

# ALSTON & BIRD

## LAND USE MATTERS

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*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.

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### City of Los Angeles Planning Department

#### Proposed Zoning Review Transfer Ordinance

In July 2025, at the direction of the city council and mayor, all zoning plan check responsibilities were transferred from the Department of Building and Safety (DBS) to the new Department of City Planning (DCP) Development Services Bureau. Before the transfer of responsibilities, DBS reviewed ministerial zoning plan checks as part of the building permit process and DCP conducted administrative and discretionary zoning reviews. DCP will now be responsible for conducting all zoning reviews within the newly established Zoning Review Division. The division will be responsible for regular zoning plan check for large/complex projects, zoning counter plan check, zoning information services (including in-person/virtual counter meetings and 311 calls), case management, and Zoning Code Manual updates. The Office of Zoning Administration, Specialized Services and Development Services Centers will also be integrated into the new bureau.

Amendments to the Municipal Code are required to identify DCP authorities, clarify zoning review functions, reassign ministerial zoning plan check and modification processes to the department, and make related technical corrections. On December 11, 2025, the City Planning Commission recommended approval of the [Zoning Review Transfer Ordinance](#), and the city council will consider the ordinance in January 2026.

### California Environmental Quality Act (CEQA) and Land Use Opinions

#### [Tulare Lake Basin Water Storage District v. Department of Water Resources](#) (3rd App. Dist., October 2025).

This case involved the Department of Water Resources' (DWR) plan to conduct preconstruction geotechnical work for the Delta tunnel project. The plaintiffs, including multiple counties, water agencies, and environmental groups, argued that the DWR's activities were subject to CEQA and the Delta Reform Act and that the DWR was required to certify the project's consistency with the Delta Plan before any work could begin. The trial court agreed and issued a preliminary injunction that barred the DWR from proceeding with preconstruction geotechnical work before it submitted a certification of consistency.



The court of appeal reversed, explaining that CEQA requires agencies to consider the “whole of an action” and prohibits “piecemealing” projects to escape full environmental review. The court contrasted this to the Delta Reform Act’s certification requirement, which is much narrower. Only “covered actions”—those meeting specific statutory criteria—require certification. Preparatory geotechnical work did not meet the statutory criteria. The court emphasized that CEQA’s comprehensive review must take place before a project is approved, while certification under the Delta Reform Act is completed and submitted after project approval but before the implementation of a covered action. The court also referred to the Delta Stewardship Council’s conclusion that preparatory geotechnical work is separate from the main project for certification purposes.

The trial court was instructed to vacate its injunction and reconsider the case in light of the court of appeal’s ruling. The decision underscores that agencies may conduct certain preparatory activities for major projects without triggering the Delta Reform Act’s certification process.

#### *Save Our Access v. City of San Diego* (4th App. Dist., October 2025).

The court of appeal held that the City of San Diego’s supplemental environmental impact report (EIR) for a ballot measure excluding the Midway-Pacific Highway community planning area from a coastal zone height limit was inadequate under CEQA. Concluding the city failed to adequately inform decision-makers and the public about the measure’s potential impacts, identify mitigation measures, and disclose reasons for adopting a statement of overriding considerations, the court reversed the trial court’s decision to deny the plaintiff’s petition for writ of mandate.

In 2018, the city approved a community plan update to rezone parts of the Midway-Pacific Highway area as mixed-use, with its preliminary EIR contemplating an existing ordinance limiting building heights in the coastal zone to 30 feet. In 2020, however, the city approved a ballot measure asking voters to exclude the area from the height limit. In 2023, the court of appeal affirmed the trial court’s invalidation of the ballot measure under CEQA because the city failed to address potentially significant environmental impacts of removing the height limit.

In response, the city prepared a supplemental EIR acknowledging that removal of the height limit was a changed circumstance requiring supplemental review. But the city only analyzed potential impacts on views and neighborhood character, referencing the existing analysis in the 2018 preliminary EIR for other impact areas. Despite public comments challenging the adequacy of the 2018 analysis, in 2022, the city certified the supplemental EIR and adopted a statement of overriding considerations and a second ballot measure to exclude the area from the coastal zone height limit.

The court of appeal found that the supplemental EIR failed to consider relevant and foreseeable environmental impacts from eliminating the height limit on noise, air quality, and biological resources. The city’s reliance on the 2018 analysis, which specifically contemplated a 30-foot limit, and its deferral of some analysis to future site-specific projects were inadequate. The court held that the supplemental EIR did not include sufficient detail to allow voters and decision-makers to meaningfully consider the issues raised by the proposed project. The court noted that recent CEQA exemptions adopted under Assembly Bill No. 130 and Senate Bill No. 131 did not impact its legal analysis because neither party claimed the exemptions applied.

#### *Rodriguez v. City of Los Angeles* (2nd App. Dist., November 2025).

This case arose from an affordable housing covenant tied to a density bonus permit. In 2005, the city granted a developer a 35% density bonus to build an extra residential unit. In exchange, the developer agreed to rent one



unit to low-income households for 30 years. This agreement was memorialized in January 2006; the developer's construction loan was secured by a deed of trust recorded earlier. In 2013, the lender foreclosed on the property. After a series of transactions, title eventually passed to the plaintiffs.

The city demanded that the plaintiffs comply with the affordable housing agreement. In response, plaintiffs filed a quiet title and declaratory relief action to remove the restriction. They asserted that the 2013 foreclosure had extinguished the 2006 agreement as a junior encumbrance on the property. The trial court concluded that the affordable housing agreement was a covenant running with the land that survived the foreclosure.

On appeal, the property owners maintained that the affordable housing covenant had been eliminated by the foreclosure because it was recorded after the bank's deed of trust (and thus was junior to the lien). They argued that their lawsuit did not challenge any permit condition, but sought only a determination that the recorded agreement was no longer enforceable. The city countered that the suit was in substance an untimely attack on a permit condition imposed as part of the 2005 project approval. The 2006 agreement existed solely to fulfill the permit's affordable housing requirement, so the city argued it should be treated as a condition of approval that "survive[s] foreclosure." Even if the foreclosure technically wiped out the recorded agreement as a lien, the city argued that the underlying permit condition (to provide the low-income unit) ran with the land and remained binding on subsequent owners.

The court of appeal affirmed the dismissal, holding that the affordable housing agreement, being equivalent to a condition attached to the permit, survived the foreclosure and remained enforceable. First, the court reiterated that once a property owner accepts the benefits of a permit (such as a density bonus), the permit's conditions run with the land and bind all future owners, including those who acquire title through foreclosure. Second, the court noted that state law provides a 90-day limitations period for challenging the validity of any permit condition, and no timely challenge was ever brought against the 2005 permit's affordable-unit condition. Because the original developer did not contest the condition and instead accepted the bonus, the restriction continued to encumber the property. Finally, the court observed that the 2006 agreement was executed solely to satisfy the permit's inclusionary housing condition, as evidenced by its own recitals referencing the building permit, which undercut the plaintiffs' attempt to characterize the agreement as an unrelated encumbrance.

The court concluded that the affordable housing obligation, as a permit condition running with the land, was not extinguished by the foreclosure, and it upheld the dismissal of the plaintiffs' action seeking to clear the covenant.

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