

## 2021 Land Use and Development Law Case Summaries

Below are summaries of the key California and Ninth Circuit land use and development law cases decided in 2021.

### 1. Planning and Zoning

**CHEVRON v. COUNTY OF MONTEREY** 70 Cal. App. 5th 153 (2021) A county ordinance enacted by initiative effectively banned new oil and gas wells and use of wastewater injection ("fracking") as part of extraction operations. The court held that these measures were preempted by Public Resources Code § 3106, which vests the State of California's Oil and Gas Supervisor with exclusive authority to decide whether to permit an oil and gas drilling operation or the use of wastewater injection in such operations, leaving no room for local regulation. The court noted that its holding did not affect local regulation of the location of oil drilling operations, a matter not addressed by Section 3106 or the ordinance. **PEOPLE v. VENICE SUITES** 71 Cal. App. 5th 715 (2021) The State of California brought action alleging that the owner of an apartment building was illegally operating a hotel or transient occupancy structure in a building permitted to operate only as an apartment house for long-term tenants. The court held that the Los Angeles Municipal Code did not implicitly prevent an apartment house from being used for short-term occupancies of 30 days or less. The court reasoned that (1) a long-term occupancy requirement for apartment houses could not be inferred from definitions in a later-enacted section of the Code limiting transient occupancy structures to occupancies of 30 days or less and (2) the Code governing apartment houses could not be read in conjunction with either the rent stabilization ordinance or the transient occupancy tax ordinance to require long-term occupancy. **SCHREIBER v. CITY OF LOS ANGELES** 69 Cal. App. 5th 549 (2021) The density bonus law (Gov't Code § 65915) requires cities to grant incentives to projects that provide a specified number of affordable housing units. Plaintiffs challenged the City's grant of certain incentives to a project on the ground that the City had failed to require the applicant to provide financial documentation proving that the incentives were required to make the project "economically feasible" as required by a local ordinance. The court held that the referenced ordinance conflicted with Section 65915, which required the City, not the applicant, to bear the burden of proof justifying denial of a requested incentive. The local ordinance was accordingly preempted by Section 65915.

### 2. Coastal Act

**KRACKE v. CITY OF SANTA BARBARA** 63 Cal. App. 5th 1089 (2021) In 2015, the City of Santa Barbara directed its staff to regulate short-term rentals as hotels, effectively banning short-term rentals in most residential areas. The court held that the City's change in policy required Coastal Commission approval because it constituted a "development," altering the intensity of use and access to land and water in the coastal zone. To proceed, the City would need to obtain a coastal development permit, an amendment to its certified local coastal program, or an amendment waiver. This decision reinforced that restrictions on short-term vacation rentals in the coastal zone—whether by a private entity or a local government—are subject to the Coastal Act and must be approved by the Coastal Commission. **LENT v. CALIFORNIA COASTAL COMMISSION** 62 Cal. App. 5th 812 (2021) The court upheld a Coastal Commission penalty of \$4,185,000 on Malibu homeowners who refused to remove structures that blocked a public access easement granted to the Commission by a prior owner of the home. The homeowners claimed the penalty violated their due-process rights because it was over four times the amount recommended by Commission staff. The court ruled that due process did not mandate advance notice of the exact penalty the agency intended to impose so long as the agency provided adequate notice of the maximum

amount of the possible penalty, which it did in this case. The court also found that the penalty did not amount to an excessive fine under the state or federal constitutions because the homeowners had a high degree of culpability—evidenced by their willful refusal to remove the structures—and their conduct effectively barred access to a beach that was part of a three-mile stretch of the coast with no other public access. **LINOVITZ C APO SHORES LLC v. CALIFORNIA COASTAL COMMISSION** 65 Cal. App. 5th 1066 (2021) Owners of beachfront mobile homes obtained permits from the California Department of Housing and Community Development (HCD) to add second stories. After renovations concluded, the Coastal Commission issued notices stating the structures were illegal without coastal development permits. The homeowners applied for "after-the-fact" permits from the Commission, and the Commission held public hearings but took no further action. The court held that although HCD and the Coastal Commission have concurrent jurisdiction over mobile homes in coastal zones, the applicants did not have to undo their remodeling because their coastal permits were "deemed approved" by the Commission under the Permit Streamlining Act. The public notice of the Commission hearing did not need to contain a statement that the permit would be "deemed approved" if the Commission did not act on it within a specified number of days for the Permit Streamlining Act to apply. General notice of public hearing was sufficient under the Act. **MARTIN v. CALIFORNIA COASTAL COMMISSION** 66 Cal. App. 5th 622 (2021) Plaintiff homeowners challenged a 79-foot setback requirement imposed by the Coastal Commission as a condition of building a new home, contending that the Commission wrongly interpreted the Local Coastal Plan (LCP) in arriving at the setback figure. The court held that the Commission's interpretation was consistent with the approach validated in an earlier appellate court decision interpreting the same LCP, i.e., that the setback should be calculated in a manner that ensured the structure would be safe considering both its current distance from the bluff edge and the rate of erosion of the bluff over the 75-year design life of the home. **PAPPAS v. S TATE COASTAL CONSERVANCY** 73 Cal.App.5th 310 (2021) The California Coastal Act restricts selling or transferring certain state-owned property interests near the coast. The court held that a public access easement granted to the State Coastal Conservancy four decades ago by the owner of coastal parcel in Hollister Ranch was such a property interest. The court accordingly held that the State Coastal Conservancy and the Coastal Commission violated the Coastal Act by agreeing to quitclaim their interests in the easement as part of a litigation settlement.

### 3. Takings

**ALLIANCE FOR RESPONSIBLE PLANNING v. TAYLOR** 63 Cal. App. 5th 1072 (2021) El Dorado County voters adopted Measure E, requiring that all necessary road improvements be completed by the developer so as to "fully offset and mitigate all direct and cumulative traffic impacts." The court held that the measure violated the "rough-proportionality" standard established by the Supreme Court, under which development exactions must be related both in nature and extent to the impact of the proposed development. Requiring a project proponent to complete road capacity improvements necessary to mitigate both its individual impacts and the cumulative effects of other projects plainly violated the rough-proportionality standard and constituted an unlawful taking. The court rejected defendant's claim that Measure E was a land use control, not an exaction. Under Measure E, the developer had to give up a property interest — the cost of constructing roadway improvements beyond those required to mitigate its impacts — as a condition of approval. The measure thus constituted an unconstitutional exaction, not a land use control. **FELKAY v. CITY OF SANTA BARBARA** 62 Cal. App. 5th 30 (2021) The City denied an application to build an ocean-front residence, finding that it violated a city policy that prohibits any development on the bluff face regardless of size. The applicant sued the City, claiming inverse condemnation. The court held that if a permit denial makes clear that no development of the property will be allowed under any circumstance, multiple applications for a development project are not required. Although a landowner must generally have pursued a meaningful application for a zoning variance or similar exception in order to assert a ripe inverse condemnation claim, there was no such requirement in this case because the agency's decision on the second application was certain to be adverse and further applications would thus be futile. **PAKDEL v. CITY AND COUNTY OF SAN FRANCISCO** 141 S. Ct. 226 (2021) Owners of a multi-unit residential building in San Francisco reached an agreement with the City for a condominium

conversion, but then belatedly asked to be excused from an agreed-upon condition. The City refused and petitioners brought a suit under 42 U.S.C. § 1983 claiming an unconstitutional regulatory taking. The Ninth Circuit held that the owners failed to exhaust administrative remedies because their request was untimely, and therefore the City's rejection was not "final." The Supreme Court reversed, holding that the Ninth Circuit misinterpreted the finality requirement as necessitating a showing not only that the administrative agency had reached a final decision but also that the applicant had complied with the agency's administrative procedures for seeking relief. The Court ruled that the latter requirement was at odds with "the settled rule ... that exhaustion of state remedies is not a prerequisite to an action under 42 U.S.C. § 1983." The Court stressed the "modest" nature of the finality doctrine, which required only that the plaintiff had been actually injured by the Government's action so as not to prematurely sue over a hypothetical harm.

#### **4. Initiative and Referendum**

**HOWARD JARVIS TAXPAYERS ASSOCIATION v. CITY AND COUNTY OF SAN FRANCISCO** 60 Cal. App. 5th 227 (2021) San Francisco voters passed the "Universal Childcare for San Francisco Families Initiative" with a 51 percent vote in 2018, which proposed a special tax on certain commercial rents to fund early childcare and education. The Howard Jarvis Taxpayers Association sued, claiming that under Proposition 13 and Proposition 218, two-thirds voter approval was required for all special taxes, including those adopted by a citizen-sponsored initiative. The court, citing the Court of Appeal's decision in *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020), held that local special taxes adopted by citizen-sponsored initiatives did not require two-thirds voter approval, reasoning that provisions in Proposition 13 and Proposition 218 applied only to councils, boards, and other representative bodies, not the electorate. **JOBS & HOUSING COALITION v. CITY OF OAKLAND** 73 Cal.App.5th 505 (2021) A citizen-sponsored initiative proposing a parcel tax received 62.47% of the vote. The ballot materials stated that a two-thirds vote was required, but the City Council determined that only a majority vote was actually needed and declared the measure enacted. The court, following *Howard Jarvis Taxpayers' Association v. City and County of San Francisco*, upheld the City Council's action, holding that a citizen initiative imposing a parcel tax may be enacted by majority vote. The court also ruled that the measure could not be invalidated on the basis of the ballot materials' voting-threshold statements because they did not concern the measure's substantive features, were not alleged to be intentionally misleading, and could not override the law governing the applicable voting threshold. **SAN DIEGANS FOR OPEN GOVERNMENT v. PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO** 63 Cal. App. 5th 168 (2021) In 2016, San Diego voters approved an amendment to the city charter, which allowed the city council to issue certain non-general fund revenue bonds without voter approval. The City later entered into a lease revenue bond transaction with the Public Facilities Financing Authority of the City of San Diego to fund improvements at Balboa Park. A local open government organization filed suit, arguing that this transaction required voter approval. The court held that the 2016 amendment did not apply to bonds issued by the Financing Authority or to lease revenue bonds. Because the ballot measure did not contemplate this specific lease bond mechanism, it was not within the umbrella of "city-issued bonds" that required voter approval.

#### **5. Development Fees and Taxes**

**COACHELLA VALLEY WATER DISTRICT v. SUPERIOR COURT (ROBERTS)** 61 Cal. App. 5th 755 (2021) Petitioner sued to invalidate an increase in the property tax imposed by a water district to fund water supplies. The court ruled that the action was time-barred under the validation statutes, which required petitioner to file his claim no later than 60 days after the water district adopted the tax. The court reasoned that although the validation statutes do not specify the matters to which they apply, provisions of the County Water District Law stating that an action "to determine the validity of an assessment" could be brought as a validation action subjected the claim to the validation statutes. While the suit concerned a tax, other provisions of the Water District Law defining "assessment" were sufficiently broad to include the property tax at issue. **DEPARTMENT**

**OF FINANCE v. COMMISSION ON STATE MANDATES** 56 Cal. App. 5th 546 (2021) A city's regional water board issued a permit requiring certain cities to install and maintain trash receptacles at transit stops. The cities filed claims with the Commission on State Mandates asserting that the state should reimburse them for costs related to the trash receptacle requirements. The court ruled in favor of the cities, holding that the state was required to reimburse cities for the cost of the state-mandated trash receptacles. In response to the state's claim that local governments could recover those costs by imposing fees on owners of property adjacent to the transit stops, the court held that such fees would run afoul of Proposition 218 because the vast majority of people who use and benefit from trash receptacles at transit stops are not owners of adjacent properties. **KCSFVI, LLC v. F LORIN COUNTY WATER DISTRICT** 64 Cal. App. 5th 1015 (2021) A court invalidated a water district's adopted rate increases, concluding that the district failed to meet its burden under Proposition 218 to establish that the increases did not exceed the cost of providing the water service. In this case, nothing in the administrative record explained either how the net revenue the district would derive from the rate increase was related to the cost of providing the water or how individual water charges were proportional to the cost of providing service to each parcel. "In simple terms," the court said, "the net revenue appears to be a profit after expenses are deducted from revenues." While generally accepting the proposition that reserves may form a component of a property-related charge, the court found nothing in the record that identified or quantified historic or projected reserves needed for the district's services or showed that the projected net revenue was pledged for any particular purpose.

## 6. Brown Act

**JULIAN VOLUNTEER FIRE COMPANY ASSOCIATION v. JULIAN-CUYAMACA FIRE PROTECTION DISTRICT** 62 Cal. App. 5th 583 (2021) A local fire association sued the Fire Protection District claiming it violated the Brown Act in voting to approve dissolution of the District. While the lawsuit was pending, dissolution proceedings moved forward, culminating in a LAFCO special election. After the election, the association filed a motion requesting judgment on its Brown Act claims, but the court held that the claims were barred under the laches doctrine. The tactical decision to wait until after dissolution proceedings were complete to seek adjudication resulted in prejudice to the LAFCO, the county, and the public. Allowing the claims to proceed at this late juncture would be inequitable and contrary to the principle of expeditious resolution of Brown Act claims. **SIERRA WATCH v. PLACER COUNTY (SQUAW VALLEY REAL ESTATE)** 69 Cal. App. 5th 1 (2021) The Brown Act provides that if a county distributes to its board of supervisors any writing pertaining to a board meeting less than 72 hours before the meeting, the county must make that writing "available for public inspection" at a county office "at the time the writing is distributed" to the board. In this case, on the evening of the board meeting, the clerk emailed a memorandum to board members and placed a copy in the clerk's office. The court held that placing the memorandum in a county office at a time the office was closed to the public did not satisfy the Brown Act's requirement because the writing would not actually be available for public inspection until the office reopened after the board meeting had been concluded.

## 7. Land Use Litigation

**DUNNING v. JOHNSON** 64 Cal. App. 5th 156 (2021) A neighbor brought an unsuccessful challenge to the approval of development of a private school adjacent to the neighbor's horse ranch. The developer then brought a malicious prosecution action against the neighbor. The court denied the neighbor's anti-SLAPP motion, finding that the developer had established a prima facie case that the neighbor's suit was filed without probable cause and with malice. The evidence showed that the neighbor consistently and aggressively opposed any use and development on the project site, harassed prior owners, restricted their access to the property, and "deployed hostile and spiteful behaviors to dissuade site owners from developing their land." This evidence and reasonable inferences from it constituted a prima facie showing that the neighbor harbored similar improper motives when pursuing the litigation. **MUSKAN FOOD & FUEL, INC. v. CITY OF FRESNO** 69 Cal. App. 5th 372 (2021) Under the Fresno Municipal Code, planning commission decisions may be appealed to the city council by a

councilmember or the mayor, "either on their own initiative or upon receiving a petition from any person." A project challenger attempted to "petition" city officials to appeal approval of a conditional use permit by sending an email (forwarded to the mayor) expressing general concern about oversaturation of alcohol licenses and attending a dinner with a city councilmember to discuss the planning commission's decision. The court held neither of these actions satisfied the requirement to "petition" and, as a result, the challenger failed to exhaust administrative remedies. Allowing such general statements of concern to fulfill the requirement to petition would "encourage end-runs" and "undermine the city council's autonomy as the elected body with the ultimate authority over land use decisions." **PASADENA REPUBLICAN CLUB v. WESTERN JUSTICE CENTER** 985 F.2d 1161 (9th Cir., 2021) A private nonprofit center, which leased city-owned property, rescinded a rental agreement with the Pasadena Republican Club after learning that the event's speaker was affiliated with an organization that promoted causes antithetical to the center's values. The Club sued the center under 42 U.S.C. § 1983, which provides individuals a cause of action for government actions that infringe their constitutional rights. The court held that the center was not a state actor that could be held liable for constitutional claims under § 1983 because, though the center leased city-owned property, the center's operations were independent of the City's. Thus, there was no "joint action" or "symbiotic relationship" between the center and the City to create the requisite "state action" for § 1983 claims. **SAN LUIS OBISPO LOCAL AGENCY FORMATION COMMISSION v. CITY OF PISMO BEACH** 61 Cal. App. 5th 595 (2021) The City of Pismo Beach and a developer signed an application for approval of an annexation by LAFCO that included an agreement to indemnify LAFCO against any claims arising out of the resulting decision. The City and developer later filed suit challenging LAFCO's denial of their application. The suit was unsuccessful, and LAFCO sought attorney's fees under the indemnity agreement. The court held that the indemnity obligation lacked consideration because the agreement simply required LAFCO to accept and act upon the application, which it was already obligated to do by statute. **SAVE BERKELEY'S NEIGHBORHOODS v. REGENTS OF THE UNIVERSITY OF CALIFORNIA** 70 Cal. App. 5th 705 (2021) Plaintiffs filed a CEQA challenge to the development of new academic, residential, and parking buildings on the Berkeley campus. The court held that two entities identified in the Notice of Determination (NOD) as the parties undertaking the project were not indispensable parties. The court rejected the argument that provisions of CEQA requiring agencies to identify the recipient of a project's approval in the NOD and requiring petitioners to name those entities as real parties in interest superseded the traditional equitable balancing test for determining whether parties were indispensable to the action. The court found that while the motivations of the Regents and the two parties might differ, their interests were sufficiently aligned that the Regents could be expected to adequately protect the interests of the two parties and the action could proceed without them. **SAVE LAFAYETTE TREES v. EAST BAY REGIONAL PARK DISTRICT (PACIFIC GAS AND ELECTRIC COMPANY)** 66 Cal. App. 5th 21 (2021) Petitioner and the District entered into a tolling agreement extending the deadline for filing suit challenging a decision approving removal of trees adjacent to PG&E gas pipelines. The court held that the tolling agreement was ineffective because it did not name PG&E, which was a necessary and indispensable party to the suit. Because PG&E did not consent to the tolling agreement, the action was properly dismissed as time-barred. The court rejected Petitioner's claim that the statute of limitations did not begin to run because the District's public hearing notice did not disclose that any trees would be removed. Documents before the Board, including the proposed resolution itself, showed that PG&E would be funding the removal of trees and gave adequate constructive notice of the project to commence the running of the statute of limitations. **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT v. CITY OF LOS ANGELES** 71 Cal. App. 5th 314 (2021) A union sought to intervene in a case challenging approvals for operations at the Port of Los Angeles, asserting an interest in protecting jobs that could be lost if the approvals were overturned. The court upheld the trial court's discretionary decision to deny intervention because existing parties had the same interest in defending the approvals and the inclusion of the union would unduly complicate the litigation.

## 8. Subdivision Map Act

**DECEA v. COUNTY OF VENTURA** 59 Cal. App. 5th 1097 (2021) Petitioner challenged the validity of a 1974 parcel map, claiming the map had not been intended to merge five lots created under a 1923 map into a single

lot. The court held that the petition was barred by the laches doctrine under which a claim may be time-barred if there was unreasonable delay in asserting the claim and prejudice to the respondent. The court found that testimony of the prior owner and his contemporaries would have been highly probative as to the issues raised in the petition and that the loss of this testimony constituted substantial evidence of prejudice to the County.

## 9. Housing Accountability

**CALIFORNIA RENTERS LEGAL ADVOCACY AND EDUCATION FUND v. CITY OF SAN MATEO** 68 Cal. App. 5th 820 (2021) The City of San Mateo denied an application to construct a four-story, ten-unit multifamily residential building, finding that the project failed to comply with adopted design guidelines, including a requirement to build a "stepback" when there is a two-story differential between the proposed project and adjacent single-family dwellings. The court held that the guidelines were not "objective" standards under the Housing Accountability Act (HAA)—which restricts a local government's ability to disapprove a proposed housing development that complies with objective standards—because they required "personal interpretation" or "subjective judgment." The court also rejected the City's constitutional challenge to the HAA, holding that the HAA did not infringe on the City's right to control its own municipal affairs as a charter city. **RUEGG & ELLSWORTH v. CITY OF BERKELEY** 63 Cal. App. 5th 277 (2021) Legislation enacted by SB 35 requires streamlined processing of qualifying multifamily and mixed-use housing applications. The City of Berkeley denied an SB 35 permit application for a mixed-use development on several grounds, including interference with a designated local landmark. The court invalidated the City's decision, finding no evidence that the subsurface resource in question could reasonably be viewed as a "historic structure" under SB 35. The court rejected the City's claim that SB 35 was unconstitutional as applied to the project because it conflicted with home rule authority over historic preservation by a charter city. It held that because the lack of affordable housing is a matter of statewide concern, SB 35 did not unduly interfere with the City's historic preservation authority. This type of subjective discretionary land use permit denial was precisely what SB 35 was designed to prevent.

## 10. Real Estate

**HUSAIN v. CALIFORNIA PACIFIC BANK** 61 Cal. App. 5th 717 (2021) Tenants of an apartment complex were allowed to park on an adjoining lot at a time when both lots were held under common ownership. Thereafter, the owner of the properties defaulted on its mortgages, and the properties were sold to different parties at trustee sales. After the severance of ownership, the tenants continued to park on the adjoining lot consistent with past use. More than five years later, the new owner brought a quiet title action against the owner of the apartment complex, and the latter cross-complained for a prescriptive easement. The court held that the longstanding use of the plaintiff's property for access and parking by residents of the adjacent apartment complex had established a prescriptive easement, finding that the prescriptive period began when ownership was severed via the trustee sales. **PEAR v. CITY AND COUNTY OF SAN FRANCISCO** 67 Cal. App. 5th 61 (2021) Plaintiffs' predecessor granted an easement to San Francisco for an underground pipeline to convey water as part of the regional water system but reserved the right to use the surface of the property to construct roads and streets "over and across" the property. The court held that the language of the easement deed did not allow plaintiffs' use of the property as a parking lot. Parking was not among the uses expressly authorized by the deed, and while the deed permitted construction of roads, a parking lot was not necessary to the use of a road. While occasional or temporary parking might be permissible as a secondary right incidental to the roadway rights, the use of a substantial portion of the property as a parking lot was not among those secondary rights. **SELF v. CHER-AE HEIGHTS INDIAN COMMUNITY** 60 Cal. App. 5th 209 (2021) A federally recognized Indian tribe purchased coastal property and applied to the Bureau of Indian Affairs to take the property into trust for the benefit of the tribe. Two nontribal individuals brought a quiet title action to establish a public easement for coastal access across the property. The court held that tribal sovereign immunity bars a quiet title action to establish such an easement in the absence of waiver or congressional abrogation of a tribe's immunity. The court further held that the common law "immovable property exception" that applies to states and foreign sovereigns

did not extend to tribes.

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