Blogs
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California Land Use & Development Law Report

2022 Land Use and Development Law Case Summaries

PLANNING AND ZONING

Old East Davis Neighborhood Association v. City of Davis
73 Cal. App. 5th 895 (2022)

The court of appeal upheld the City's determination that a mixed-use development was consistent with general plan policies requiring new buildings to maintain scale transition and provide an architectural fit with the neighborhood. The court observed that the applicable policies did not provide a formulistic method for determining whether a proposed structure met the transition requirements. Rather, this determination relied on subjective measures and the dispute was over conflicting evidence on matters such as whether step-backs, extra-

wide alleys and other factors created a scale that was consistent with the area's traditional scale and character. Reviewing each of the City's consistency determinations, the court found that a reasonable person could have reached the same conclusion based on the record, and the City's decision was therefore supported by substantial evidence.

Bankers Hill 150 v. City of San Diego
74 Cal. App. 5th 755 (2022)

Relying on the Density Bonus Law, a developer proposed a 20-story mixed-use project with affordable units that would exceed the maximum zoned capacity by 57 units. The developer also sought development incentives, including avoiding a setback restriction and eliminating on-site truck loading spaces. The court rejected petitioner's claim that the project approval conflicted with several General Plan policies. It ruled that the City did not abuse its discretion in finding that several cited policies were inapplicable and that the project did not conflict with the policies that were applicable. It also found that if the City had denied the requested incentives or failed to waive inconsistent design standards, it would have physically precluded construction of the project and the affordable units, which would defeat the goals of the Density Bonus Law.

AIDS Healthcare Foundation v. City of Los Angeles
78 Cal. App. 5th 167 (2022)

The court rejected a claim that the City's approval of a mixed-use project violated provisions enacted by the former Community Redevelopment Agency requiring 15 percent of units to be reserved for low-income housing. The court held that the 2011 Redevelopment Dissolution Law rendered the 15 percent requirement inoperative.

Tiburon Open Space Committee v. County of Marin
78 Cal. App. 5th 700 (2022)

Under stipulated judgments in federal court, the County agreed to approve development of a minimum of 43 residential units on 110 acres of land subject to compliance with applicable land use laws, including CEQA. The court dismissed petitioner's claims that the County had effectively contracted away its police powers in the stipulated judgments and abdicated its duties under CEQA by approving the project. The court observed that the project EIR was over 800 pages and went through extensive redrafts, and that the lengthy administrative approval process provided ample opportunities for public input. The County Board would not have gone through such a "protracted charade" had it intended to bypass CEQA. The court also upheld the County's determination that a less dense project alternative was legally infeasible under CEQA, stating that "no reason in law or logic prevents a final federal court judgment from having [that] impact."

HOUSING ACCOUNTABILITY ACT

Reznitskiy v. County of Marin
79 Cal. App. 5th 1016 (2022)

Plaintiff claimed the County's denial of a permit to build a single-family home on his property violated the Housing Accountability Act. The court found that neither the language of the HAA nor its legislative history supported an interpretation of "housing development project" to include one single-family home. Terminology in the statute reflected legislative intent that it should apply to a project to construct a "housing development," not to any project to "develop housing." Among the core purposes of the HAA is providing for the housing needs of lower-income populations by reducing local agencies' ability to deny higher-density projects, a scenario that would never apply to a single home. It was therefore improbable that the intent of HAA was to give those who could afford to build their own home enhanced protection against rejection of development application based on

subjective criteria.

Save Lafayette v. City of Lafayette
85 Cal.App.5th 842(2022)

A developer sought approval of a 315-unit residential development project but agreed to suspend processing while it pursued an alternative, 45-unit project. It later abandoned the alternative project and the City resumed processing of and approved the original project. Petitioners claimed the approval was invalid because the original project no longer conformed to the City's General Plan at the time it was approved. The court held that, under the Housing Accountability Act, a project must be evaluated under the planning and zoning standards in effect when the application is deemed complete, not under standards that exist at the time of project approval. The court rejected petitioner's argument that the developer's request to resume processing should be treated as a "resubmittal" and hence be subject to the then-current land-use standards. The court also dismissed the claim that the Permit Streamlining Act's time limits had deprived the City of the power to act on the application, ruling that the consequence under that statute of any failure by city to timely act was project being deemed approved, not disapproved,

COASTAL ACT

Coastal Act Protectors v. City of Los Angeles
75 Cal. App. 5th 526 (2022)

The City of Los Angeles adopted an ordinance restricting short-term vacation rentals. Over a year later, petitioner sued to enjoin enforcement of the ordinance until the City obtained a Coastal Development Permit from the Coastal Commission. Petitioner argued the action was not subject to the 90-day statute of limitations in Government Code § 65009, but rather was timely under the three-year statute of limitations in Code of Civil Procedure § 338(a) for actions "upon a liability created by statute." The court disagreed, pointing out that if the City had a mandatory duty to obtain a CDP, that duty existed at the time the City enacted the ordinance. The action, therefore, was one to "attack, review, set aside, void, or annul" the City's decision to adopt a zoning ordinance without first obtaining a CDP and was subject to section 65009's 90-day deadline.

Darby T. Keen v. City of Manhattan Beach
77 Cal. App. 5th 142 (2022)

In 2015, without obtaining Coastal Commission approval, the City enacted zoning ordinances banning short-term rentals in the coastal zone. The City justified not seeking that approval by claiming that its existing zoning ordinance from 1994 already banned short-term rentals. The court disagreed, finding that the City's zoning ordinances prior to 2015 did not specify any limitation on the term of rentals and therefore allowed the short-term rentals the City now sought to ban. The court was also unpersuaded by the City's argument that short-term rentals should be treated as regulated hotels under the City code, concluding that homes that are typically rented out as short-term rentals did not meet the code's definition of a hotel.

CLEAN WATER ACT

California State Water Resources Control Board v. Federal Energy Regulatory Commission
43 F.4th 920 (9th Cir., 2022)

Section 401 of the Clean Water Act authorizes states to impose conditions on federal licenses for hydroelectric projects to ensure compliance with state water quality standards. The Federal Energy Regulatory Commission found that the California State Water Resources Control Board had waived that authority for certain

hydroelectric projects by engaging in coordinated schemes with project applicants to delay certification. The Ninth Circuit upheld the agencies' challenge to that determination, holding that FERC's findings of coordination were unsupported by substantial evidence. The evidence showed only acquiescence in the applicants' withdrawal and resubmittal of their requests; nothing in record suggested the agencies' decisions were motivated by a desire to deliberately delay certification.

Monterey Coastkeeper v. Central Coast Regional Water Quality Control Board
76 Cal. App. 5th 1 (2022)

Petitioners asserted that, in issuing water quality permits, the State Board and regional water boards had violated the Board's Nonpoint Source (NPS) Policy by failing to protect against water pollution from crop irrigation. The court held that neither declaratory nor mandamus relief was available for petitioners' claims. Declaratory relief was not appropriate because an issue as complex as water pollution from agricultural runoff could not be solved by a court decree. Mandamus was likewise unavailable because petitioners attacked respondents' exercise of discretion rather than its performance of a ministerial duty or quasi-legislative action. Application of the NPS Policy was a "quintessentially discretionary task" because the agencies had broad flexibility to fashion NPS management programs to protect water quality according to the dictates of their own judgment.

Central Sierra Environmental Resource Center v. Stanislaus National Forest
30 F. 4th 929 (9th Cir., 2022)

Livestock grazing permits issued by the U.S. Forest Service did not violate state water quality permitting requirements. The Forest Service complied with Management Agency Agreements between the Service and the State Water Resources Control Board, which governed non-point source pollution control measures for the area and expressly superseded statutory permit requirements. Although levels of fecal matter exceeded established water quality objectives set forth in the basin plan, the court ruled that these objectives did not apply to individual dischargers and could not be enforced in isolation.

LAND USE LITIGATION

Meinhardt v. City of Sunnyvale
76 Cal. App. 5th 43 (2022)

The trial court issued an order denying petitioner's administrative mandamus claim and, over a month later, entered judgment against petitioner. Within 60 days of entry of the judgment but more than 60 days after issuance of the order, petitioner filed a notice of appeal. The Court of Appeal dismissed the appeal because it had not been filed within 60 days of issuance of the order. In response to the argument that an appeal is timely under the Code of Civil Procedure if filed within 60 days of the "judgment," the court relied on prior caselaw holding that an order granting or denying a petition for a writ of mandate is "in effect" a judgment because it finally determines the rights of the parties.

Schmier v. City of Berkeley
76 Cal. App. 5th 549 (2022)

As a condition to approving plaintiff's condominium conversion, the City required plaintiff to sign an agreement and record a lien on the property securing payment of an affordable housing fee upon sale of the unit. Twenty years later, when plaintiff sought to sell the condominium, the City requested payment of an affordable housing fee of $147,000. Plaintiff sued, arguing that the ordinance authorizing the fee had since been repealed and language in the lien agreement provided if the fee was rescinded, the lien would be void. The court rejected the City's claim that the suit was time-barred under the 90-day limitations period in the Subdivision Map Act,

reasoning that the suit did not challenge the validity of the fee requirement originally imposed; it alleged that the City misinterpreted language in the lien agreement. Plaintiff's suit was filed within 90 days after he became aware of the challenged misinterpretation and was therefore timely.

City of Coronado v. San Diego Association of Governments
80 Cal. App. 5th 21 (2022)

Three cities challenged their RHNA housing allocations, contending that the San Diego Association of Government denied them a fair hearing by using a weighted vote and "predetermin[ing]" the denial of their appeals of the allocations. The court held that the administrative procedures established under the statute governing RHNA allocations, including appeals of allocations and review by the Department of Housing and Community Development, were intended by the legislature to be the exclusive remedy for the municipality to challenge those determinations. The court therefore lacked jurisdiction to adjudicate the cities' claims.

AIDS Healthcare Foundation v. City of Los Angeles
86 Cal.App.5th 322 (2022)

Petitioner sued under the Political Reform Act, seeking to set aside building permits issued during multiple years while two Councilmembers allegedly were the beneficiaries of an ongoing bribery scheme. Petitioner contended that its PRA claims were subject to a three-year statute of limitations. The court held that the more specific 90-day statute of limitations in Government Code § 65009 applied, as it clearly encompassed the building permits petitioner sought to set aside. The court rejected petitioner's argument that the gravamen of its action was not principally a challenge to the permit decisions, but instead was "a challenge to the corruption." While petitioner relied on the PRA as the basis for its claims, the gravamen of its suit was an attack on, or review of, the Council's decisions related to permitting and real estate project approvals, and section 65009 directly governed that challenge.

Jenkins v. Brandt-Hawley
No. A162852 (1st Dist., Dec. 28, 2022)

An attorney's actions in filing and prosecuting a CEQA and general plan challenge to construction of a single-family home supported a claim for malicious prosecution. The record showed that the attorney, who held herself out as a CEQA and land use expert, knew the claims in the petition were untenable. As to the required element of malice, there were numerous statements in the attorney's pleadings that the court found to be "misleading as to material facts." This, coupled with the attorney's continued prosecution of a meritless writ petition, gave rise to a viable inference of malice.

TAKINGS

Today's IV, Inc., v. Los Angeles County Metropolitan Transportation Authority
83 Cal.App.5th 1137 (2022)

The court held that construction of a subway line did not result in inverse condemnation of plaintiff's hotel property or creation of a nuisance. Plaintiff failed to show any burden on its property that was "direct, substantial, and peculiar to the property itself." The temporary interference with its right of access caused by construction was not unreasonable, and personal inconvenience, annoyance, or discomfort could not support a condemnation claim. Plaintiff's claim of excessive noise and dust did not show an intrusion that was "unique, special or peculiar" in comparison with other stakeholders in the area. As to the nuisance claim, the court ruled that plaintiff failed adequately to allege that the harm to its hotel operation outweighed the social utility of the subway project, which included reducing travel times and traffic congestion and improving air quality

DEVELOPMENT FEES

Sheetz v. County of El Dorado
84 Cal.App.5th 394 (2022)

A traffic mitigation fee required for construction of a single-family home did not violate the Mitigation Fee Act or amount to an "unconstitutional condition" in violation of the takings clause of the Fifth Amendment. The fee was imposed under a legislatively authorized fee program and hence was not subject to the heightened scrutiny applicable to *ad hoc* fees under U.S. Supreme Court caselaw. The County also complied with the Mitigation Fee Act in adopting the fee as part of its 2004 General Plan to ensure that roadway improvements were developed concurrently with new development. The record reflected that the County considered the relevant factors and demonstrated a rational connection between those factors and the fee imposed.

ENDANGERED SPECIES

San Luis Obispo Coastkeeper v. Santa Maria Valley Water Conservation District
49 F.4th 1242 (9th Cir., 2022)

Environmental groups sued the agencies that operate the Twitchell Dam in San Luis Obispo County, arguing that releases of water designed to maximize percolation in the riverbed provided insufficient flow to the river to sustain steelhead migration and reproduction. The Ninth Circuit rejected the agencies' claim that they lacked statutory authority to release water for any purpose other than water conservation and flood control. The governing statute expressly gave the agencies discretion to operate Twitchell Dam for "other purposes," which potentially included adjusting water discharges to support steelhead migration.

REAL ESTATE

Romero v. Shih
78 Cal. App. 5th 326 (2022)

The court held that grant of an equitable easement was appropriate where (1) through no fault of either party, a homeowner's fence encroached on about 1,300 feet of the neighbor's property; (2) the neighbor had no concrete plans to use the land and there would be no undue tax burden or likelihood of premises liability on the encroachment area; (3) not granting an easement would result in disproportionate hardship on the homeowner through reduction of their driveway width that would preclude use by most vehicles; and (4) the scope and duration of the easement were narrowly tailored, providing that the easement would terminate if the homeowner ceased to use the land for the limited and necessary purposes for which it was granted.

BROWN ACT

G.I. Industries v. City of Thousand Oaks
84 Cal. App. 5th 814 (2022)

On February 15, 2023, the California Supreme Court issued an order depublishing this decision. While still binding on the parties to the case, the decision can no longer be cited or relied on as authority.

The City posted an agenda that included consideration of a proposed franchise agreement but made no mention of CEQA. On the day of the City Council meeting. a supplemental item was posted giving notice of the staff's recommendation that the City find the agreement to be categorically exempt from CEQA. The court held that the

Brown Act applied to the City's determination that the franchise agreement was categorically exempt under CEQA, and that 72 hours' prior notice of that decision was accordingly required. The court reasoned that the City's CEQA determination was an item of business at a regular meeting of a local legislative body and failure to provide the required notice of this agenda item deprived the public of a meaningful opportunity to be heard. The court rejected the City's claim that its adoption of the CEQA exemption was a component of the agenda item awarding the franchise agreement, ruling that approval of the CEQA exemption involved a separate action by the City concerning the discrete, significant issue of CEQA compliance.

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