

DECEMBER 2, 2022

In a landmark victory for housing rights and state housing law, California Court of Appeal rules in favor of the Terraces of Lafayette

Related Lawyers: **Arthur F. Coon**

Related Practices: **Land Use & CEQA, Land Use - Litigation, Land Use - Transactional, Land Use - Entitlement**

In a major victory for housing rights statewide, the First District Court of Appeal issued a unanimous ruling on November 30 upholding the project approvals and CEQA review and rejecting in full Save Lafayette's lawsuit challenging the Terraces of Lafayette, a 315-unit apartment community by O'Brien Land Company. After nearly 10 years of processing and 120 public hearings, the Lafayette City Council finally approved the project by a 4-1 vote in August 2020.

The project site is in an urbanized area adjacent to Highway 24 and located one mile from the Lafayette BART station. With 20%, or 63, of its dwelling units set aside for lower income households, the Terraces is considered an affordable housing project under the Housing Accountability Act (HAA). This will substantially assist Lafayette in meeting its Regional Housing Needs Allocation (RHNA) for the lower income categories assigned to it by long-standing state law.

Despite the project's robust legal protections under controlling state law, Save Lafayette has actively opposed the project and all development on the project site for years. The anti-development group also opposed a 44 single-family home compromise project the City approved in 2015 after the City and O'Brien contractually paused processing of the apartment project to consider an alternative the group might accept. Save Lafayette responded by filing litigation and a ballot referendum that overturned the smaller project. Once the voters rejected the smaller project, O'Brien and the City of Lafayette resumed processing the apartments.

Although the apartment project included a full Environmental Impact Report, Save Lafayette's lawsuit claimed the City's approval violated the California Environmental Quality Act, a law frequently employed by anti-development NIMBY groups to challenge new housing. The lawsuit also claimed the project was not entitled to the protection of the HAA, which protects housing developments from changes in local land use laws after an application is deemed complete by, among other things, substantially curtailing the circumstances under which a housing project may lawfully be disapproved. As the Superior Court did in 2021 after hearing the matter in late 2020, the Court of Appeal rejected Save Lafayette's arguments and agreed that the City complied with the law in approving the project.

The Court of Appeal recognized the HAA's statutory mandate to interpret and implement the HAA to "afford the fullest possible weight to the interest of, and the approval and provision of, housing" and accordingly held that the trial court "rightly refused to disturb the City's approval of the project."

Dennis O'Brien, President and Founder of O'Brien Land Company, stated:

"Despite the fact that the project, located on a former quarry site, is supported by the Sierra Club and Greenbelt Alliance, and provides critically-needed affordable housing, it took 12 years to get to this point after finally getting the project approved and through this and other wasteful litigation. It's been disheartening the last few years to have to tell local residents and workers that we weren't yet able to build the apartments the City approved. People have long been in need of housing like this for themselves, family members, and local workers, and all we could do was add their name to an interest list and ask them to be patient while we saw the project through an incredibly difficult and time-consuming process. We are elated that we can now move forward."

Matt Regan, Senior Vice President of Public Policy for the Bay Area Council, stated:

“When anyone asks why we have a housing affordability crisis in California, I just show them the history of the Terraces in Lafayette. This is a site where the City said they wanted housing, a developer offered a proposal that met their requirements, and here we are 12 years later after multiple plan changes, referendums, lawsuits, delay after delay after delay, needless costs piled on top of needless costs, and still no homes. The team at O'Brien Homes should be given every credit for refusing to be bullied and sticking with this project.”

Sonja Trauss, the President and Founder of Yimby Law, stated:

“This decision is a win for housing, but the fact that this project has taken so long is exactly why we have such a catastrophic housing shortage. The people involved with Save Lafayette should be ashamed of themselves. They have denied housing for more than 700 middle income people for the last 10 years while they fought this project. Imagine if Save Lafayette had spent their time and money actually helping people.”

Contact:

Jamie Moss
newsPROs
(201) 493-1027
jamie@newspros.com

Miller Starr Regalia

Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for more than fifty years. For nearly all that time, our firm has written *Miller & Starr, California Real Estate 4th*, a 12-volume treatise on California real estate law. We call it “the Book.” The Book is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. Our firm has experience in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, common interest development, construction, management, title insurance, environmental law, and land use. For more information, visit www.msrlgal.com.