

Development Moratoria

Introduction

Development moratoria are temporary prohibitions on development, or certain kinds of development, in a location while planning or studies can be completed.¹ Moratoria function to preserve the status quo while these processes proceed. A local government might implement a moratorium while an environmental study proceeds, for example. Similarly, a moratorium could be used to pause development while a general plan is completed for an area. A community might also use a moratorium while it reconsiders its existing floodplains after a flooding event.² For coastal adaptation purposes, a moratorium would be useful while a community implements new zoning restrictions to address rising seas.

Procedurally, a local community can adopt a forty-five-day “urgency measure” to initiate a moratorium.³ This measure can then be extended after notice and public hearing for another twenty-two months and fifteen days.⁴ Moratoria can be implemented by resolution or ordinance, or may be precipitated by voter initiative. Moratoria face certain substantive limitations, which are discussed below.

Tradeoffs

Moratoria allow local communities time to thoughtfully, effectively, and comprehensively undertake planning measures while maintaining the status quo. They also pause development so planners can consider the long-term implications of recent and future development and how they fit with the values and goals of the community.

One drawback of moratoria as a coastal adaptation strategy is that they are only temporary. Accordingly, moratoria are not ends themselves. Instead, they are a means of ensuring comprehensive long-term planning. Another drawback is that moratoria are often unpopular. They will likely face opposition from affected property owners wishing to develop their parcels during the moratorium.

Legal Considerations

The power of a local community to temporarily halt all development in order to meet planning objectives derives from California’s State Planning and Zoning Law and its inherent powers to protect health and safety of its citizens.⁵ The United States Supreme Court has upheld moratoria as valid land use planning tools.⁶ Nonetheless, moratoria need to meet the minimum constitutional threshold for government actions, specifically that they advance a legitimate state interest.⁷

1 CECILY TALBERT BARCLAY & MATTHEW S. GRAY, CALIFORNIA LAND USE & PLANNING LAW 585 (35th 2016).

2 FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOODPLAIN MANAGEMENT REQUIREMENTS: A STUDY GUIDE AND DESK REFERENCE FOR LOCAL OFFICIALS 6-24 (2017), available at <https://www.fema.gov/floodplain-management-requirements>.

3 An urgency measure can proceed without following the procedures otherwise required prior to the adoption of a zoning ordinance. CAL. PUB. RES. CODE § 65858.

4 CAL. PUB. RES. CODE § 65858.

5 CAL. PUB. RES. CODE § 65000 *et seq.*; see also U.S. CONST. amend. X.

6 Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002).

7 Nollan v. California Coastal Comm’n, 483 U.S. 825, 834 (1987).

Moratoria may be found to impermissibly “take” property without just compensation, in violation of the U.S. Constitution, if they deprive a property of all economic uses.⁸ Moratoria may avoid this fate by being limited in time.⁹ Moratoria have survived takings challenges when they are for a limited time period and not indefinite in duration, but time limits alone will not necessarily shield moratoria from takings claims.¹⁰

If a moratorium is challenged and determined by a court to have been invalid or unlawful, the time period it was in effect might constitute an impermissible temporary taking.¹¹ In such a case, the local community that issued the invalid moratorium would be liable to pay just compensation for the time period the invalidated provision prohibited development and temporarily “took” their property without compensation.¹² Local communities should ensure that moratoria comply with all substantive and procedural legal requirements to avoid this fate.

California has specific restrictions on moratoria. For instance, California law limits interim ordinances to a maximum of two years.¹³ Further, moratoria ordinances require “legislative findings that there is a current and immediate threat to the public health, safety, or welfare” of a community.¹⁴

Examples

Marin County instituted a development moratorium for a third of Stinson Beach while it finalized an update to its Local Coastal Program (LCP).¹⁵ The County cited safety concerns as well as the need to analyze projected sea level rise in the area for instituting the moratorium. The moratorium is planned to last until the Coastal Commission approves Marin’s updates to its LCP.

There are additional recent examples of development moratoria in California. Redondo Beach adopted a temporary ban on mixed-use projects while it updates its General Plan.¹⁶ A proposed moratorium on developments that required zone changes failed when it was put on the ballot in Los Angeles.¹⁷ East Palo Alto’s City Council imposed a development moratorium based on that city’s limited water supply.¹⁸

Researchers

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8 U.S. CONST. amend. V.

9 *Tahoe-Sierra Preservation Council, Inc.*, 535 U.S. at 332 (“Logically, a fee simple estate cannot be rendered valueless by a temporary prohibition on economic use, because the property will recover value as soon as the prohibition is lifted.”).

10 535 U.S. at 342 (“In our view, the duration of the restriction is one of the important factors that a court must consider in the appraisal of a regulatory takings claim, but with respect to that factor as with respect to other factors, the ‘temptation to adopt what amount to per se rules in either direction must be resisted.’”) (citation omitted).

11 *See generally* BARCLAY & GRAY, *supra* note 1, at 307-08.

12 *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 320 (1987).

13 CAL. PUB. RES. CODE § 65858.

14 CAL. PUB. RES. CODE § 65858.

15 Beau Evans, *County Halts Development for a Third of Stinson*, POINT REYES LIGHT, Sept. 10, 2015, <https://www.ptreyeslight.com/article/county-halts-development-third-stinson>.
 16 Megan Barnes, *Redondo Beach Adopts Temporary Ban on Controversial Mixed-use Projects*, THE DAILY BREEZE, Aug. 16, 2017, <http://www.dailybreeze.com/business/20170816/redondo-beach-adopts-temporary-ban-on-controversial-mixed-use-projects>.
 17 Emily Alpert Reyes, et al., *Measure S Defeated After a Heated, Costly Battle Over Future L.A. Development*, L.A. TIMES, Mar. 8, 2017, <http://www.latimes.com/local/lanow/la-me-ln-measure-s-20170307-story.html>.
 18 Kaitlyn Landgraf, *East Palo Alto Imposes Development Moratorium Due to Lack of Water*, SAN JOSE MERCURY NEWS, July 20, 2016, <http://www.mercurynews.com/2016/07/20/east-palo-alto-imposes-development-moratorium-due-to-lack-of-water/>.



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