ALSTON & BIRD

LAND USE MATTERS

A PUBLICATION OF ALSTON & BIRD'S LAND USE GROUP

March 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

Los Angeles City Planning and Department of Building Safety

COVID-19 Emergency Public Order on Tolling and Time Limits Rescinded

On March 21, 2020, then-Mayor Eric Garcetti issued a COVID-19 emergency public order to toll or pause land use and planning-related deadlines prescribed in the Los Angeles Municipal Code and to extend the time limits for utilizing approved entitlements and processing permit applications.

Effective February 28, 2023, Mayor Karen Bass rescinded the public order and its tolling provisions. City Planning issued a memorandum on February 24, 2023 that identifies the implications of the rescindment on projects and cases before the city, including how to calculate new expiration dates for the effectuation and utilization of entitlements and term-limited grants. The memorandum also states that extensions will be available for the effectuation and utilization of certain qualifying entitlements, with application forms and instructions available on the department's website.

The Department of Building and Safety issued an information bulletin on the expiration of the tolling period provided by the COVID-19 public order. The bulletin includes examples of how to determine any time remaining on an existing permit, plan check application, or slight permit modification.

County of Los Angeles Department of Regional Planning

Annual Fee Adjustment

The Department of Regional Planning application filing fees for zoning, environmental, and subdivision permits were increased effective March 1, 2023. The fee increase is based on the Consumer Price Index increase of 4.9% for calendar year 2022. Projects with an affordable housing set-aside may qualify for a fee exemption or reduction from fees on a case-by-case basis.

California Environmental Quality Act (CEQA)

Committee to Relocate Marilyn v. City of Palm Springs **(4th App. Dist., March 2023)**

This case involved a challenge to the City of Palm Springs' approval of a temporary downtown street closure to facilitate the display of a 26-foot tall, 34,000-pound statute of Marilyn Monroe. Among other claims, the petitioner asserted that the city had improperly found the street closure to be categorically exempt from CEQA under the "Class 1" exemption for existing facilities. When the city filed the notice of exemption, the notice stated that the project would "vacate the public's vehicular access rights on a portion" of the street in question.

But after the notice of exemption was filed, the city elected to temporarily restrict access to the street, rather than vacating the street, because it was unlikely that the city could meet the statutory requirements for a street vacation. The trial court sustained the city's demurrer to the CEQA claim on the grounds that the lawsuit was filed more than 35 days after the city filed a notice of exemption. The court of appeal reversed, holding that when "substantial changes" are made to a project after the notice of exemption is filed, a new 180-day limitations period replaces the 35-day period that generally applies to exemption determinations. The 180-day limitations period starts to run when the petitioner knew or reasonably should have known about the changes to the project.

Pacific Palisades Residents Association v. City of Los Angeles **(2nd App. District, March 2023)**

This case involved a challenge to the City of Los Angeles' approval of a proposed eldercare facility in the Headlands, a densely developed subdivision of the Pacific Palisades neighborhood. The petitioner asserted that (1) the city did not adequately evaluate the project's compatibility with the surrounding neighborhood; (2) the proposed building is larger than the Los Angeles zoning code allows; and (3) the California Coastal Commission's dismissal of the petitioner's appeal, contending that the project would block scenic views from nearby streets, homes, and park trails, was not based on substantial evidence.

Rejecting each of the petitioner's arguments, the court of appeal upheld the city's approval of the project, noting that "aesthetics are subjective" and a reasonable person could agree with the city's conclusion that adding an urban building to an urban area was compatible with the area's general plan. Substantial evidence also supported the city's findings that the project would not have an adverse effect on traffic, noise, scenic views, aesthetics, or threatened species. Next, the court held the project meets applicable zoning code provisions, which do not impose buildable-area limits on residential portions of the proposed building. Finally, the court held that the California Coastal Commission properly found that opponents of the project presented no substantial Coastal Act issue.

Make UC a Good Neighbor v. Regents of the University of California **(1st App. Dist., February 2023)**

In this case, the petitioners challenged the adequacy of an environmental impact report (EIR) prepared for the University of California, Berkeley's plans to develop student housing on the site of People's Park, a designated historic landmark. The court of appeal held the EIR's analysis was deficient in two respects. First, the EIR failed to evaluate a reasonable range of alternatives because the EIR did not provide a "viable explanation" for declining to study an alternative location despite evidence in the record demonstrating that alternative sites for student housing existed, including at properties owned by UC Berkeley. Second, the EIR's noise analysis was defective for failing to analyze potential impacts from loud student parties. The EIR did not analyze the issue because it was "speculative" to assume that the addition of new students would generate substantial noise impacts from parties. But the record included substantial evidence that noise from student parties has been a problem in residential areas near UC Berkeley, a point

UC Berkeley did not dispute. The court therefore held that noise from student parties must be analyzed in the EIR and, if the impact is found to be significant, UC Berkeley must adopt feasible mitigation to address the impact.

Arcadians for Environmental Preservation v. City of Arcadia **(2nd App. Dist., February 2023)**

This case involved a challenge to an Arcadia resident's application to expand her existing single-family home. A neighborhood association filed a petition for writ of mandate, alleging that the Arcadia City Council erred in finding the project categorically exempt from CEQA under the Class 1 exemption for existing structures. However, the neighborhood association did not assert this objection during the administrative proceeding for the project and only requested preparation of an EIR in a written administrative appeal with general references to alleged environmental impacts the project would cause. The trial court denied the petition because the neighborhood association failed to meet the jurisdictional prerequisite of first exhausting its administrative remedies.

The court of appeal affirmed, holding that general objections to a project approval do not satisfy the exhaustion requirement. Any project subject to a Class 1 exemption has been inherently determined to have no significant environmental impacts, absent an applicable exception that would bar the exemption. In order to preserve its challenge, a plaintiff seeking to challenge a CEQA exemption therefore must articulate during the administrative process why application of such an exemption is incorrect.

IBC Business Owners for Sensible Development v. City of Irvine **(4th App. Dist., February 2023)**

In this case, the petitioners challenged a city's approval of an office building project slated for development within a larger business complex. In approving the proposed project with only a supporting checklist addendum, the city determined that all the project's environmental effects had been studied in a program EIR previously prepared for the business complex and that the office building project would have no further significant environmental effects.

Affirming the trial court, the court of appeal determined that because the city had not assessed whether the project's greenhouse gas (GHG) emissions would prevent the business complex from achieving its net zero emissions goal, the project's emissions could not be considered to be within the scope of the program EIR. This meant that the project's GHG emissions had not been sufficiently analyzed and the city erred in concluding that these emissions would be less than significant. The city asserted that any deficiencies in the project's environmental review were inconsequential because the project was categorically exempt from CEQA under the Class 32 infill exemption and no CEQA review was in fact required.

The court of appeal, however, determined that the exemption did not apply because substantial evidence supported a finding of "unusual circumstances" and that there was a reasonable possibility the project might have a significant impact on the environment. As a result, the city needed to evaluate the significance of the project's GHG emissions, and its existing project approvals relying on the program EIR and limited addendum were void.

Save Livermore Downtown v. City of Livermore **(1st App. Dist., December 2022 / Published January 2023)**

The court of appeal considered two primary issues in this case. First, whether a 130-unit affordable-housing project in downtown Livermore was inconsistent with the city's general plan and the downtown-specific plan such that further environmental review was required. Second, whether the petitioner was properly required to post a $500,000 bond as security for costs and potential damages as a result of the litigation.

On May 25, 2021, the city approved the project's application for design review and a vesting tentative parcel map, finding the project was exempt from CEQA because it conformed with a specific plan for which an EIR had been certified. The project was also subject to the Housing Accountability Act (HAA), which prohibits a local agency from rejecting or conditioning a housing development project for very low-, low-, or moderate-income households unless specific inconsistency findings are made. In considering CEQA and the HAA, the court found there was no practical difference in the standard of review when an agency finds a project consistent with its general plan. "Using either lens to review the project's consistency with the specific plan—asking whether there is substantial evidence from which a reasonable person could find the project consistent, or whether there is substantial evidence supporting the City's finding of consistency—leads to the same conclusion." The court affirmed the trial court's decision that the project was consistent with the General Plan and the agency's findings were adequate, and rejected the petitioner's CEQA arguments.

After the petition was filed, the project developer moved for a bond under Code of Civil Procedure Section 529.2, which authorizes a bond of up to $500,000 as security for costs and damages from litigation-related project delays in an action challenging qualified low- or moderate-income housing projects. The trial court granted the developer's motion. The court of appeal affirmed the bond requirement was appropriate on the grounds that the petitioner's action was brought for the purpose of delaying the provision of affordable housing.

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

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

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

Kalina Zhong
Associate
Environment, Land Use & Natural Resources
kalina.zhong@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

Hannah Hess
+1 213 576 2517
hannah.hess@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

Kalina Zhong
+1 415 243 1018
kalina.zhong@alston.com