



Land Use & CEQA Update

Presented to the League of California Cities
2023 City Attorneys' Spring Conference

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AGENDA

- GENERAL OBSERVATIONS re CASES
 - LAND USE CASES (*Quickly...*)
 - *Constitutional Questions*
 - *Housing & Housing-Related*
 - *Other Land Use Issues*
- CEQA / ENVIRONMENTAL LAWS CASES
 - *Exemptions From CEQA*
 - *Environmental Impact Reports*



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LAND USE CASES

Constitutional Questions



Gearing v. City of Half Moon Bay

(9th Cir. 2022) 54 F.4th 1144

Background Summary:

- Regulatory Taking and Eminent Domain
- City denied Landowner Housing Development
- City then Initiated Condemnation Proceedings
- City Removed to Federal Court & sought Pullman Abstention pending Eminent Domain Action

Take Aways:

- Ninth Circuit affirmed Applying Pullman Abstention
- Distinguished from Knick & Pakdel cases
- No Exhaustion Delay / Could Moot or Narrow Issues

Shenson v. County of Contra Costa

(2023) 89 Cal.App.5th 1144

Background Summary:

- Owners of Residential Properties Adjacent to Creak
- Subdivision with Map over 40 Years Ago
- Condition of Approval = Drainage into Creak
- Drainage Improvement Failed / Damage to Properties / Inverse Condemnation and Related Torts

Take Aways:

- Undisputed Facts: County Did Not Own or Exercise Control over Waterway or Drainage Improvements
- County Never Accepted Offers of Dedication



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Ventura 29, LLC v. City of San Buenaventura

(2023) 87 Cal.App.5th 1028

Background Summary:

- Developer Brought Inverse Condemnation and Related Torts
- City Engineer Verbally Modified Grading Plan
- Remove Uncertified Fill City Dumped 38 Years Ago

Court Proceedings:

- Trial Court Sustained Demurrer w/o Leave
- Court of Appeal Affirmed



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Ventura 29, LLC v. City of San Buenaventura

(2023) 87 Cal.App.5th 1028 (continued)

Take Aways:

- Inverse Cond. Claim Barred – Failed to Exhaust Admin. Remedies Available for Verbal Modification at City
- Argument Time-Sensitive Construction Would Halt = No Excuse to follow Exhaustion Requirement
- Developer Lack of Knowledge to Right to Administrative Appeal Did not Excuse Exhaustion Requirement
- City Not Equitably Estopped from Asserting Forfeit of Inverse Cond. Claim
- Developer Concession = Prior Owners May Have Known Uncertified Fill - Precluded Application of Discovery Rule

LAND USE CASES

Housing & Housing-Related



Socal Recovery, LLC v. City of Costa Mesa

(9th Cir. 2023) 56 F.4th 802



Background Summary:

- Sober living home operators
- Special use permits & reasonable accommodation
- U.S. Fair Housing Act and ADA, State FEHA
- Summary judgment below / Ninth Circuit Reversed

Take Aways:

- Operators had standing
- Operators could satisfy “actual disability” prong
- No Requirement City believed residents disabled



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Johnson v. City of Grants Pass

(9th Cir. 2022) 50 F.4th 787



Background Summary:

- Class Action / 8th Amend. Cruel & Unusual Punishment
- Ordinances Prohibit Sleeping, Camping, Overnight Parking with Criminal Penalties & Fines
- Number of Homeless Persons Outnumber Beds

Take Aways:

- Ninth Circuit: Prohibiting Bed Supplies Unconstitutional
- Followed Martin v. Boise Precedent
- City’s Voluntary “Non-Enforcement” Does Not Moot Case
- Upheld Evidence and Determination of Class



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Potter v. City of Lacey (Washington)

(9th Cir. 2022) 46 F.4th 787

Background Summary:

- Truck Owner Lived in Trailer
- Parked in City Hall Lot Overnight
- Alleged RV Parking Ordinance Unconstitutional
- U.S. & State Freedom of Intrastate Travel / Cruel & Unusual Punishment / Unreasonable Search & Seizures

Take Aways:

- District Court Granted Summary Judgment for City
- Ninth Circuit Punted: Certified Interstate Travel Question to Washington State Supreme Court
- Dissent: No Interstate Travel / No Constitutional Violation



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Save Lafayette v. City of Lafayette

(2022) 85 Cal.App.5th 842

Background Summary:

- Planning & Zoning Law (Published) and CEQA (Unpublished)
- Permit Streamlining Act (Gov. Code §65920 *et seq.*) and Housing Accountability Act (§65589.5)
- City Approved Apartment Project in 2011 / EIR in 2013
- Project Suspended / Started Again in 2018
- Legal Issue: Project Consistent for 2011 but not 2018 under City's General Plan and Zoning Ordinance

Take Aways:

- PSA Silent on Suspending Project or City Failure to Act
- Because Housing Project – HAA Supported Finding the PSA Would Deem Project Application Complete in 2011



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LAND USE CASES

Other Land Use Issues



Spencer v. City of Palos Verdes Estates

(2023) 88 Cal.App.5th 849

Background Summary:

- Lunada Bay on PV Peninsula / Non-Local Surfers Alleged Harassment Against Locals (“Bay Boys”)
- Alleged City Conspired with Locals to Block Coastal Access Coastal Act Violation
- Bay Boys (not City) Built Masonry & Wood “Fort”
- Trial Court Granted Judgment on Pleadings for City / Reversed

Take Aways:

- “Fort” was “Development” under Coastal Act
- City as Landowner May Be Liable (*Leslie Salt* and *Lent* cases)
- Maintaining Unpermitted Structure = Landowner “Undertaking Activity” for purposes of Coastal Act
- NOTE: Harassment *May* be “Development” under Act

Hamilton and High, LLC v. City of Palo Alto

(2023) 89 Cal.App.5th 528

Background Summary:

- Mitigation Fee Act / Downtown Commercial In-Lieu Parking Fees At Issue
- Retention of fees
- More than 5 years / No Public Reports or Findings

Take Aways:

- In-Lieu Parking Fee = “Fee” under Mitigation Fee Act
- Mandamus Claim *Accrued* from Denial of Refund
- Standards for Set-Aside of Zoning Action = No Excuse
- Five Year Return of Funds Requirement Applies



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CEQA / ENVIRONMENTAL LAW CASES

Exemptions from CEQA



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Committee to Relocate Marilyn v. City of Palm Springs (2023) 88 Cal.App.5th 607



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Committee to Relocate Marilyn v. City of Palm Springs (2023) 88 Cal.App.5th 607

Background Summary:

- Towering Statue of Marilyn Monroe in Middle of Street
- Writ Challenging “Temporary” Closure of Street (3 Years)
- Class 1 Existing Facilities CEQA Exemption
- Trial Court Granted Demurrer / Appellate Court Reversed

Take Aways:

- 3 Years Not Temp. Closure under Vehicle Code §21101
- Street Vacation Procedure (St.&Hwy. Code) Claim Abandoned / No Discussion in Opinion
- CEQA Notice of Exemption – Said “Vacating Street”
- Material Change from Notice of Exemption (NOE)
- Longer 180-Day Limitations Period Applied

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Pacific Palisades Residents Ass'n v. City of Los Angeles (2023) 88 Cal.App.5th 1338

Background Summary:

- Challenge Against City & Coastal Commission
- Eldercare Facility – Extensive Opposition
- Appellate Court Affirmed / Sufficient Evidence for Class 32 In-Fill Exemption

Take Aways:

- Facility Not Subject to Yard Requirements
- Court Deferred to City re Compatibility / Subst. Evid.
- Mediterranean Style 1 or 2 Story Surrounding Homes / “Uniformity” Not Required, just “Compatibility”
- View Preservation in Community Plan - Not Dispositive



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Arcadians for Environmental Preservation v. City of Arcadia (2023) 88 Cal.App.5th 418

Background Summary:

- Home Remodel Project
- Petitioner AEP – Neighbor of Owner for Remodel Project
- Class 1 Existing Facilities CEQA Exemption (Expand 1st Floor and Add 2nd Floor)
- Trial Court Denied Petitioner / Failure to Exhaust Admin. Remedies

Take Aways:

- Affirmed – Failed to Exhaust / NO Allegations or Discussion re Class 1 CEQA Exemption
- Adequate Public Notice that Minor Alteration Exemption Would Be Discussed
- City - Implied Finding No Exception Barred CEQA Exemption
- AEP failed to establish that the cumulative effects



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Saint Ignatius Neighborhood Ass'n v. City and County of San Francisco

(2022) 301 Cal.Rptr.3d 641

Background Summary:

- City Approved High School Application to Install Four 90-Foot Light Standards in Stadium
- Issue: Whether Class 1 (Existing Facilities) and Class 3 (Construction of Small Structures) CEQA Categorical Exemptions Apply

Take Aways --- *No*

- Class 1: No Stadium Expansion, but Could Expand Night-time Use to 150 Nights per Year
- Class 3: 90-Foot Standard NOT Small Structures



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CEQA / ENVIRONMENTAL LAW CASES

Environmental Impact Reports



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East Oakland Stadium Alliance v. City of Oakland

(2023) 89 Cal.App.5th 1226

Background Summary:

- Oakland A's Waterfront Ballpark District Project
- Appx. 55 Acres at the Port of Oakland / "Ambitious" Commercial & Residential Components
- Mostly Parking and Storage as Existing Uses
- Long-time Industrial Use / Contamination Concerns
- Relocation of Existing Uses
- Substantially New Pedestrian and Vehicle Traffic
- City Prepared EIR / One Year b/w Draft & Certified



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East Oakland Stadium Alliance v. City of Oakland (continued)

(2023) 89 Cal.App.5th 1226

Environmental Impacts and CEQA Issues:

- Mitigation Measure / "Blame it on the Wind"
- Railroad Impacts
- Displacement of Current Parking and Storage
- Air Quality and Greenhouse Gases
- Hazardous Materials
- Cumulative Impacts
- Recirculation of the Draft EIR



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East Oakland Stadium Alliance v. City of Oakland (continued)

(2023) 89 Cal.App.5th 1226

Take Aways:

- Trial Court – Writ Issued for Wind Mitigation
- Appellate Court Affirmed
- Wind: Lacked Specific Performance Standard (CEQA Guidelines §15126.4)
- MM: Compare Wind Hazards to Existing Conditions at time of Development of Buildings
- Contrast Contamination MM: Required Preparation of RAP and DTSC Must Approve Prior to Grading



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Make UC a Good Neighbor v. Regents of University of California

(2023) 88 Cal.App.5th 656



Background Summary:

- At Issue: U.C. Berkeley's 2021 Long Range Development Plan
- "High-level planning document" – Guides Land & Infrastructure Development
- Estimates Enrollment / No Enrollment Caps / Amend Plan When "Substantial" New Growth
- Housing (Campus Houses 23% of Students)
- Chancellor's Initiative to Immediately Address Housing with Specific Housing Project
- U.C. Prepared EIR



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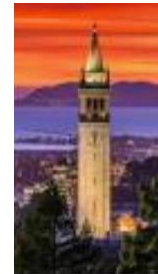
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Make UC a Good Neighbor v. Regents of University of California (continued)

(2023) 88 Cal.App.5th 656

CEQA Issues:

- “Hybrid” of Program & Project EIR
- Alternatives to the Plan
- Alternatives to the Specific Housing Project
- Piecemealing Long Range Plan
- Noise Impacts
- Population Growth
- Recirculation of the Draft EIR



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Make UC a Good Neighbor v. Regents of University of California

(2023) 88 Cal.App.5th 656

Take Aways:

- Trial Court – Denied Writ on All Grounds
- Appellate Court – Reversed & Remanded
- Range of Alternatives in the Program EIR for the Long Range Plan Not Manifestly Unreasonable
- Housing Project EIR Deficient – Did Not Analyze ANY Alternative Locations
- Revitalizing U.C.-Owned Property No Excuse for No Alternative Locations
- Fair Argument - Proposed Housing Project Contributes Noise (Student Parties)
- Insufficient Evidence Housing Project Has Potential Impact re Social or Economic Impacts for Displacement
- No Improper Piecemealing



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IBC Business Owners for Sensible Development v. City of Irvine

(2023) 88 Cal.App.5th 100

Background Summary:

- At Issue: Approval of Office Complex Development in Irvine Business Complex (IBC)
- IBC Covers 2,800 acres / 2010 Program EIR
- Project on 4.95 acres / Replace 2-story 69,000sq.ft. with 5- and 6-story Office Buildings with 275,000sq.ft.
- Addendum – No Impacts Other Than Analyzed in Program EIR
- Writ Granted by Trial Court / Affirmed



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IBC Business Owners for Sensible Development v. City of Irvine (continued)

(2023) 88 Cal.App.5th 100

Take Aways:

- New Vehicle Miles Traveled Metric did not apply
- Project Did Not Violate Traffic Assumptions in EIR
- Evidence Not Supportive of Greenhouse Gas Emissions Analysis from EIR
- Unusual Circumstances Exist: Class 32 In-Fill Exemption Could Not Be Applied
- Reasonable Possibility Project Might Have Significant Impact from GHGs



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Save Our Capitol! v. Department of General Services

(2023) 87 Cal.App.5th 655

Background Summary:

- Project: Demolition & Construction of Capitol Annex
- EIR Prepared – DGS and Joint Rules Committee



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Save Our Capitol! v. Department of General Services (continued)

(2023) 87 Cal.App.5th 655

Court Proceedings:

- Trial Court Denied Writ Entirely
- Third District Reversed In Part / Dissenting Opinion

CEQA Issues and Take Aways:

- Project Description Impermissibly Unstable – Change in Final EIR to Glass Exterior Design of the Annex
- Impact on Historical Resources Deficient / Glass Design
- Impacts on Light & Glare Deficient / Glass Design
- EIR Failed to Analyze Reasonable Range of Alternatives
- Substantial Evidence Supported Construction Traffic Less than Significant

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Save North Petaluma River and Wetlands *v.*

City of Petaluma (2022) 86 Cal.App.5th 207

Background Summary:

- CEQA Challenge to 180-Unit Apartment Complex
- Trial Court Denied Writ / Appellate Court Affirmed

CEQA Issues and Take Aways:

- Special Status Plant and Animal Species
 - Alleged – No Investigation in 2007 When NOP Issued
 - Court: Reliance on 2004 Wetlands Research Associates Special Status Species Report Sufficient
- Public Safety Impacts
 - Referring to Cal. Fire Code Sufficient for Fire Safety
 - City Fire Department Approved Emergency Access

Thank You