

# ALSTON & BIRD LAND USE MATTERS

A publication of Alston & Bird's Land Use Group

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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, as well as new CEQA appellate decisions.

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## City of Los Angeles

### **SB 330 Implements Vesting and Streamlined Entitlement Process for Housing Development Projects**

Senate Bill 330 (SB 330), the Housing Crisis Act of 2019, intends to provide a vesting and streamlined land use entitlement process for housing development projects. SB 330 became effective on January 1, 2020 and sunsets on January 1, 2025. The Department of City Planning (DCP), Department of Building and Safety (DBS), and Housing and Community Investment Department (HCID) issued interim guidelines on the implementation of SB 330 and on February 8, 2020 gave a [presentation](#) to the development community. The DCP submitted a [report on the Implementation of State Law SB 330 dated February 13, 2020](#) to the Planning and Land Use Management (PLUM) Committee. The report includes the following summary of what SB 330 does:

- Creates a new vesting process for zoning and land use ordinances, policies, and standards in place at the time that a preliminary application is submitted, with limitations;
- Clarifies the Permit Streamlining Act regarding the review of development applications for completeness;
- Prohibits approval of a Housing Development Project that results in a net loss of housing units;
- Shortens required permit review timeframes and limits the number of public hearings for Housing Development Projects that meet all applicable objective zoning standards;
- Prohibits legislative actions that reduce total zoned capacity for housing (i.e. "downzoning") in the City;
- Prohibits imposing or enforcing non-objective design review standards established after January 1, 2020;
- Requires that the historic status or designation of any site be determined at the time an application for a discretionary action is deemed complete; and
- Creates new housing replacements, eviction protections, relocation assistance, and right-of-return requirements.

The DCP requires submittal of detailed project information and obtaining clearances from the DBS and HCID before filing the project application. We recognize that SB 330 is a very detailed statute with a complicated implementation process. Please contact Alston & Bird to schedule a meeting to discuss how the new procedures can provide vesting certainty in the entitlement process and a streamlined approval for your housing development project.

## California Environmental Quality Act

### ***Covington v. Great Basin Unified Air Pollution Control District (3rd App. Dist., 12/23/19)***

In a case reminding all lead agencies and project applicants to address any additional mitigation measures proposed by a project opponent and to provide evidence in support of the rejection of such measures, the court invalidated an environmental impact report (EIR) for a geothermal plant to be located in Mono County. The lead agency (an air pollution control district) imposed various measures to mitigate the project's air emissions and required the use of the best available technology. The court did uphold the agency's adoption of those mitigation measures, but found that the agency did not address, or provide evidence in support of its rejection of, additional mitigation measures that were proposed by the plaintiff and other project opponents. The court found that the lead agency's failure to do so was prejudicial because the project's impact was still significant even after the mitigation measures that were adopted by the lead agency.

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### ***Holden v. City of San Diego (4th App. Dist., 12/13/19)***

In a victory for the use of the urban infill exemption under CEQA, the court upheld the use of this exemption for the development of seven condominium units. The plaintiff challenged the use of that exemption on the basis that the project was not consistent with the city's general plan and community plan because those plans required a minimum density for the project site that was greater than seven units. However, other provisions of the city's plans recognize that fewer units may be appropriate depending on site conditions. Given the location of the site in a hillside area and the city's hillside regulations, the court upheld the city's decision finding that, on balance, the project was consistent with the general plan and zoning. Also, consistent with a long line of cases, the court accorded a high level of deference to the city's interpretation of its own general plan.

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### ***Citizens for Positive Growth & Preservation v. City of Sacramento (3rd App. Dist., 12/18/19)***

The court upheld an EIR prepared for the City of Sacramento's adoption of the 2035 General Plan. Interestingly, the court found the challenge to the traffic analysis in the EIR "moot" because that analysis was based on significance thresholds tied to "level of service" (LOS), and CEQA Section 21099(b)(2) provides that upon certification of the guideline (Guideline 15064.3) addressing "vehicle miles traveled" (VMT), automobile delay as measured by LOS shall not be considered an environmental impact under CEQA. Since that guideline was certified before the entry of judgment by the trial court, Section 21099(b)(2) mooted the challenge to the LOS analysis in the EIR.

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