



# Land Use & CEQA Update

Presented to the League of California Cities  
2021 Annual Conference on September 23, 2021

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## AGENDA

- GENERAL OBSERVATIONS re CASES
- SUMMARY OF FEDERAL CASES
  - SUMMARY OF REPORTED COURT OF APPEAL CASES
    - SUMMARY OF NOTABLE UNPUBLISHED APPELLATE CASES
    - QUESTIONS



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# Federal Cases

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## ***Pakdel v. City and County of San Francisco, California***

-- U.S. ---, 141 S.Ct. 2226 (June 28, 2021)

- Partial owners of tenancy-in-common multi-unit residential building brought § 1983 action
- Alleged ordinance was unconstitutional regulatory taking / Conditions that owners offer tenants lifetime lease prior to condominium conversion
- Lower courts dismissed for failure to comply with San Francisco's administrative procedures
- HOLDING: Vacated & Remanded / Owners did not have to comply with admin. procedures
- *Knick v. Township of Scott* (2019) 588 U.S. ---, 139 S.Ct. 2162 followed (5<sup>th</sup> Amendment Takings)
- "Plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit"

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***Cedar Point Nursery v. Hassid***  
 -- U.S. ---, 141 S.Ct. 2063 (June 23, 2021)

- Agricultural employers brought action against State Ag. Labor Relations Board
- Challenged State regulation granting labor organizations “right to access” property to solicit support for unionization / Reg. allowed organizers on property up to 3 hours per day and 120 days per year
- **HOLDING:** Regulation appropriated employers’ right to exclude from property / thus a *per se* taking / 5<sup>th</sup> Amend. requires just compensation

***Center for Biological Diversity v. Haaland***

998 F.3d 1061 (9th Cir., June 3, 2021)

- Endangered Species Act (ESA) and U.S. APA case
- The Center sought review of U.S. Fish and Wildlife Service (FWS) reversing prior decision that Pacific walrus qualified for listing as endangered or threatened
- District court granted summary judgment for FWS / Center appealed
- **HOLDING:** *de novo* review / reversed & remanded / FWS did not sufficiently explain why changed position
- Lengthy proceedings and settlement involved
- Summary: FWS Assessment did not offer comparison between current findings and prior 2011 decision / only mentioned 2011 process and indicated uncertainty in several critical conclusions / Lack of substance, thus arbitrary & capricious under Federal APA review

## ***Friends of Animals v. Haaland***

997 F.3d 1010 (9th Cir., May 17, 2021)

- Endangered Species Act (ESA) and U.S. APA case
- Challenge to Fish and Wildlife Service's (FWS) denial of citizen petition to list Pryor Mountain wild horse population as threatened or endangered
- District court granted summary judgment for FWS / organization appealed
- HOLDING: *de novo* review / reversed & remanded: (1) Case of first impression = final rule requiring private parties seeking to list species provide affected states 30-day notice of intent to file petition was invalid; (2) FWS's summary denial of the organization's petition was arbitrary and capricious
- Take Away: pre-filing requirements as impediments

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## ***A Community Voice v. U.S. EPA***

997 F.3d 983 (9th Cir., May 14, 2020)

- Writ challenge to EPA under Toxic Substances Control Act, Residential Lead-Based Paint Hazard Reduction Act, and U.S. APA, to act on rulemaking petition granted years earlier re: dust-lead hazard and lead-paint standards
- HOLDING: (1) EPA required to set dust-lead hazard standards solely on basis of its assessment of health risks; (2) EPA acted arbitrarily and capriciously failing to update its definition of "lead-based paint"; (3) EPA's failure to update soil-lead hazard standards violated TSCA; (4) EPA had to reconsider dust-lead clearance levels when it promulgated new hazard standards

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# Reported State Court of Appeal Cases

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## ***Save Our Access—San Gabriel Mountains v. Watershed Conservation Authority***

(Aug. 19, 2021) -- Cal.App.5th ---,  
2021 WL 3673902

- Advocacy group petitioned for writ ordering authority set aside approval of project to improve area in Angeles National Forest alleging EIR deficiencies
- Trial court granted in part / ordered agency articulate and substantiate parking baseline / awarded \$154,000 in attorney's fees
- HOLDING: Reversed: (1) EIR did not "gloss over" project's parking reduction; (2) EIR only required to address parking reduction to extent reduction had secondary impact; (3) EIR sufficiently evaluated alternative proposals; (4) project did not conflict with land management plan or presidential proclamation

*\*Not included in accompanying case summaries*

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## **Save Lafayette Trees v. East Bay Regional Park District**

(June 30, 2021) 66 Cal.App.5th 21

- Neighbors filed amended petition/complaint to vacate district's approval of MOU with PG&E allowing removal of 245 trees from district land
- Trial court sustained demurrer w/o leave
- HOLDING: Affirmed:
  - (1) tolling agreement with district re: CEQA challenge not binding on non-party utility;
  - (2) CEQA's 180-day statute of limitations triggered on date of public hearing;

## **Save Lafayette Trees v. East Bay Regional Park District**

(continued)

- HOLDING (continued):
  - (3) statutory exception prohibiting district from interfering with public property that is either "owned or controlled" by city did not require district to comply with municipal tree protection ordinance;
  - (4) district's board not bound by district ordinance providing rules and regulations for the general public's use of its land;
  - (5) district's actions were all quasi-legislative actions / constitutional due process rights of notice and hearing inapplicable
- SPECIAL NOTE: *Petition for Review filed* (Aug. 10, 2021)

## ***Linovitz Capo Shores LLC v. California Coastal Commission***

(June 25, 2021) 65 Cal.App.5th 1106

- Owners of beachfront mobilehomes petitioned for writ declaring coastal development permits (CDPs) from Commission deemed approved under Permit Streamlining Act (Act).
- Trial court denied petition / Court of Appeal reversed and remanded
- Matter of first impression: Commission and HCD have concurrent jurisdiction for mobilehomes in coastal zone
- Between 2011-2013, owners applied for, and received, permits from HCD under Mobile Home Parks Act (MPA) for remodels to change interior walls, outfit exteriors, replace roofs, and add second stories



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## ***Linovitz Capo Shores LLC v. California Coastal Commission***

(continued)

- HCD has exclusive jurisdiction over mobilehome construction and design
- CDP applications concerned renovations on grounds *surrounding* mobilehome structures, e.g. carports, patio covers, barbeques
- Evidence supported the trial court's finding no withdrawal of CDP applications
- Commission's public hearing notice = "public notice required by law" under Act / necessary prerequisites to deemed approval satisfied
- SPECIAL NOTE: *Petition for Review filed* (Aug. 4, 2021)



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## ***Martin v. California Coastal Commission***

(June 23, 2021) 66 Cal.App.5th 622

- Challenge to Commission's conditions for vacant oceanfront lot to eliminate basement and to set back home 79 feet from bluff edge
- HOLDING: Court of Appeal affirmed in part & reversed in part:
  - Commission correctly interpreted Encinitas Local Coastal Program (LCP) calculation of setback
  - Condition prohibiting construction of a basement consistent with LCP removability requirement
- *Lindstrom v. California Coastal Commission* (2019) 40 Cal.App.5th 73 followed (re: same LCP and interpretation of set back requirements)

## ***Newtown Preservation Society v. County of El Dorado***

(June 16, 2021) 65 Cal.App.5th 771

- Challenge to MND for a bridge replacement project (Newtown Road Bridge at South Fork Weber Creek) / writ denied & affirmed by Third District Court of Appeal
- Petitioners argued project may have significant impacts on fire evacuation routes during bridge construction and thus an EIR was required
- Petitioners' erroneously framed fair argument test
- Test = whether *record* contains substantial evidence project may have significant effect on environment or may exacerbate existing environmental hazards
- Petitioners failed to meet their burden / "lay testimony" and focus only on safety concerns
- Unpublished portion of opinion: County did not impermissibly defer mitigation



## ***Kracke v. City of Santa Barbara***

(May 4, 2021) 63 Cal.App.5th 1089

- Short-term vacation rental (STVR) Coastal Zone case
- Manager of STVR sought writ to compel allowing rental as previously allowed b/f ban / writ was granted
- Court of Appeal held City's ban constituted "development" under Coastal Act / required CDP or amendment to LCP
- Examined *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896 (HOA could not ban STVRs in Oxnard's Coastal Zone; decision to ban or regulate must be made by the City and Commission)
- STVRs not expressly included in Santa Barbara LCP / Court of Appeal concluded exclusion did *not* excuse approval by both City and Commission or applicability of the Coastal Act

*\*Petition for Review denied (Aug. 11, 2021)*



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## ***Issakhani v.***

## ***Shadow Glen Homeowners Assn., Inc.***

(May 27, 2021) 63 Cal.App.5th 917

- Condo complex guest brought action against a condo complex owner for negligence and premises liability from injuries sustained by being struck by a car crossing the street
- HOLDING: Condo owner had no common law duty of care / summary judgment affirmed
- TAKE-AWAY: Los Angeles City Ordinance did not create duty of care based on rezoning complex's parcel and condition meant to provide adequate guest parking



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## ***Stop Syar Expansion v. County of Napa*** (April 23, 2021) 63 Cal.App.5th 444

- Community group filed a writ challenging planning commission's modified approval of quarry expansion / denied writ affirmed
- Planning commission properly determined project consistent with general plan per CEQA
- Lengthy proceedings since 2008 application / 7 years of environ. review / EIR certified 2015 / Court of Appeal upheld EIR (unreported)
- Reported portion: Admin. appeal limited issues that Court of Appeal would consider

## ***California Coastkeeper Alliance v. State Lands Commission*** (April 8, 2021) 64 Cal.App.5th 36

- CEQA case involving certified EIR for Poseidon desalination plant in City of Huntington Beach
- In 2010, nonparty City was lead agency for CEQA and certified a 2010 subsequent EIR / Project did not move forward
- Poseidon modified project to address lease modification with State Lands Commission / in 2017, Commission certified Supplemental EIR
- HOLDING: (1) No CEQA violation b/c Commission was not initially lead agency; (2) No unlawful piecemealing/segmenting environmental review

# Notable Unreported Court of Appeal Cases



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## ***Boppana v. City of Los Angeles***

(July 16, 2021) 2021 WL 3012620 [unreported case]

- Case re: land use permits for accessory structures and dispute b/w neighbors
- Fair hearing/abuse of discretion issues raised
- Good summary (with citable precedent) in determining whether a city complied with required procedures, whether a city's findings are supported by substantial evidence, and deference of courts (*Mateel Environmental Justice Foundation v. Office of Environmental Health Hazard Assessment* (2018) 24 Cal.App.5th 220, 229; *Exxon Mobil Corp. v. Office of Environmental Health Hazard Assessment* (2009) 169 Cal.App.4th 1264, 1276)



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***Tchejeyan v. City Council of City of Thousand Oaks***  
(July 7, 2021) 2021 WL 2819393 [unreported case]

- Case in which the city moved to dismiss plaintiff's writ petition based on: (1) failure to timely serve an amended petition, and (2) failure to name Verizon Wireless as an indispensable party
- Court of Appeal affirmed dismissal, holding 90 days in Gov. Code § 65009(c)(1)(E), not 180 days in § 65009(d), applied
- Court held City Council's decision adopted on date of resolution and effective immediately (citing *Marquez v. Medical Bd. of California* (2010) 182 Cal.App.4th 548, 558)

***Patane v. County of Santa Clara***  
(June 30, 2021) 2021 WL 2679034 [unreported case]

- CEQA case where petitioner contended:
  - (1) EIR's conclusions regarding aesthetic impact of light emitted from a proposed greenhouses during non-daylight hours, specifically sky glow on cloudy skies, were not supported by substantial evidence;
  - (2) EIR's mitigation measures for greenhouse lighting were inadequate; and
  - (3) the county's response to comments by petitioner's lighting expert were inadequate.
- Court of Appeal found no merit to petitioner's contentions and affirmed trial court judgment

### ***Sasan v. County of Marin***

(June 10, 2021) 2021 WL 2373509 [unreported case]

- Case that involved a planning commission approval of a design review application subsequently reversed on administrative appeal by the board of supervisors
- Petitioners challenged final board action and supporting findings were legally defective and unsupported by substantial evidence
- The Court of Appeal disagreed, finding that the board's findings satisfied *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [must show the “analytic route the administrative agency traveled from evidence to action”].)

## ***Questions?***