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.

Please visit the firm's website for additional information about our Land Use Group.

State of California

Office of Governor Gavin Newsom

Governor Newsom Signs Tenant Protection Act of 2019

On October 8, 2019, Gov. Gavin Newsom signed Assembly Bill 1482 (AB 1482), capping annual rent increases to 5 percent plus inflation for the next 10 years. Apartments constructed within the last 15 years or single-family homes that are not owned by corporations or other institutional investors are exempt from the rent cap. The bill also requires that a landlord must state a just cause to evict a tenant who has lived in the rental unit for more than a year. AB 1482 goes into effect on January 1, 2020, and remains in effect until January 1, 2030.

City of Los Angeles

City Council

Transfer of Land Use Authority from Community Redevelopment Agency to City of Los Angeles

The city council adopted an ordinance transferring land use authority under various unexpired Redevelopment Plans to the city of Los Angeles from "the former Community Redevelopment Agency of the City of Los Angeles (CRA/LA) or the CRA/LA, a Designated Local Authority Successor to the Community Redevelopment Agency of the City of Los Angeles (CRA/LA-DLA)." Effective November 11, 2019, the city is not required to consult with or provide notice to CRA/LA or CRA/LA-DLA regarding any Redevelopment Plan amendment or land use approval or entitlement. Note, however, that the ordinance does not address the apparent conflict between the density limitations of the Redevelopment Plans and the Transit Oriented Communities Affordable Housing (TOC) program.

Council Adopts Procedures for CEQA Appeals

On October 2, 2019, the city council adopted an ordinance establishing an appeal procedure for California Environmental Quality Act (CEQA) determinations by non-elected decision makers. When a lower decision-making body certifies an environmental impact report (EIR), adopts a mitigated negative declaration (MND), or a sustainable communities environmental assessment (SCEA), or approves a CEQA exemption, that decision may be appealed to the city council, provided all administrative appeals of the project approval were exhausted. The appeal must be filed within 15 days of the project approval, and a stay will be placed on the project approval and any discretionary or ministerial permits issued for the project approval. The ordinance was transferred to the mayor for final action by October 15, 2019.

California Environmental Quality Act

Chico Advocates for a Responsible Economy v. City of Chico **(3rd App. Dist., 10/3/2019)**
The court upheld an EIR prepared for a new Walmart project as well as a statement of overriding considerations (SOC). The primary challenge to the EIR focused on its urban decay analysis. That analysis was supported by a "robust" 123-page study, which concluded that after accounting for cumulative impacts, only one existing full-service grocery store could close, but such a closure would not lead to the type of physical impacts that can lead to a significant urban decay impact. The court held that the analysis was not deficient even though it did not look at the "likely elimination of close and convenient shopping." While the court held that the question of whether the urban decay analysis properly included all potential impacts is reviewed de novo with no deference to the lead agency, it found that the urban decay analysis properly relied on the definition of urban decay that has been confirmed by the case law. The court also rejected the plaintiff's second attack on the urban decay analysis based on its methodology, which the court dismissed as a disagreement among experts. Finally, the court upheld the SOC adopted for the project, holding that SOCs do not need to provide the detailed reasoning that CEQA findings must provide since SOCs are more in the nature of policy documents stating which project benefits outweigh the project's significant impacts.

Order

Stopthemillenniumhollywood v. City of Los Angeles **(2nd App. Dist., 8/22/2019)**
The appellate court upheld the trial court's decision invalidating the EIR, which was made more than four years ago. The EIR for this project in Hollywood had analyzed the maximum impacts from three different development scenarios and then relied on a concept called the "land use equivalency program" to justify the lack of further details about the specific project that would eventually be built. Under that program, floor area and uses could be transferred among the parcels at the project site so long as the actual development fell within the development envelope arising from the three development scenarios. The court, however, found that the project description in the EIR was legally insufficient. (Notably, the court held that the question of the validity of the project description is reviewed de novo and the lead agency is given no deference on that issue.) The court noted that the project description failed to describe the sighting, size, mass, or appearance of any building proposed to be built. The court also noted that the EIR did not contain site plans, cross-sections, building elevations, or massing to show what buildings would be built.

Opinion

County of Butte v. Department of Water Resources **(3rd App. Dist., 9/5/2019)**
The appellate court held that the Federal Power Act (FPA), which governs the licensing of hydroelectric dams, preempts CEQA. The court based its decision on the comprehensive licensing process for such projects, including dual review by the Federal Energy Regulatory Commission and the State Water Resources Control Board acting under the Clean Water Act. Notably, the court interpreted a prior preemption decision involving CEQA, *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal. 5th 677, narrowly limiting that decision to statutes that allow a state agency to be the owner of the project or activity at issue under a statute whose intent was deregulation and not the comprehensive regulatory scheme provided under the FPA.

Opinion

The Lake Norconian Club Foundation v. Department of Corrections and Rehabilitation **(1st App. Dist., 9/13/2019)**
In a straightforward decision, the appellate court held that the state Department of Corrections and Rehabilitation's failure to maintain (including failure to allocate funds to do so) a historic building on one of its properties was not a "project" or "activity" within the meaning of CEQA, and therefore there was no failure by the agency to comply with CEQA.

Opinion

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Editor's Note: We are pleased to congratulate Ed Casey on his recognition by the *Los Angeles Business Journal* as one of the "Top Litigators in Los Angeles" in land use. You can read more about the award here.

This publication by Alston & Bird LLP provides a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

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