Blogs
February 04, 2021
California Land Use & Development Law Report

2020 Land Use and Development Case Summaries

Below are summaries of the key California and Ninth Circuit land use and development cases decided in 2020. Each case name is linked to our more extensive discussion of the case on the California Land Use & Development Law Report.

1. Planning and Zoning

GRANNY PURPS, INC. v. COUNTY OF SANTA CRUZ **53 Cal. App. 5th 1 (2020)** The court of appeal held that the County of Santa Cruz was required to return approximately 2,000 medical marijuana plants seized from a dispensary. Local law enforcement had seized the plants due to a violation of a county zoning ordinance that prohibits cultivation of over 99 medical marijuana plants. The court reasoned that the plants were not subject to seizure because the local zoning ordinance did not change the legal status of medical marijuana under state law. Because medical marijuana is not contraband in California, and local governments are bound by state law, local governments cannot withhold legally possessed marijuana plants. ***LATEEF V. CITY OF MADERA*** **45 Cal. App. 5th 245 (2020)** Plaintiff appealed to the City Council after his conditional permit was denied by the Planning Commission. At the time of the hearing, only five of the seven councilmembers were eligible to vote: one council seat was vacant, and one councilmember had recused himself from voting. Although the Council voted four to one to overturn the Planning Commission's decision, the City determined that the motion failed to meet the requirement in the municipal code that "five-sevenths vote of the whole of the Council shall be required to grant, in whole or in part, any appealed application denied by the Commission." The court confirmed the City's interpretation, finding that nothing in the municipal code indicated that the "whole of the council" meant only those present and voting. ***PETROVICH DEVELOPMENT CO., LLC v. CITY OF SACRAMENTO*** **48 Cal. App. 5th 963 (2020)** The court invalidated the City Council's denial of plaintiff's application for a conditional use permit for operation of a gas station, finding that the actions of one of the councilmembers demonstrated hostility and bias toward the project and resulted in denial of a fair hearing. The court relied on evidence that the councilmember was actively lining up votes of other councilmembers against the project, as well as advising a project opponent on how to lobby the council. These concrete facts showed that the councilmember acted as an advocate, not an impartial decisionmaker, and should have recused himself from voting on the appeal. His actions demonstrated an unacceptable probability of actual bias and denied plaintiff a fair hearing.

2. Subdivision Map Act

HONCHARIW v. COUNTY OF STANISLAUS **51 Cal. App. 5th 243 (2020)** Honchariw sued the County after it refused to process his final map because the project did not comply with fire suppression conditions attached to the tentative map. The County argued Honchariw's challenge was barred by the 90-day statute of limitations under the Map Act because it involved conditions attached to the tentative that had been approved years earlier. The court disagreed, finding that the main issue was not the validity of the map conditions but the County's interpretation of those conditions. Because Honchariw filed suit within 90 days after the dispute regarding the map conditions arose, the challenge was timely.

3. Takings

BRIDGE AINA LE'A, LLC v. STATE OF HAWAII LAND USE COMMISSION **950 F.3d 610 (9th Cir.**

2020) The State of Hawaii Land Use Commission reversed the conditional use classification of 1,060 acres of vacant land from urban to the prior agricultural use classification because, in 22 years, various landowners failed to comply with a condition of the changed classification requiring the completion of 385 affordable housing units. The court held that the Commission's reversion of the conditional use did not constitute an unconstitutional taking under (a) Lucas v. South Carolina Coastal Council because the landowner could still reap economic benefits from the property and (b) under Penn Central Transportation Company v. City of New York because the reclassification did not substantially affect the overall valuation or potential sales and the landowner should have anticipated reversion for failure to satisfy certain conditions running with the land. ***PAKDEL v. CITY AND COUNTY OF SAN FRANCISCO*** **952 F.3d 1157 (9th Cir. 2020)** Plaintiffs applied to convert their property from a tenancy-in-common to condominium ownership. The City conditioned the conversion on plaintiffs granting the existing tenant a lifetime lease. Plaintiffs initially agreed to the lifetime lease but, six months after their conversion map was approved, plaintiffs asked the City to exempt them from the lease requirement. When the City refused, plaintiffs filed a takings claim. The Ninth Circuit ruled that the claim was not ripe because, despite multiple opportunities to do so, plaintiffs never sought an exemption from the lease requirement at any time during the approval process. Their post-approval request for waiver of the requirement came too late, and their failure to seek a timely exemption rendered their takings claim unripe. ***RUIZ v. COUNTY OF SAN DIEGO*** **47 Cal. App. 5th 504 (2020)** Plaintiff brought an inverse condemnation action seeking just compensation arguing that the County had accepted a drainage easement and had a duty to maintain a storm drain pipe because the County used the pipe for 50 years as part of the public drainage system. The court noted that a public entity's use of private land over a period of time may constitute implied acceptance of an offer of dedication if the entity exerts control over the property. Here, however, the County had expressly declined the developer's offer to dedicate an easement through the pipe and had no control over or access to the property. The court also held that although a public entity may be liable in an inverse condemnation action if it makes unreasonable alterations to its upstream property that result in increased volumes of water that cause damage to a downstream property, in this case plaintiff's failure to prove the proportion of damage attributable to the County's conduct precluded a damages award. ***RUTGARD v. CITY OF LOS ANGELES*** **52 Cal. App. 5th 815 (2020)** In 2007, the Los Angeles City Council enacted, and the Mayor thereafter approved, an ordinance authorizing condemnation of a two-story building. However, due to an economic downturn, the City never developed the property as planned. In 2017, the City Council enacted an ordinance reauthorizing the public use of the property. The Mayor approved the 2017 ordinance 10 years and 19 days after approval of the 2007 ordinance. Code of Civil Procedure section 1245.245 provides that if the acquired property has not been developed for its intended public use within 10 years of the condemnation resolution's adoption, the City must adopt another resolution reauthorizing its intended public use. The court determined that "final adoption" in this case should be measured from the time the Mayor approved the ordinances, not the date of enactment. Because the 2017 ordinance was approved 19 days past the 10-year deadline, the City was required to offer to sell the property back to its original owner at present market value. ***SLPR, LLC v. SAN DIEGO UNIFIED PORT DISTRICT*** **49 Cal. App. 5th 284 (2020)** Plaintiffs, a group of Coronado property owners, brought a quiet title and inverse condemnation action against the State and the Port contending that dredging in the San Diego Bay from 1998 to 2005 had damaged, and taken portions of, their bayfront properties without just compensation. The court found that a 1931 judgment resolving a title dispute between plaintiffs' and defendants' predecessors-in-interest established the boundaries between their respective properties, and that the plaintiffs therefore did not own the property they asserted had been taken or damaged. This conclusion was supported not only by the record in the 1931 action itself but also by extrinsic evidence showing that, following entry of judgment, temporary wood stake boundary markers had been replaced with concrete monuments, reflecting a "permanent fixed line" between tidelands and uplands property. ***SAN JOAQUIN REGIONAL TRANSIT DIST. v. SUPERIOR COURT (SARDEE)*** **59 Cal.App.5th 39 (2020)** An agency commenced proceedings to condemn a two-acre site owned by Sardee and used to manufacture packaging equipment. The agency obtained possession of the site but temporarily leased a portion of it back to Sardee pending relocation of machinery and personnel to another site. The relocation was almost complete when the agency decided to abandon the condemnation proceedings. When Sardee then sought to recover the costs of closing down and moving its operations, the

agency argued that the applicable statute only permitted damages if the condemnee had entirely vacated the premises at the time the proceedings were abandoned. The court disagreed, noting that although the statute referred to damages "after the defendant moves from property," this did not require complete physical dispossession of the premises. Sardee was well into the process of moving at the time proceedings were abandoned and could therefore recover damages for the resulting costs.

3. Vested Rights

NORTH MURRIETA COMMUNITY, LLC v. CITY OF MURRIETA **50 Cal. App. 5th 31 (2020)** Developer and the City of Murrieta entered into a development agreement, which extended the term of a vesting tentative map for 15 years, locking in regulations and some fees for the same period. In 2003, the City passed an ordinance to raise funds to improve the regional transportation system and subsequently collected fees from the developer. Developer sued seeking a refund arguing that the vesting tentative map and the development agreement prohibited the imposition of new fees. The appellate court held that while a development agreement may extend rights under a vesting tentative map beyond their normal term, the terms of the development agreement, not the map, control in the event of a conflict. Here, although the parties extended the term of the tentative vesting map, they also agreed that the City reserved the right to impose additional fees for city-wide impacts that were not fully mitigated at the time of project approval. ***REDONDO BEACH WATERFRONT, LLC v. CITY OF REDONDO BEACH*** **51 Cal. App. 5th 982 (2020)** The court of appeal held that a development in the City of Redondo Beach was vested against a later voter initiative by virtue of an approved vesting tentative map notwithstanding its location in the Coastal Zone. The case arose after the City approved the developer's vesting tentative map and executed a lease for the project area, only to terminate it a year later, contending that provisions of a voter initiative would interfere with the City's lease obligations. The developer filed suit claiming its rights had vested at the time its vesting tentative map application was deemed approved. Project opponents intervened, contending that the vesting provisions of the Map Act did not apply to development within the Coastal Zone because the local agency's decisions are subject to review by the Coastal Commission. The court held that the developer acquired vested rights that were protected against application of the voter initiative. The court also rejected intervenors' argument that the project's location in the Coastal Zone vitiated the vested rights, noting that while this rendered the project subject to Coastal Commission jurisdiction, it did not impair the enforceability of vested rights against the City. ***OAKLAND BULK & OVERSIZED TERMINAL LLC v. CITY OF OAKLAND*** **960 F.3d 603 (9th Cir. 2020)** The City of Oakland and plaintiff entered into a statutory development agreement for the redevelopment of the Oakland Army Base, which permitted the City to adopt new regulations if the City determined "based on substantial evidence and after a public hearing that a failure to do so would place existing or future occupants or users . . . neighbors, in a condition substantially dangerous to health or safety." In response to public opposition to coal shipping, the City Council held public hearings, analyzed evidence presented by experts, and approved an ordinance prohibiting coal shipping through the terminal. The appellate court held that plaintiff's suit for breach of the development agreement should be treated as a breach-of-contract action, not an administrative law proceeding because deferring to the government agency's findings would "effectively create an escape hatch for the government to walk away from contractual obligations" through "self-serving regulatory findings insulated by judicial deference . . . ." Accordingly, the trial court was correct in making factual findings based on the evidence presented at trial, considering evidence not presented at the public hearing, and affording no deference to the City's factual determinations.

4. Initiative And Referendum

COUNTY OF KERN v. ALTA SIERRA HOLISTIC EXCHANGE SERVICE **46 Cal. App. 5th 82 (2020)** The County brought a nuisance action against marijuana dispensaries pursuant to a 2016 moratorium on new medical marijuana dispensaries and a 2017 ordinance declaring the operation of marijuana dispensaries a public nuisance. Defendants argued that the 2016 and 2017 ordinances violated the Elections Code by reenacting

essential features of a 2011 ordinance repealed via referendum. The court held that a county board could reenact the essential features of an ordinance repealed via referendum following a reasonable period of time provided that a material change in circumstances had occurred. The court determined that the increased amount of County resources spent on new dispensaries; information about the negative effects of legalization in Colorado, including increased traffic incidents and hospitalizations; and the adoption of Proposition 64 and the Medical and Adult-Use Cannabis Regulation and Safety Act of 2017 collectively constituted a material change in circumstances. Accordingly, the County's reenactment of essential features of the 2011 ordinance repealed via referendum did not violate the Elections Code. ***WILDE v. DUNSMUIR*** **9 Cal. 5th 1105 (2020)** Plaintiff filed suit to compel the City of Dunsmuir to place a referendum on the ballot regarding new water rates. The City refused to place plaintiff's petition on the ballot on the ground that rate setting is an administrative act not subject to referendum and Proposition 218 does not grant voters the right to challenge water rates by referenda. Plaintiff argued that the court should classify water rates as "fees" and hence not subject to the bar against challenges by referendum. The California Supreme Court held that water rates are "taxes" for the purposes of the referendum tax exemption, even though they are categorized as "fees" in Proposition 218. The court reasoned that the term "tax" has no fixed meaning and that water rates are essential to government services, which the referendum tax exemption was designed to keep free from disruption. While municipal water rates may be challenged by other means, such as initiative or protest, they are not subject to referendum. ***CITY AND COUNTY OF SAN FRANCISCO v. ALL PERSONS INTERESTED IN THE MATTER OF PROPOSITION C*** **51 Cal. App. 5th 703 (2020)** San Francisco voters approved Proposition C, a citizen-sponsored initiative that authorized the City to collect business taxes to fund housing, mental health and other programs. Business and taxpayer associations contended the measure was invalid under Propositions 13 and 218 because it had not been enacted by two-thirds of the voters. The court rejected the challenge, holding that the two-thirds majority vote requirement did not apply to tax measures adopted by initiative, as distinct from those enacted by councils, boards and other local government bodies. ***CITY OF FRESNO v. FRESNO BUILDING HEALTHY COMMUNITIES*** **58 Cal. App. 5th 884 (2020)** Agreeing with the First District's opinion in City and County of San Francisco v. All Persons Interested in the Matter of Proposition C, 51 Cal. App. 5th 703 (2020), the Fifth District Court of Appeal held that there is nothing in either Proposition 13 or Proposition 218 that implicitly overruled the power of initiative to enact laws by simple majority vote. The court accordingly upheld a tax initiative approved by fewer than two thirds of the voters of the City of Fresno. The court observed that, while voters are bound by the substantive limitations applicable to legislative actions taken by boards and councils, they are not bound by procedural requirements such as a two-thirds vote requirement. The court also rejected the argument that because the Elections Code allows councils and boards to adopt citizen- sponsored initiatives outright rather than putting them to a vote, failing to require a supermajority vote would "create a playground for mischief." The court refused to address this hypothetical scenario, observing that this concern should be addressed to the Legislature, not the courts.

5. Public Use

MARTIS CAMP COMMUNITY ASSOCIATION v. COUNTY OF PLACER **53 Cal. App. 5th 569 (2020)** The Streets and Highways Code provides that a city or county may abandon a public road if it finds the road is unnecessary for present or prospective public use and that the abandonment is in the public interest. Plaintiffs claimed the County's decision to vacate a public road violated the statute because its determination that the road was unnecessary was contradicted by evidence of extensive ongoing public use. The court upheld the finding based on evidence that the road was never intended to be part of the public transportation network and instead was simply being used as a convenient shortcut. and that the road was neither designed nor approved to accommodate or support such use. The court also rejected the assertion that the County's reservation of public transit, emergency and utility easements along the right of way demonstrated the road was necessary for public use. Observing that the statute authorized abandonment of all or part of any road, the court concluded the County's decision to abandon use for general vehicular traffic while reserving the use for public transit and emergency access purposes was reasonable and consistent with the statute. ***TIBURON/BELVEDERE***

RESIDENTS UNITED TO SUPPORT THE TRAILS v. MARTHA COMPANY **56 Cal. App. 5th 461 (2020)** Plaintiffs claimed the public's longstanding use of trails on Martha's property established a recreational easement under the doctrine of implied dedication. Citing the trial court's extensive findings, the appellate court concluded that the association failed to demonstrate that the public use was sufficient to put the landowner on notice because the users, for the most part, comprised a relatively small group of neighbors, not the public at large. Even assuming the association had established that the trails were used by a significantly large and diverse group of the public, Martha made adequate bona fide attempts to prevent public use by, among other things, installing no trespass signs and fences.

6. Brown Act

FOWLER v. CITY OF LAFAYETTE **46 Cal. App. 5th 360 (2020)** Homeowners sought approval from the City to build a cabaña near a tennis court on their property. During the approval process, the homeowner's attorney threatened to sue the City if it denied the project. The City Attorney notified the City Council of the litigation threat orally in a closed session. The threat was not noted in the agenda for any of the public meetings and not included in the information packets made available to the public before the meetings. Project opponents brought an action contending the City violated the Brown Act by discussing the application in closed hearings, thereby depriving them of their right to a fair hearing. The court determined the City had violated the Brown Act by not including the litigation threat in the agenda packet made publicly available before the meeting. However, because the project itself had been discussed in multiple, properly noticed open sessions, plaintiffs could not show they were prejudiced or lacked a fair opportunity to present their case. Therefore, the court refused to declare the action to approve the project null and void under the Brown Act.

7. California Coastal Act

11 LAGUNITA, LLC v. CALIFORNIA COASTAL COMMISSION **58 Cal. App. 5th 904 (2020)** The Coastal Commission issued a Coastal Development Permit in 2015 for reinforcement of an existing seawall at the base of a 1950's Laguna Beach home. The CDP provided it would expire and the seawall would have to be removed if the home were "redeveloped in a manner that constitutes new development." Without notice to the Commission, subsequent owners significantly remodeled the home, including demolishing exterior walls down to their studs, replacing roofing materials, and reinforcing the entire framing system. When Commission staff learned of the work, they sent an enforcement notice requesting that the remodeling cease. After the owners refused, the full Commission voted unanimously to issue a cease-and-desist order requiring the owners to remove the seawall and imposed a $1 million administrative penalty. The court of appeal upheld both the order and the penalty. It rejected the owners' claim that because the City did not consider the work a "major remodel," they reasonably proceeded with the work without notifying the Commission. The court noted that the work plainly constituted "new development" under the Coastal Act regardless of how it was characterized by the City. It also held that the $1 million penalty was not an abuse of discretion in light of the gravity of the violation, the cost of enforcement and evidence that the owners deliberately sought to avoid Commission review of the proposed remodel because of the likelihood Commission staff would find it constituted unpermitted new development. ***CITIZENS FOR SOUTH BAY COASTAL ACCESS v. CITY OF SAN DIEGO*** **45 Cal. App. 5th 295 (2020)** The City planned to rehabilitate an existing building in the City's Coastal Overlay Zone for a transitional housing project. The City's municipal code exempted improvements to existing structures from the requirement to obtain a Coastal Development Permit for development in the Coastal Overlay Zone. In reliance on the exemption, the City Council approved a conditional use permit for the project without a CDP. Petitioners sued, claiming the City's municipal code exemptions were preempted by the Coastal Act because they were more permissive than the existing-structure exemption in the Commission's regulations. The court denied petitioners' claims, finding that because the Commission had certified the City's local coastal program in compliance with the Coastal Act, the Commission's regulations did not apply to the City's CDP decisions. ***MOUNTAINLANDS CONSERVANCY, LLC v. CALIFORNIA COASTAL COMMISSION*** **47 Cal. App. 5th 214 (2020)** Vintners challenged a local

coastal program proposed by Los Angeles County and approved by the California Coastal Commission prohibiting new vineyards within the Santa Monica Mountains Coastal Zone. Plaintiffs argued that the coastal program failed to heed policies favoring the preservation of agricultural lands within the coastal zone and that the evidence failed to justify the ban on new vineyards. The court of appeal found that the coastal program furthered the California Coastal Act policies requiring the Commission to maintain the "maximum amount of prime agricultural land . . . in agricultural production" and forbidding the conversion of other lands "suitable for agricultural use" unless "continued or renewed agricultural use is not feasible." The California Coastal Act definition of "feasible" includes "economic, environmental, social, and technological factors," which the Commission properly considered in support of its finding that the Santa Monica Mountains Coastal Zone is mostly "unsuitable" for agriculture. The court found substantial evidence that additional vineyard development within the Santa Monica Mountains Coastal Zone had the potential to severely disturb natural areas, reduce biodiversity, and impact freshwater resources.

8. Public Bidding

DAVIS v. FRESNO UNIFIED SCHOOL DISTRICT **57 Cal. App. 5th 911 (2020)** The court of appeal found that a contract for construction of a middle school was invalid because the public work was not competitively bid in compliance with the public bidding laws. The school district argued that because construction of the school had already been completed, invalidation of the contract was no longer an effective remedy and therefore the case was moot. The court disagreed, noting that disgorgement of the public funds paid to the contractor was an available remedy under the plaintiff's taxpayer action for unlawful expenditure of public funds and therefore the case was not moot.

9. Development Fees And Exactions

AMCAL CHICO, LLC v. CHICO UNIFIED SCHOOL DISTRICT **57 Cal. App. 5th 122 (2020)** AMCAL constructed a private dormitory complex intended to house unmarried college students, requiring that all renters be at least 18 years old and enrolled in a degree program. AMCAL challenged the School District's levy of school impact fees on the ground the project would not generate any new District students. The court held that, under the Mitigation Fee Act, the District needed only consider the general type of development—such as residential construction—not the specific subtype of development when assessing school impact fees. In this case, the school impact fee was reasonably related to the impacts of new residential construction generally on the school district's school facilities and therefore met the requirements of the Mitigation Fee Act.

10. Religious Land Use And Personalized Institutions Act

CALVARY CHAPEL BIBLE FELLOWSHIP v. RIVERSIDE COUNTY **948 F.3d 1172 (9th Cir. 2020)** Calvary Chapel contended that Riverside violated the Religious Land Use and Institutionalized Persons Act's equal terms provision by adopting an ordinance that prohibited religious assemblies, but permitted "special occasion facilities," including hotels, resorts, and wineries in its "Citrus-Vineyard" (C/V) zone. The Ninth Circuit determined that on its face, the ordinance treated both secular and religious places of assembly the same because both were allowed in the C/V zone if they met the requirements of a "special occasion facility." The court found that churches and other houses of worship were permitted in the C/V Zone if, at some point, they rented their facilities out in return for compensation. Because nothing in the ordinance prevented churches from also holding regular worship services or other religious assemblies in their special occasion facilities, the ordinance did not violate RLUIPA's equal terms provision.

11. Fair Housing Act

AIDS HEALTHCARE FOUNDATION v. CITY OF LOS ANGELES **50 Cal. App. 5th 672 (2020)** A nonprofit

challenged the City's approval of four large "upscale" projects, contending that the approval created a barrier to fair housing in violation of the Fair Housing Act and Fair Employment and Housing Act by contributing to gentrification. The court of appeal rejected petitioner's argument because the City's approval of the project was not an "artificial, arbitrary, or unnecessary barrier" to fair housing. Even though the approvals might cause landlords to raise their rents, they would neither prevent affordable housing nor eliminate housing. The court held that the FHA and FEHA are only designed to eliminate unfair housing policies and do not require a municipality to implement measures to mitigate a project's potentially adverse impact on housing.

12. Unreasonable Search And Seizure

HOTOP v. CITY OF SAN JOSÉ **982 F.3d 710 (9th Cir. 2020)** Plaintiffs challenged provisions of San José's Apartment Rent Ordinance that required landlords to disclose certain information about rent-stabilized units to the City, including a history of the rents and amounts charged as security deposits. Plaintiffs claimed the disclosure requirements constituted an unreasonable search and seizure in violation of the Fourth Amendment, which occurs when the government either physically intrudes upon "persons, houses, papers, [or] effects" or invades a person's "reasonable expectation of privacy." The court held that plaintiffs had not alleged any physical intrusion and had failed adequately to allege they had a reasonable expectation of privacy in the business records at issue. Plaintiffs' claim was that the information constituted "private business records . . . not found in the public domain." However, the court pointed out that plaintiffs already provided very similar information to the City under other regulations. The complaint did not contain any facts showing how the information implicated by the challenged disclosure requirements differed meaningfully from allegedly private information landlords already provide to the City in other contexts under regulations whose validity had not been challenged.

13. Land Use Litigation

ALFORD v. COUNTY OF LOS ANGELES **51 Cal. App. 5th 742 (2020)** The County argued that plaintiff's challenge to an administrative decision was time-barred because it was not filed within 90 days of the final decision as required under Code of Civil Procedure section 1094.6. A decision becomes "final" under that statute on the date it is served by first-class mail. Although it was undisputed that plaintiff did not file his action until over four months after receiving mailed notice of the decision, the court found that plaintiff's action was timely because the County's notice did not comply with the statutory requirements. The notice was deficient because it gave plaintiff conflicting information about the filing deadline. Per the statute, the notice said that the administrative decision was final, and that section 1094.6 required plaintiff to file suit no later than 90 days after the date it became final. But the notice also said the decision would become final "90 days from the date it is placed in the mail." The court admonished that agencies must provide the notice specified in the statute, and may "not add confusing information to the required notice that could mislead affected parties about the timing for seeking judicial review." ***COMMUNITIES FOR A BETTER ENVIRONMENT v. ENERGY RESOURCES AND DEV. COMM.*** **57 Cal. App. 5th 786 (2020)** Public Resources Code section 22531 restricts judicial review of decisions by the Energy Commission regarding licensing of large thermal power plants to the California Supreme Court. The court of appeal held that section 25531(a) violated the California Constitution because it impermissibly divested lower courts of jurisdiction. The court relied on caselaw holding that the state Legislature may not divest courts of their original jurisdiction granted under article VI, section 10 of the California Constitution unless another provision of the Constitution empowers the Legislature to do so, which was not the case here. The court also held that Section 25531(b) violated article VI, section 1 of the Constitution because it prevented courts from reviewing evidence and effectively conferred judicial power on an administrative agency. Unlike the PUC, the Energy Commission was not created by the Constitution nor was it vested with independent judicial powers. Because section 25531(b) did not allow for the review of the Commission's factual findings by a court, it was unconstitutional. ***STANFORD VINA RANCH IRRIGATION CO. v. STATE OF CALIFORNIA*** **50 Cal. App. 5th 976 (2020)** A nonprofit irrigation company challenged emergency regulations and curtailment

orders adopted by the State Water Resources Control Board during a severe drought period from 2014 to 2015. Petitioner claimed that the regulations violated its vested water rights and that the Water Board should have conducted an evidentiary hearing before implementing the regulations. The court held that the Water Board properly adopted emergency regulations to protect water resources consistent with article X, section 2 of the California Constitution, which ordains conservation of water resources. The Water Board was not required to hold evidentiary hearings prior to the adoption of the emergency regulation as neither the due process guarantees of federal or California Constitutions, nor article X, section 2 of the California Constitution required such a hearing. ***SPOTLIGHT ON COASTAL CORRUPTION v. KINSEY*** **57 Cal. App. 5th 874 (2020)** The appellate court held that plaintiff lacked standing to sue members of the Coastal Commission for violation of disclosure requirements regarding ex parte communications. Plaintiff claimed it had "public interest" standing, which allows a party lacking conventional standing to pursue a claim where the question is one of public right and the object of the mandamus action is to procure the enforcement of a public duty. The court rejected this argument on the ground that public interest standing is allowed only in the context of mandamus proceedings and plaintiff's complaint did not properly plead a mandamus claim. ***OAKLAND BULK AND OVERSIZED TERMINAL, LLC v. CITY OF OAKLAND*** **54 Cal. App. 5th 738 (2020)** Plaintiff sued the City alleging various causes of action for breach of contract and tort. The City filed an anti-SLAPP motion contending that some of the claims arose from protected speech in connection with a public issue. The court found that the actions of the City implicated by the suit were not protected under SLAPP law. Plaintiffs' claims arose out of the City's alleged breach of agreements with plaintiff, its refusal to cooperate, and its tortious conduct. The inclusion of the City's speech-related activities in the complaint provided background and context—the evidence—to support the claims of the City's wrongdoing but were not the gravamen of the causes of action. The communications that led to and followed the alleged misconduct were merely incidental to the asserted claims and hence not protected under the SLAPP law.

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