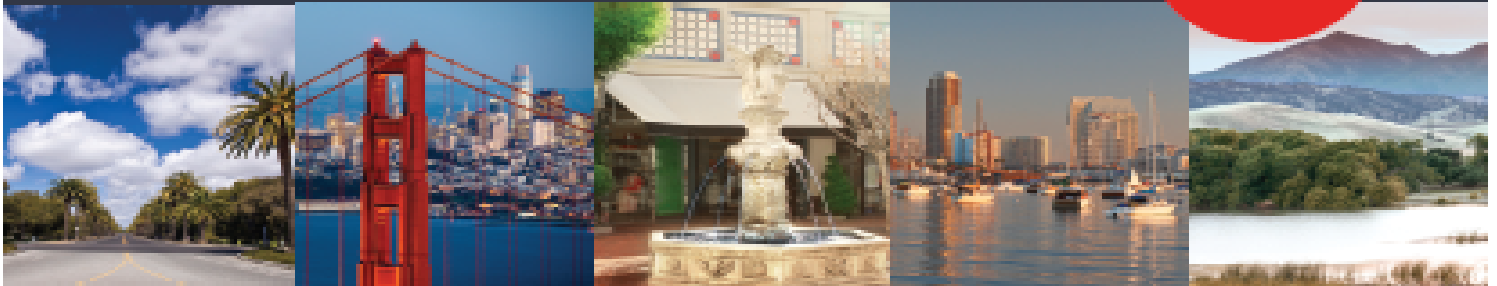


City Properly Approved Project Under Land-Use Standards Existing at Time of Original Application

Under the Housing Accountability Act, a proposed residential development should be evaluated under the land-use standards that applied when the original application was deemed complete, not those at the time of the final decision on the project. *Save Lafayette v. City of Lafayette*, 85 Cal.App.5th 842 (2022).

33rd Annual Land Use & Development Law Briefing

2023



In 2011, a developer applied for approval of a 315-unit apartment project on land zoned Administrative/Professional Office — a designation that allowed multi-family development — and the City certified an EIR for the project. Before final action on the project, the developer and the City agreed to suspend processing while the developer pursued an alternative, 45-unit single-family proposal. In 2018, the City approved the single-family project, but the approval was successfully overturned by referendum. A month after the referendum, the City changed the General Plan land-use designation and zoning of the subject parcel to

single-family residential. The developer then reactivated the 2011 project application and the City approved the 315-unit apartment project.

Petitioners challenged the approval, contending that the project was inconsistent with the site's General Plan designation and zoning when approved. Petitioners relied on the Permit Streamlining Act, which provides that if an agency fails to approve or disapprove a development project within 180 or 270 days after certifying an EIR, the applicant may provide public notice that the project will be deemed approved if the agency does not act within 60 days of the notice. Petitioners argued that because the developer did not pursue this course of action, the City's power to approve the original application lapsed by operation of law.

The court rejected this reading of the PSA, pointing out that the PSA nowhere states that an application is deemed withdrawn, disapproved, or resubmitted if the agency fails to act within the PSA's time limits. Under the PSA's statutory scheme, the consequence of an agency's failure to timely act is that a project is deemed approved, not disapproved.

The court also found that petitioners' reading conflicted with the Housing Accountability Act's goal of encouraging development of affordable housing by "curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects." These considerations, together with the absence of any legal authority providing that an agency loses power to act on a project application within a particular time period, weighed in favor of applying the standards in effect at the time of the original application rather than at some later date after the City had changed the zoning of the property.

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. [View posts by topic](#). [Subscribe ?](#)

[View the blog](#)