of a housing development project is designated for use as a residential hotel.

The city has the option to impose minimum parking requirements if written findings can be made showing that by not doing so the project would have a substantially negative impact on any of the following:

1. The city's ability to meet its share of the Regional Housing Needs Assessment (RHNA) for very-low- and low-income households.

2. The city's ability to meet any special housing needs for the elderly or persons with disabilities, as identified in the Housing Element of the General Plan.
3. Existing residential or commercial parking within one-half mile of the housing development project.

These findings may not be made against housing development projects that include a minimum of 20% of the total dwelling units for very-low-, low-, or moderate-income households, students, the elderly, or persons with disabilities; contain fewer than 20 dwelling units; or are subject to parking reductions of any other applicable law.

The city's Zoning and Information Mapping Access System (ZIMAS) has been updated to identify parcels within a one-half-mile radius of a major transit stop that are eligible to utilize AB 2097. A request to not provide the minimum amount of parking should be submitted either with the entitlement application or after an application has been submitted but before a letter of determination or permit is issued. To request changes to parking for a development project with approved entitlements, a request and revised plans should be submitted to the senior planner on the project planning team that processed the entitlement application. Projects that propose a substantial modification to a project beyond the removal of parking spaces may require additional review.

California Environmental Quality Act, Housing Accountability Act, Planning and Zoning Law, and Brown Act

Save Lafayette v. City of Lafayette **(1st App. Dist., December 2022)**

The court of appeal considered whether, under the Housing Accountability Act (HAA), the general plan and zoning standards that apply to a 315-unit apartment development project were in effect when the project application was deemed complete in 2011 or in effect when the project approval process was resumed in 2018 following a lengthy pause when a lower-density alternative was pursued.

Between 2011 and 2018, the general plan land use designation and zoning for the project site were changed to limit the site to single-family residential development. There was no dispute that the project was consistent with the 2011 standards but could not be approved under the 2018 standards. The court of appeal held that the 2011 standards governed under the HAA. This was based on the HAA's statutory text stating that a local agency may not disapprove a housing development project (like the proposed apartment project) that includes housing for very-low-, low-, or moderate-income households unless it finds that the project is inconsistent with the zoning ordinance and general plan land use designation existing when the application was deemed complete.

The court of appeal rejected the project opponent's argument that the Permit Streamlining Act (PSA) deprived the city of power to act on the original application because the project was not approved within 270 days after certification of the EIR. Although the city may have violated the PSA through the multiyear delay in processing the project, nothing in the PSA states that an application is deemed denied or withdrawn if it is not approved within the applicable time limits. The court of appeal also relied on the policy goals of the HAA, which is intended to address California's housing crisis by fostering significantly increased housing construction.

AIDS Healthcare Foundation v. City of Los Angeles **(2nd App. District, December 2022)**

This case was premised on alleged bribery and other corruption by two former Los Angeles city council members (Mitchell Englander and Jose Huizar) in connection with decisions they made while sitting on the city's Planning and Land Use Management (PLUM) Committee, which reviews and votes on proposed real estate projects. Proceeding under the Political Reform Act of 1974 (PRA), the petitioner sought to restrain the city from taking further action to process or implement any projects approved during Englander's or Huizar's tenure and to set aside any such approvals where it could be shown that the approvals may have resulted from unlawful conduct. The court of appeal affirmed the trial court's grant of a demurrer in the city's favor, holding the lawsuit was untimely under Government Code Section 65009's 90-day statute of limitations period for challenges to certain land use and zoning decisions. The statute states that "no action" challenging such approvals may be brought after 90 days. Even though the petitioner alleged corruption under the PRA, the 90-day limitations period applied because the gravamen of its complaint was to challenge the PLUM Committee's real estate project approvals.

Save North Petaluma River and Wetlands v. City of Petaluma **(1st App. Dist., December 2022)**

The petitioners challenged the City of Petaluma's certification of an EIR for an apartment complex, asserting that the EIR failed to properly analyze the project's impacts on special status species and public safety. The court upheld the city's certification of the EIR, rejecting the petitioners' argument that a study must be completed at the time of the notice of preparation and cannot rely on previous studies. The court held that the EIR's special status species analysis drawn from site visits, studies, and habitat evaluations that were undertaken both before and after the notice of preparation constituted "substantial evidence" supporting the EIR's ultimate findings. The court found no indication that the EIR analysis was inadequate due to material changes in the habitat over the period at issue. CEQA does not mandate a uniform, inflexible rule for determining the existing conditions baseline. Rather, agencies have discretion to decide how to measure the existing physical conditions.

The court also found that the EIR adequately considered specific information about the actual threat of flood or fire at the project site and appropriately concluded that the project would not interfere with an emergency evacuation plan.

Save Our Capitol! v. Department of General Services **(3rd App. Dist., December 2022)**

This case involves a CEQA challenge to plans to demolish and rebuild the Annex portion of the California State Capitol Building. The petitioners filed petitions for writ of mandate, contending that (1) the EIR lacked a stable project description; (2) the EIR did not adequately analyze the project's impacts on cultural or historic resources, biological resources, aesthetics, traffic, and utilities and service systems; and (3) the EIR's analysis of alternatives was defective. The trial court denied the petition, and the petioners appealed.

The court of appeal reversed in part, holding that the EIR was deficient in four respects. First, the EIR lacked an accurate description of the new Annex's exterior design. The project descriptions in the draft and recirculated draft EIRs did not describe the exterior design. Instead, they broadly stated the new Annex's aesthetics and materials would be consistent and sympathetic with the Historic Capitol and would create a "one-building" feel. The project description changed in the final EIR, however, which stated that the new Annex would have a glass exterior, that the materials would be "compatible" rather than consistent with the Historic Capitol, and that the building's interior, rather than exterior, would contribute to the "one-building" feel. The court held that the conflicting project descriptions were inadequate because they may have misled the public about the nature of the project's design and adversely affected their ability to comment on it, especially given that the capitol is a historical resource.

Second, the EIR's historical resource impacts analysis was similarly deficient because it did not account for public comment on the new Annex's exterior design revealed in the final EIR. Third, the EIR's aesthetic analysis of the project was deficient because it did not explain how the new glass design of the Annex would impact light generation. Fourth, the alternatives analysis was inadequate because it omitted an alternative that would feasibly attain most of the project's objectives while lessening the project's significant impacts. The court rejected the petitioners' remaining claims.

On rehearing, the court analyzed whether project activities unrelated to the CEQA violations could proceed. The court concluded that the deficient parts of the EIR are severable from "hard demolition" of the existing Annex's building structure and may proceed during remand, along with "soft demolition" of the interior. All other activities, however, could prejudice the developer's ability to address the EIR deficiencies and therefore must be suspended during remand.

Saint Ignatius Neighborhood Association v. City and County of San Francisco **(1st App. Dist., December 2022)**

The court of appeal determined that the City and County of San Francisco erred in finding that a proposed lighting project at a high school athletic stadium was categorically exempt from CEQA review. A neighborhood association had filed a petition for writ of mandate, alleging that the project was not exempt from CEQA review and challenging its conditional use authorization. The superior court denied the neighborhood association's petition, but the court of appeal reversed, holding that neither of the two claimed CEQA categorical exemptions applied.

First, the court of appeal determined that San Francisco erred in applying a Class 1 exemption for existing facilities because, although the proposed project was not designed to expand the stadium's frequency of use or capacity, it would significantly expand nighttime use of the stadium. The court further determined that San Francisco erred in applying a Class 3 exemption for new construction or conversion of small structures, because the project's four outdoor light structures were, at 90 feet tall, significantly taller than any other structure in the neighborhood. Citing potential light, noise, and traffic impacts from the proposed project, the court concluded that an environmental analysis was warranted. The court did not reach the neighborhood association's alternative argument that the CEQA exemptions did not apply due to unusual circumstances or its claims regarding the conditional use authorization.

G.I. Industries v. City of Thousand Oaks **(2nd App. District, November 2022)**

The Ralph M. Brown Act (Gov. Code, § 54950, et seq.) requires public agencies to conduct their business in the open with adequate notice to the public. In this case, the appellate court determined that Section 54954.2 (regarding public notice of agenda items) of the Brown Act requires a CEQA finding of exemption to be listed on the agency's agenda for its public meeting.

G.I. Industries (dba Waste Management) provided solid waste management for the City of Thousand Oaks. The public agenda for the agency meeting that discussed the new contract did not include the city staff's recommendation that the city find the agreement to be categorically exempt. The court considered whether the determination that the contract was exempt from CEQA was a decision that is required to comply with the Brown Act's notice provisions, despite the city's argument that CEQA does not require a public hearing for exemption decisions.

Finding that the Brown Act must be broadly construed, the court was dismissive of the city's argument that applying the Brown Act to a CEQA exemption would create an unmanageable burden on local agencies for basic administrative decisions. The court explained that the applicable Brown Act provision applies only to items of business transacted

or discussed at a regular meeting of the legislative body. Because most day-to-day business is not discussed at a regular meeting, there is no undue burden created. Further, if a local legislative body intends to vote on or discuss a CEQA exemption at a regular meeting, adding the item to a public agenda 72 hours in advance requires minimal effort. In response to the city's argument that the exemption decision was made by staff long before the meeting, the court held that the city cannot avoid the Brown Act by delegating its duty to staff – if an agency approves a project that is subject to a staff determination regarding a CEQA exemption, it must comply with the Brown Act.

SUBSCRIBE TO LAND USE MATTERS

Contributing Authors

Jeffrey Carlin
Partner
Environment, Land Use & Natural Resources
jeff.carlin@alston.com

Kathleen A. Hill
Planning Director
Environment, Land Use & Natural Resources
kathleen.hill@alston.com

Gina Angiolillo
Associate
Environment, Land Use & Natural Resources
gina.angiolillo@alston.com

Megan Ault
Associate
Environment, Land Use & Natural Resources
megan.ault@alston.com

Ytran Hoang
Associate
Environment, Land Use & Natural Resources
ytran.hoang@alston.com

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Lee Ann Anand
+1 404 881 4609
leeann.anand@alston.com

Gina Angiolillo
+1 213 576 2606
gina.angiolillo@alston.com

Doug Arnold
+1 404 881 7637
doug.arnold@alston.com

Megan Ault
+1 415 243 1056
megan.ault@alston.com

Greg Berlin
+1 213 576 1045
greg.berlin@alston.com

Jennifer Bonneville
+1 213 576 1148
jennifer.bonneville@alston.com

Meaghan Goodwin Boyd
+1 404 881 7245
meaghan.boyd@alston.com

Jeff Carlin
+1 213 576 1008
jeff.carlin@alston.com

Nicki Carlsen
+1 213 576 1128
nicki.carlsen@alston.com

Edward Casey
+1 213 576 1005
ed.casey@alston.com

Greg Christianson
+1 415 243 1012
greg.christianson@alston.com

Jeffrey Dintzer
+1 213 576 1063
jeffrey.dintzer@alston.com

Leland Frost
+1 404 881 7803
leland.frost@alston.com

Ronnie Gosselin
+1 404 881 7965
ronnie.gosselin@alston.com

Maya Lopez Grasse
+1 213 576 2526
maya.grasse@alston.com

Krista Hernandez
+1 213 576 2531
krista.hernandez@alston.com

Ytran Hoang
+1 213 576 2610
ytran.hoang@alston.com

Jason Levin
+1 213 576 2518
jason.levin@alston.com

Clay Massey
+1 404 881 4969
clay.massey@alston.com

Camille Smith McMakin
+1 404 881 7456
camille.mcmakin@alston.com

Kevin Minoli
+1 202 239 3760
kevin.minoli@alston.com

Vickie Chung Rusek
+1 404 881 7157
vickie.rusek@alston.com

Hillary Sanborn
+1 202 239 3640
hillary.sanborn@alston.com

Shannon Vreeland
+1 404 881 7429
shannon.vreeland@alston.com

Megan Walker
+1 404 881 7942
megan.walker@alston.com

Sara Warren
+1 404 881 7472
sara.warren@alston.com

Matt Wickersham
+1 213 576 1185
matt.wickersham@alston.com