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**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

### Citywide Adaptive Reuse Ordinance Approved

The [Citywide Adaptive Reuse Ordinance \(ARO\)](#) went into effect February 1, 2026. The ARO now applies to all areas within city limits and to all buildings that are at least 15 years old if located within multifamily residential, commercial, parking, or public facilities zones. The new ordinance establishes zoning incentives and streamlines procedures for the conversion of existing commercial buildings and structures that result in the creation of five or more residential units. The original ARO, adopted in 1999, applied only to buildings constructed before 1974 and located in the Downtown Community Plan Area.

Most ARO projects will qualify for by-right (ministerial) approval by the Department of Building and Safety. Some of the more significant adaptive reuse incentives include:

- Adaptive reuse projects are not considered to be a “project” under any zoning regulation and therefore are not subject to CEQA. Only provisions for designated historic resources or sign districts prevail over ARO provisions and could trigger CEQA review.
- Flexibility in how interior spaces may be reconfigured without counting as “new” floor area, either by adding floor levels or new additions to replace any space removed to create light wells, courtyards, or other open space within the existing building.

- Housing units within an adaptive reuse project are exempt from zoning requirements for minimum unit size. However, each unit must meet minimum City of Los Angeles Building Code standards.
- A new rooftop story may be added without counting toward a project’s building height or floor area to provide new shared amenities or open space for residents.

To encourage the voluntary inclusion of affordable housing units within adaptive reuse projects, the ARO also provides incentives such as permitting the construction of up to two additional stories above the existing building height and allowing adaptive reuse projects to be eligible for unlimited density in the new construction portion of the project.

### Department of City Planning Comprehensive Fee Update

On December 10, 2025, the city council voted to approve [Ordinance No. 188,796](#), amending Articles 2 and 9 of Chapter I and Articles 11, 14, and 15 of Chapter 1A of the Los Angeles Municipal Code to implement a comprehensive fee update for Department of City Planning application and appeal fees. The new fee schedule became effective on February 23, 2026.

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

*City of Vallejo v. City of American Canyon* (3rd App. Dist., January 2026).

The City of Vallejo challenged the City of American Canyon's certification of an environmental impact report (EIR) for a proposed industrial warehouse complex, arguing the EIR's water supply assessment was inadequate under CEQA and the California Water Code. The trial court denied Vallejo's petition for writ of mandate, and the court of appeal affirmed.

First, Vallejo argued the EIR failed to disclose the amounts of water purchased by American Canyon from Vallejo under a 1996 agreement, rather than the water available for purchase, making discussion of future water supplies impermissibly speculative. The court disagreed, finding a comparison to actual purchases was unnecessary under CEQA if there was no evidence in the record that future water supplies were uncertain or unlikely to be available.

Second, Vallejo argued the EIR failed to discuss place-of-use restrictions on one source of water that would prevent that water's delivery to the project site. Noting such a discussion may be unnecessary because place-of-use restrictions do not reduce overall water availability, the court found that the omission was insubstantial or technical rather than prejudicial. Even if the information would have been helpful to decision-makers, it was not necessary for informed decision-making and public participation because substantial evidence supported the EIR's conclusion that total water supplies would be sufficient to meet projected demand.

Third, Vallejo argued the EIR should have provided monthly rather than annual curtailment projections, discussed the risk of simultaneous curtailment of Sacramento–San Joaquin Delta watershed supplies to American Canyon and Vallejo, and analyzed alternative water sources during curtailment. The court held that the CEQA Guidelines do not require monthly projections. The court also found that the EIR adequately alerted decision-makers to the possible impacts of imported water supply availability by discussing shared infrastructure, potential supply reductions, and contingency planning. The court also found Vallejo forfeited its alternative sources argument by failing to raise it at trial, and that it would have failed regardless because the CEQA Guidelines only require that alternative sources be discussed if, unlike here, the lead agency cannot determine a particular water supply would be available.

Turning to Vallejo's Water Code claims, the court held that the EIR adequately identified the 1996 agreement without providing specific details such as priority date, diversion limits, place-of-use restrictions, and historical curtailments. These details are not required by the Water Code. The court also held the water supply assessment did not need to specify the quantities of water actually received under the 1996 agreement when the assessment relied on the urban water management plan, which describes historical quantities of water received.

Lastly, the court held the Water Code did not require American Canyon to discuss plans for acquiring additional supplies in the water supply assessment because it did not determine that water supplies would be insufficient.

*Californians for Homeownership Inc. v. City of La Habra* (4th App. Dist., January 2026).

This case arose from a challenge to revisions to the “housing element” within a city’s general plan. Under the Government Code, general plans must include “a housing element that analyzes existing and projected housing needs and discusses housing goals, policies, and programs.” The petitioner argued a revised version of the city’s housing element was invalid because it was adopted by “unelected city staff” and without a public hearing. The trial court disagreed because public hearings were conducted on earlier drafts of the housing element, the revised version was posted on the city’s website, and the city manager was validly delegated the authority to approve and implement the modifications. The court of appeal affirmed.

First, the court found the petitioner had conceded that the city met the public hearing requirement for an earlier version of the housing element because multiple public hearings were held. The court rejected the petitioner’s argument that additional public hearings were necessary for the revised version because (1) it did not constitute a new and distinct “amendment”; and (2) the city properly posted it online pursuant to Government Code Section 65585. The petitioner’s position was also contrary to the legislature’s intent because it would create a “never-ending loop,” defeating the purpose of the eight-year cycle for revising housing elements.

Second, the court found the city council validly delegated authority to its city manager, pursuant to the city’s municipal code, to further revise the housing element after the city council officially adopted it. The court rejected the petitioner’s contention the revisions “were

substantial and far exceeded the scope of that delegation.” The record, rather, indicated the city council ratified the modifications, and the Department of Housing and Community Development subsequently certified the housing element, creating a presumption of validity under Government Code Section 65589. Finally, the court upheld the trial court’s harmless error analysis, finding the petitioner had not demonstrated any “prejudice, substantial harm, or that a different outcome would have occurred” to the housing element revisions.

*Coalition for Pacificans for an Updated Plan v. City Council of the City of Pacifica* (1st App. Dist., December 2025).

Following a CEQA challenge to a city’s approval of a housing development project, the court of appeal held that the trial court abused its discretion in awarding attorneys’ fees to the petitioners under Code of Civil Procedure Section 1021.5. While the court agreed that the petitioners conferred a significant public benefit by obtaining a ruling that an EIR was required, it concluded that the trial court misapplied the Housing Accountability Act (HAA) when weighing the statutory factors governing fee awards. The court reversed the fee award and remanded for reconsideration.

The petitioners challenged the city’s approval of a project to construct an eight-unit residential development. The city approved the project based on a mitigated negative declaration. The petitioners argued that substantial evidence showed the project could have significant environmental impacts. The trial court agreed, finding the city prejudicially abused its discretion by failing to prepare an EIR. The trial court ordered all project approvals be rescinded and entered

judgment in the plaintiffs' favor. No party appealed from the merits of that judgment.

The trial court granted the plaintiffs' motion for attorneys' fees under Code of Civil Procedure Section 1021.5. While the fee motion was pending, a new provision of the HAA took effect, requiring courts in housing approval challenges to consider specified housing-related factors when considering fee awards. The trial court determined that under the new statute, a fee award remained appropriate and awarded over \$1 million in fees against the city and the project developers.

The court of appeal agreed that the new HAA provision applied. However, it concluded that the trial court erred in how it weighed the statutory factors. Specifically, the trial court improperly determined that the eight-unit development would contribute to the state's two-million-unit housing shortage. The court of appeal found that there was no evidence the development would have any impact on this shortage. The trial court also erred by categorically treating the entire city as non-urban when evaluating whether the project furthered the HAA policy favoring development in existing urban areas. The court therefore reversed the attorneys' fee award and remanded, directing the trial court to reconsider the fee motion while giving proper weight to the HAA factors.

**[Make UC A Good Neighbor v. Regents of the University of California](#)** (1st App. Dist., December 2025).

In this case, the petitioner sought attorneys' fees after earlier securing a court of appeal ruling (*Make UC I*) that found CEQA flaws in UC Berkeley's environmental review. In *Make UC I*, the court of

appeal initially agreed with the petitioner on two issues—the needs to analyze noise impacts from student parties and to consider alternative locations for the People's Park housing project. But while review was pending at the California Supreme Court, the state legislature enacted Assembly Bill 1307, expressly abrogating those holdings for residential projects. The supreme court then reversed *Make UC I* on those two issues in *Make UC II*, directing judgment in favor of UC Berkeley.

On remand, the petitioner sought over \$1.1 million in fees, claiming it was still a "successful party" entitled to fees because portions of *Make UC I* remained good law for nonresidential projects. The trial court rejected the petitioner's claim and the court of appeal affirmed, holding that the supreme court's reversal "disapproved" the *Make UC I* analyses on noise and location alternatives. Although *Make UC I* retained precedential value on unrelated CEQA issues, the court clarified that it retains no precedential force on the specific issues on which the petitioner claimed success. The court of appeal also emphasized that the petitioner obtained none of the substantive relief it requested and, in fact, the litigation produced legislation and a supreme court ruling directly contrary to its objectives. The petitioner was not, therefore, a "successful party."

**[Krovoza v. City of Davis](#)** (3rd App. Dist., December 2025).

The court of appeal affirmed a trial court decision upholding a city's reliance on categorical exemptions to provide CEQA clearance for the relocation of playground equipment within a public park, rejecting claims that the project triggered the "unusual circumstances" exception. The case arose after the city installed a playground feature at a park that generated noise complaints from nearby residents.



Following multiple noise studies and mitigation efforts, including limiting hours of operation and installing sound-dampening features, the city ultimately approved relocating the equipment to a more central location within the park where predicted noise levels would be lower.

The city filed a notice of exemption relying on Class 3 (small structures), Class 4 (minor alterations to land), and Class 11 (accessory structures) categorical exemptions. Nearby homeowners challenged the exemption, arguing the project was subject to CEQA review under the unusual circumstances exception due to noise impacts.

The court reiterated that a CEQA challenger bears the burden of producing evidence to establish an exception to a categorical exemption and emphasized the two alternative tests articulated by the California Supreme Court in *Berkeley Hillside*: (1) evidence that the project will have a significant environmental effect; or (2) evidence that the project presents unusual circumstances coupled with a reasonable possibility of a significant environmental effect. The court found neither test was satisfied.

Critically, the court held that an alleged violation of a local noise ordinance standing alone does not constitute substantial evidence that a project will have a significant environmental effect. CEQA requires evidence of a substantial adverse change from existing baseline conditions, and here, the record did not show that relocating the playground feature would change the baseline conditions or that any such change would be adverse. In fact, the evidence showed the relocation would reduce noise levels.

The court further concluded that the petitioner failed to meet either prong of the unusual circumstances test because there was no substantial evidence to support a fair argument that there is a reasonable possibility the purported unusual circumstance—moving mechanical parts of the playground equipment—may have a significant effect on the environment.

***The Committee for Tiburon LLC v. Town of Tiburon*** (1st App. Dist., December 2025).

This case concerned the specificity required within a program EIR for a general plan. In 2020, a town began the process of preparing a comprehensive update to its existing general plan, General Plan 2040. The petitioner challenged the adequacy of the program EIR based on the town's failure to analyze the specific environmental impacts of developing housing on sites identified in the general plan's housing element. The trial court granted the committee's petition.

The Planning and Zoning Law requires general plans to include a housing element, part of which includes a regional housing needs assessment (RHNA). To address the town's share of the regional housing needs (639 units), General Plan 2040's housing element identified 17 vacant or underutilized sites to meet the town's RHNA and included implementation programs to rezone all 17 sites.

The controversy in this case centered on Site H, one of the 17 sites identified. Site H is over nine acres in size and was previously zoned for a maximum of seven units. The housing element's proposed zoning



changes would increase the site's realistic development capacity to 93 units. No specific housing project was proposed on Site H, and the program EIR did not conduct a specific environmental review of Site H (or any individual site listed in the housing element inventory).

Citing additional analysis prepared by the town, including a transportation memo and a site conditions report for Site H, the petitioner argued that even though the town had not committed to a specific development project, it had sufficient information about site-specific environmental impacts that were reasonably likely enough that those impacts should have been analyzed in the EIR.

The court considered the requirements of a "program" versus a "project" EIR and identified the standards for the specificity required, as well as the foreseeability of impacts established by prior CEQA case law. The court determined that the use of a program EIR was appropriate and that the EIR was not required to assume that all identified development would occur. The Housing Element Law requires local governments to *identify* sufficient sites and make those sites available to accommodate their RHNA; it does not require every site identified to be developed. Evaluating the site-specific environmental effects of housing projects that had not yet been proposed would be "premature and unlikely to yield any meaningful analysis."

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If you have any questions, or would like additional information, please contact one of the [attorneys](#) with our [Environment, Land Use & Natural Resources Group](#).