Filed 2/19/13 LA Unif. School Dist. v. City of Maywood CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LOS ANGELES UNIFIED SCHOOL DISTRICT, Petitioner and Appellant, v. CITY OF MAYWOOD, et al. Respondents and Defendants.	Nos. B238629, B238630 (Los Angeles County Super. Ct. Nos. BS136356, BS136357)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ann I. Jones, Judge. Affirmed in part and reversed in part.

David R. Holmquist, General Counsel, and Jay F. Golida, Associate General Counsel; R. Bruce Tepper, ALC and R. Bruce Tepper; Pircher, Nichols & Meeks, Fernando Villa and Jeffrey N. Brown, for Petitioner and Appellant.

Law Offices of Beth S. Dorris and Beth Dorris for Respondents and Defendants.

INTRODUCTION

The Los Angeles Unified School District filed petitions for writ of mandate challenging two City of Maywood ordinances. The first ordinance established a process allowing city residents to seek historic designation of their property. The second ordinance imposed a permit requirement for any encroachment on, under or above a road or other public right-of-way. The LAUSD argued that both ordinances were void because Maywood had failed to follow statutory procedures governing the adoption of "urgency" ordinances. Alternatively, the LAUSD argued that, pursuant to its authorities under Government Code section 53094, the governing school board had adopted a resolution that exempted the district from complying with either ordinance.

The trial court denied the petitions, concluding that: (1) the LAUSD lacked standing to challenge the historic designation ordinance because it had previously been declared exempt; and (2) the LAUSD was required to comply with the encroachment ordinance pursuant to Government Code section 53097. The LAUSD appeals the judgments denying each writ. We affirm the trial court's judgment regarding the historic designation ordinance and reverse its judgment regarding the encroachment ordinance.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Summary of "South Region High School No. 8" and Maywood's Ordinances*[1]

1. Summary of the South Region High School No. 8 project

In July of 2009, the LAUSD issued a "Notice of Preparation and Initial Study" (NOP) announcing that "it was 'proposing to construct and operate a new high school on a 9.4 acre site at the northeast corner of Slauson Avenue and King Avenue, in the City of Maywood.' The NOP indicated that 8.65 acres of the site consisted of two city blocks bordered by 57th Street, Mayflower Avenue, Slauson Avenue and King Avenue. The

---

1 For a more thorough discussion of the factual and procedural history in this matter, see *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362 (*Maywood*).

remaining 0.75 acres consisted of the portion of 58th Street that ran between the two blocks, which would be vacated and incorporated into the project." (*Maywood, supra,* 208 Cal.App.4th at p. 372.)

During the environmental review process, "several Maywood residents and government officials informed the LAUSD that its proposed design was infeasible because Maywood would not allow the school district to close the portion of 58th Street that bisected the project site." (*Maywood, supra*, 208 Cal.App.4th at p. 372.) In its draft environmental impact report (DEIR), the LAUSD indicated that it had elected to redesign the project by leaving 58th Street as an active roadway that would be traversed by a pedestrian bridge "connecting the northern and southern sides of the campus." (*Id*. at p. 373.)

In its comments to the DEIR, Maywood objected to the redesign, asserting that the city "had 'serious safety concerns about . . . [a] campus with a busy truck-laden street running down the middle and no effective way to prevent teens from jaywalking.'" (*Maywood, supra*, 208 Cal.App.4th at p. 378.) Maywood also argued that the DEIR failed to address significant impacts "associated with destroying cultural, historic and architectural resources in the 'long standing Slauson Neighborhood[,]' . . . including its 'total failure' to consider the 'Winans House,' which was allegedly designed and built by a notable architect and designated as a cultural resource . . ." (*Id.* at p. 382.) Maywood questioned the adequacy of numerous other sections of the DEIR.

In February of 2010, the LAUSD issued its final EIR (FEIR), "the substantive content of which was essentially identical to the DEIR." (*Maywood, supra*, 208 Cal.App.4th at p. 378.) The FEIR did, however, include a "350-page chapter summarizing and responding to comments on the DEIR, 75 pages of which responded to written comments submitted by Maywood." (*Ibid*.) After holding a public hearing, the LAUSD certified the FEIR and approved the project on March 9, 2010.

2. Maywood's adoption of two "urgency" ordinances

The day before the LAUSD approved the South Region High School No. 8 project, Maywood's city council passed two "urgency" ordinances. The first established a historic designation program for properties located within the city. The second imposed a permit requirement for any structure that encroached into a public right-of-way.

a. The "Voluntary Historic Resource Designation Program"

On March 8, 2010, Maywood's city council held a public hearing regarding an ordinance establishing the "Voluntary Historic Resource Designation Program," which would allow "landowners to voluntarily apply for designation as an historic resource." The preamble to the ordinance stated that numerous "historic structures . . . and areas of significance located within Maywood" were "at risk of alteration, demolition or removal." The preamble also indicated that a historic designation program was necessary "for the immediate preservation of the health, safety, prosperity, social and cultural enrichment and general welfare of the City's residents."

The ordinance permitted landowners to submit a written request for historic designation of their property and listed the "criteria" that would be used to assess each application.[2] The ordinance further provided that any structure designated as a historic resource could not be demolished or altered "without first obtaining a permit" from the city council.

Maywood's city attorney provided a memorandum to the city council recommending the adoption of the ordinance. The memorandum explained that the LAUSD had recently "indicated its intent to acquire approximately 9 acres of land within the limits of the City through eminent domain, demolish structures within those 9 acres

---

2 The criteria to be applied included, among other things, consideration of whether the property: "exemplifie[d] or reflect[ed] special elements of the City's cultural, social, economic, . . . or natural history"; "[wa]s identified with persons or events significant in local, regional, state or national history"; "embodie[d] distinctive characteristics of a style . . . or method of construction, or [wa]s a valuable example of the use of indigenous materials or craftsmanship"; "[wa]s representative of the work of a notable builder, designer, or architect."

and construct a new high school. Several of these structures are considered to have historical and cultural value and will be destroyed if LAUSD is permitted to realize its stated goals." According to the memorandum, the proposed ordinance qualified as "an urgency ordinance" under Government Code section 36937, subdivision (b) because the immediate preservation of cultural resources was necessary to protect public peace, health, and safety.[3]

In addition to the historic designation ordinance, the city council was presented with a resolution approving a request from Lawrence Winans to designate his property, which was located within the South Region High School No. 8 project site, as a historic resource. The resolution stated that the Winans home was "one of the earliest examples of California ranch-style architecture . . . [and had] greatly influence[d] the mid-century ranch style architecture that swept across the state in the 1940s, 50s and 60s." At the conclusion of the hearing, the city council approved the ordinance and the resolution designating the Winans property as a historic resource.

b. The encroachment permit ordinance

On March 8, 2010, the city council was also presented with an "urgency ordinance" that established the "City's new encroachment permits system." An accompanying memorandum from Maywood's city attorney explained that, under the city's existing regulations, "an encroachment permit was required whenever work is proposed within the City's public rights-of -way. Historically, the City's permit process has been a ministerial act so long as the applicant complied with the City's existing building code and zoning regulations. Unfortunately, the City's Municipal Code provides very limited instructions specific to encroachments and provides no distinction between the type of encroachments subject to review by the City. In addition, the term

---

3 Government Code section 36937 states, in relevant part: "Ordinances take effect 30 days after their final passage. An ordinance takes effect immediately, if it is an ordinance: . . . [¶¶] (b) For the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council."

'encroach' is never actually defined within the City's Municipal Code." The memorandum argued that the new encroachment ordinance would "provide immediate clarity and instructions to the encroachment permitting process."

The ordinance established two categories of encroachments: "minor encroachments" and "major encroachments."[4] "Minor" encroachments "would continue to be ministerial acts handled by the City Engineer." "Major" encroachments, however, would require a permit from the city council. The term "major encroachment" was defined to include "any permanent improvement attached to a structure or constructed into place so that it projects into the public right-of-way such as basement vaults, bridges . . . ramps, or fences . . ." Although the ordinance listed the criteria that would be used to evaluate an application for a major encroachment, it provided the city council "sole discretion" to decide whether to issue a permit. The ordinance also prohibited any person from constructing or maintaining an encroachment "without complying with the terms of this chapter."

As with the historic designation ordinance, the encroachment ordinance included language indicating that it was being adopted as an "urgency ordinance . . . pursuant to California Government Code Section 36937 . . . and shall take effect immediately upon its passage . . ."

B. The Parties' Petitions for Writ of Mandate

1. City of Maywood's petitions for writ of mandate

In April of 2010, the City of Maywood "filed a petition for writ of mandate alleging that the LAUSD had: (1) failed to comply with CEQA procedures governing the preparation of an environmental impact review, and (2) violated 'Education Code requirements for siting . . . new school facilities.'" (*Maywood, supra*, 208 Cal.App.4th at p. 380.) The petition, case number BS125872 (*Maywood I*), alleged that the FEIR "failed

---

4 The ordinance also prohibited various types of encroachments outright, including, for example, structures that would "obstruct and reduce the capacity of any flood control channel."

to 'sufficiently address' a wide range of 'potential adverse impacts to the environment,'" including, in part "'the pedestrian risks to high school students associated with [a] street bisecting the campus'"; "'impacts associated with the cultural historic and architectural significance of structures on the [p]roposed . . . [s]ite'"; "the extent to which the site was contaminated by hazardous materials"; and "'the cumulative impacts of the new Slauson on/off ramp at the I–710 . . . [c]orridor project.'" (*Ibid*.)

On August 12, 2010, the City of Maywood filed a second petition for writ of mandate, case number BS127788 (*Maywood II*), alleging that the LAUSD was threatening to violate the City's historic designation ordinance by destroying the Winans house. The second petition also asserted a nuisance claim and raised additional CEQA claims arising from "an addendum" to the FEIR that the LAUSD had certified in July of 2010.[5]

On March 16, 2011, the trial court heard both of Maywood's petitions for writ of mandate. "The court informed the parties that it had elected to consider the CEQA arguments Maywood raised in relation to the FEIR addendum – which appeared in the second petition – as part of the first petition for writ of mandate. The remaining arguments set forth in the second petition, which pertained to the LAUSD's alleged violation of local ordinances, would be considered separately." (*Maywood, supra*, 208 Cal.App.4th at p. 383.)

On the *Maywood I* petition, the trial court issued an order concluding that the FEIR violated CEQA because it failed to adequately assess: (1) "whether students and other pedestrians would be endangered by the active street that bisected the campus or

---

5 The LAUSD's "addendum" revised the FEIR's finding that the project would result in unavoidable significant impacts on pedestrian safety because the district lacked the authority to force Maywood to implement traffic measures necessary to mitigate pedestrian hazards. According to the addendum, various sections of the Vehicle Code authorized the LAUSD to require Maywood to implement any traffic controls necessary to mitigate pedestrian traffic hazards. Maywood's petition argued that the addendum was invalid because the LAUSD had failed to circulate a "revised" EIR. (See *Maywood, supra*, 208 Cal.App.4th at pp. 379-381.)

whether the pedestrian bridge would adequately mitigate any such dangers" (*Maywood, supra*, 208 Cal.App.4th at p. 383); (2) cumulative impacts from a pending highway expansion project; (3) "potential impacts from hazardous material contamination at the project site" (*id*. at p. 384); and (4) project alternatives. The court also ruled that the LAUSD's certification of the FEIR "violated Education Code sections 17211 and 17213.1, which require school districts to take certain actions before acquiring a school site." (*Ibid.*) The LAUSD appealed the trial court's order, which we reversed in part and remanded to the trial court. (See *Maywood, supra*, 208 Cal.App.4th 632.)

In regards to the *Maywood II* petition, the trial court ruled that the LAUSD was not subject to Maywood's historic designation ordinance. The court explained that although state agencies were generally required to comply with local zoning ordinances (see Gov. Code, § 53091), Government Code section 53094, subdivision (b) permitted the governing board of a school district to "render a city or county zoning ordinance inapplicable to a proposed use of property by the . . . district." The court further explained that the LAUSD had submitted a resolution from its governing board exempting the South Region High School No. 8 project site from any local zoning ordinances.[6] According to the court, this resolution, which was adopted on September 14, 2010, effectively exempted the LAUSD from complying with the historic designation ordinance. The court also ruled that Maywood's nuisance claim was preempted by state law. Maywood did not appeal the court's order denying the *Maywood II* petition.

2. The LAUSD's petitions for writs of mandate

On May 7, 2010, the LAUSD filed two petitions for writ of mandate that are the subject of its current appeals. The first petition, case number BS126357 (*LAUSD I*), challenged Maywood's historic designation ordinance, which would require the LAUSD

---

[6] The text of the LAUSD resolution states that it was adopted "to exempt the [LAUSD] from the City of Maywood zoning ordinances. . . . that may otherwise compromise the ability of LAUSD to provide the South Region High School # 8, to be located . . . in Maywood California." The resolution further states that the "Board of Education hereby invokes its authority under California Government Code section 53094 to exempt the Project . . . . from the City's zoning ordinances . . . as applicable."

to obtain a permit prior to demolishing the Winans house. The second petition, case number BS126356 (*LAUSD II*), challenged Maywood's encroachment ordinance, which would require the LAUSD to obtain a city permit prior to constructing a pedestrian bridge over 58th Street.

a. LAUSD's challenge to the historic designation ordinance

In *LAUSD I*, the district asserted that Maywood's historic designation ordinance and the accompanying resolution designating the Winans house as a historic resource were "designed solely to block" construction of South Region High School No. 8. The LAUSD argued that the ordinance, which was adopted as an "urgency ordinance" pursuant to Government Code section 36937, should be declared void because: (1) the ordinance failed to include a "declaration of the facts constituting the urgency" as required under section 36937; and (2) Government Code section 65858 provided the exclusive means of adopting an "urgency" ordinance related to zoning. The LAUSD also argued that, to the extent the ordinance was not void, the governing school board had adopted a resolution on September 14th, 2010 that exempted the district from complying with the ordinance for any property located within the project site.

In both its answer and opposition, Maywood admitted that the LAUSD's September 14th resolution exempted the district from complying with the historic designation ordinance in regards to any land associated with the South Region High School No. 8 project. Maywood's opposition brief also admitted that the trial court's ruling in the *Maywood II* case, which Maywood had not appealed, specifically found that the LAUSD was exempt from the ordinance. According to Maywood, the September 14th resolution and the *Maywood II* order demonstrated that the LAUSD "lack[ed] the beneficial interest in invalidating the ordinance required to establish standing." Alternatively, Maywood argued that the ordinance satisfied all of the requirements under Government Code section 36937.

In its reply brief, the LAUSD asserted that it had a beneficial interest in obtaining a judgment declaring the ordinance void because the city might try to enforce the ordinance again in the future. Alternatively, the LAUSD asserted that it had "citizen standing" to "protect a 'public right' by enforcing a 'public duty' by a writ of mandamus."

After hearing oral argument, the trial court denied the LAUSD's petition for lack of standing. The court explained that its order in the *Maywood II* matter had concluded that "[the] LAUSD — as of September 14, 2010 — [was] not subject to Maywood's Historic Ordinance and its accompanying resolution [designating the Winans house as a historic resource]." The court further explained that this prior ruling withdrew any "beneficial interest" the LAUSD might have previously had in obtaining an order declaring the "the entire scheme . . . void ab initio and of no effect as to other unidentified . . . parties." According to the court, the prior order demonstrated that LAUSD would "obtain no [relief] if [its]s [current] challenge [wa]s upheld and w[ould] suffer no detriment if it [wa]s denied."

The trial court also ruled that LAUSD lacked "citizen standing," stating: "At oral argument, the Court asked repeatedly what reason the [LAUSD] had for bringing this action. Other than future protection against [Maywood] someday enforcing this ordinance – of which there is absolutely no competent evidence in light of the [Maywood] having lost its [p]etition to have the measure enforced – the [LAUSD] could state no reason. Nor could it identify a single member of the public who shared its interest in having Maywood's Historic Ordinance struck down . . . . [¶] [T]he [LAUSD] has absolutely no interest at stake in the legality of the challenged ordinance."

Finally, the court ruled that, even if the LAUSD had standing to have the ordinance declared void, Maywood had complied with the requirements enumerated in Government Code section 36937, subdivision (b).

b. LAUSD's challenge to the encroachment permit ordinance

The LAUSD's petition for writ of mandate challenging Maywood's encroachment ordinance raised the same arguments it had asserted in its petition challenging the historic designation ordinance. Specifically, the LAUSD argued that: (1) although adopted as an "urgency" ordinance pursuant to section 36937, the encroachment ordinance failed to include a declaration of facts describing the need for urgency; and (2) the LAUSD was exempt from the encroachment ordinance as a result of its September 14th resolution. In addition, the LAUSD argued that the encroachment ordinance was preempted by Education Code section 17280, which states that the California Department of General Services shall "supervise the design and construction of any school building . . . ."

In its opposition, Maywood argued that the LAUSD had no authority to exempt itself from the encroachment ordinance. Maywood relied on Government Code section 53097, which requires school districts to comply with "any city or county ordinance" regulating "drainage improvements and conditions," "road improvements and conditions" or "grading plans." Maywood contended that "overpasses" such as the proposed 58th Street pedestrian bridge "can directly affect road conditions if not fully controlled and coordinated by the City." Maywood also argued that it had properly adopted the measure as an urgency ordinance under Government Code section 36937, subdivision (c), which states that ordinances related to "street improvement proceedings" shall take effect immediately. Alternatively, Maywood argued that the ordinance contained factual declarations that satisfied all of the requirements of section 36937, subdivision (b). Finally, the school asserted that the ordinance was not preempted by Education Code section 17280 because the statute did not permit "school district[s] to bypass . . . local permitting process[es]."

After a hearing, the trial court denied the petition for writ of mandate. The court concluded that the LAUSD was required to comply with the encroachment ordinance pursuant to section 53097, explaining: "the District is not exempt from compliance with the Maywood Encroachment Permit scheme to the extent that any proposed 58th Street overpass or any other encroachments occasioned by the construction of the project may

cause obstructions on the roadway, alter and impair storm drainage flow in gutters, and expose pedestrians and vehicles to hazards." The court also found that Education Code section 17280 did not preempt the ordinance because the LAUSD had failed to show any inconsistency between state building standards applicable to schools and the requirements imposed under the encroachment ordinance. In addition, the court found that the ordinance was properly adopted as an urgency measure under both subdivisions (b) and (c) of Government Code section 36937.

The LAUSD filed a separate appeal on each petition.[7]

DISCUSSION

A. The LAUSD Lacks Standing to Challenge the Historic Designation Ordinance

The LAUSD argues that the trial court erred in concluding that it did not have standing to challenge Maywood's historic designation ordinance. The LAUSD asserts that it has a "beneficial interest" in obtaining a writ of mandate declaring the ordinance void. Alternatively, it argues that it has standing under the "public interest" exception to the beneficial interest requirement.

1. The LAUSD has failed to articulate any "beneficial interest"

"For a lawsuit properly to be allowed to continue, standing must exist at all times until judgment is entered and not just on the date the complaint is filed." (*Californians For Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 232-233.) Thus, "[a] plaintiff may lose standing even where an actual controversy originally existed 'but, by the passage of time or a change in circumstances, ceased to exist.'" (*Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903, 916-917.)[8]

---

7 On July 24, 2012, we filed an order providing that the two appeals would be considered concurrently.

8 For the purposes of this case, we need not address whether the LAUSD had standing at the time it filed its petition for writ of mandate. The pertinent question is whether the LAUSD had standing at the time the trial court entered its ruling.

"As a general rule, legal standing to petition for a writ of mandate requires the petitioner to have a beneficial interest in the writ's issuance. [Citations.] A petitioner is beneficially interested if he or she has '"some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large."' [Citations.] [¶] Beneficially interested parties 'are "'in fact adversely affected by governmental action'" and have standing in their own right to challenge that action. [Citation.]' [Citation.] A beneficial interest must be 'direct and substantial.' [Citation.] [A] . . . petitioner [lacks a beneficial interest if he or she] will gain no direct benefit from its issuance and suffer no direct detriment if it is denied.' [Citation.]" (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 913 (*Rialto*).)

In its appellate brief, LAUSD asserts that "[t]he core aim of [its] lawsuit was and remains a judgment declaring the [South Region High School No. 8] project exempt from the Historic Ordinance and Resolution . . . ." However, Maywood's answer to the LAUSD's petition for writ of mandate expressly admits that, on September 14, 2010, the district adopted a resolution that exempts the high school project from the ordinance. Moreover, on March 16, 2011, the trial court issued an order in a related case between the parties ruling that the LAUSD's resolution exempted the project from the ordinance. Maywood did not appeal the March 16th ruling and now concedes that the issue is *res judicata*. As a result, LAUSD's project is now exempt from the historic designation ordinance regardless of whether its current petition for writ of mandate is granted or denied.

The LAUSD, however, asserts that it has a beneficial interest in having the ordinance declared void because Maywood is likely to use the ordinance to impede the project again in the future. However, as stated by the trial court, the LAUSD has offered "absolutely no competent evidence" in support of this assertion. Nor has it explained how Maywood could possibly enforce the ordinance against the LAUSD given the admissions the city has made in this case and the trial court's March 16, 2011 order.

In light of the LAUSD's September 14th resolution and the trial court's prior order declaring the project to be exempt from the ordinance, the LAUSD cannot satisfy the "beneficial interest requirement." (*Rialto, supra,* 208 Cal.App.4th at p. 913.)[9]

2. *The LAUSD does not qualify for the "public interest exception" to the beneficial interest requirement*

"A petitioner who is not beneficially interested in a writ may nevertheless have 'citizen standing' or 'public interest standing' to bring the writ petition under the 'public interest exception' to the beneficial interest requirement. [Citation.] The public interest exception 'applies where the question is one of public right and the object of the action is to enforce a public duty – in which case it is sufficient that the plaintiff be interested as a citizen in having the laws executed and the public duty enforced. [Citations.]' [Citation.] The public interest exception '"promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." [Citations.]' [Citation.]" (*Rialto, supra,* 208 Cal.App.4th at pp. 913-914.)

The California Supreme Court has cautioned, however, that "[n]o party . . . may proceed with a mandamus petition as a matter of right under the public interest exception. . . . 'Judicial recognition of citizen standing is an exception to, rather than repudiation of, the usual requirement of a beneficial interest. The policy underlying the exception may

---

9 In a footnote, the LAUSD also argues that it has a "beneficial interest" in challenging the historic designation ordinance because, if it prevails, it may then seek attorneys' fees under Code of Civil Procedure Section 1021.5. Generally, we need not address issues "discussed only in a footnote." (See *Evans v. CenterStone Development Co*. (2005) 134 Cal.App.4th 151, 160 ["We do not have to consider issues discussed only in a footnote"]; *Lyles v. State* (2007) 153 Cal.App.4th 281, 285, fn. 3 [refusing to consider argument raised "in conclusory fashion via footnote"].) Even if we were to consider the argument, we would reject it. The LAUSD has not cited a single case holding that the beneficial interest requirement is satisfied merely because the plaintiff may, if ultimately victorious, seek a discretionary fee award pursuant to section 1021.5. (See *Abouab v. City and County of San Francisco* (2006) 141 Cal.App.4th 643, 645 ["an award of attorneys' fees under section 1021.5 is discretionary"].) If accepted, this argument would effectively eviscerate the beneficial interest requirement.

be outweighed by competing considerations of a more urgent nature.'" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 170 fn. 5 (*Plastic Bag Coalition*); see also *Nowlin v. Department of Motor Vehicles* (1997) 53 Cal.App.4th 1529, 1538 [citizen standing may be "nullifie[d]" by "'competing considerations of a more urgent nature'"].) "[T]he propriety of a citizen's suit requires a judicial balancing of interests, and the interest of a citizen may be considered sufficient when the public duty is sharp and the public need weighty." (*Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1232-1233, disapproved on other grounds in *Plastic Bag Coalition, supra*, 52 Cal.4th at pp. 169-170.)

Our courts have generally denied citizen standing to parties whose interests in the litigation arose from something other than their "broader public concerns" regarding the alleged public duty at issue. (*Plastic Bag Coalition, supra*, 52 Cal.4th at pp. 169.) For example, in *Carsten v. Psychology Examining Com. of the Board of Medical Quality Assurance* (1980) 27 Cal.3d 793, a member of the Psychology Examining Committee of the Board of Medical Quality Assurance (PEC) filed a petition for writ of mandate alleging that the PEC had, over plaintiff's dissenting vote, adopted a testing method that violated certain statutory duties.

The Supreme Court held that although the plaintiff's petition sought to enforce a public duty, she did not have standing to pursue the case under the public interest exception. The court explained that the plaintiff's suit did not arise from her "everyday experience as . . . [a] citizen, but [rather] from [her] experiences in government" (*Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1258): "While it is true that this petitioner is not only a board member but also a [citizen], it is as a board member that she acquired her knowledge of the events upon which she bases the lawsuit." (*Carsten, supra*, 27 Cal.3d at p. 799.) "Thus, her challenge to the decision was motivated by interests arising from her service on the board, rather than by broader public concerns." (*Plastic Bag Coalition, supra*, 52 Cal.4th at p. 169.)

The Supreme Court also identified various policy reasons that "militate[d] against permitting disgruntled governmental agency members to seek extraordinary writs from

the courts." (*Carsten, supra*, 27 Cal.3d at p. 799.) First, the court explained that allowing similarly situated plaintiffs to proceed with such litigation would "be disruptive to the administrative process and antithetical to its underlying purpose of providing expeditious disposition of problems in a specialized field without recourse to the judiciary." (*Ibid*.) Second, the court concluded that "such litigation [would have] ominous aspects [for the judiciary.] [The petition] is purely and simply duplicative, a rerun of the administrative proceedings in a second, more formal forum. The dissident board member, having failed to persuade her four colleagues to her viewpoint, now has to persuade merely one judge. The number of such suits emanating from members on city, county, special district and state boards, will add significantly to court calendar congestion." (*Ibid*.; see also *Laidlaw Environmental Services, Inc., Local Assessment Com. v. County of Kern* (1996) 44 Cal.App.4th 346 (*Laidlaw I*) [citizen standing denied where committee members appointed to evaluate application to expand a hazardous waste facility sought petition for writ of mandate to vacate permit issued by the county].)

As in *Carsten*, there are several reasons why it would be inappropriate to permit the LAUSD to proceed with this litigation under the public interest exception.[10] First, like the plaintiff in *Carsten*, the record indicates that the LAUSD's challenge to the historic designation ordinance was not motivated by any broad public concern regarding Maywood's alleged violation of statutory requirements governing the adoption of local regulations. Rather, its interest in this case arose as the result of its ongoing litigation

---

10 We are not aware of any case in which a government agency has been granted standing under the public interest exception. (See, e.g., *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 203 [court was not required to address defendant's argument that "a public agency cannot qualify for public interest standing because it is a governmental entity and not a citizen"].) We conclude that, even if there are circumstances under which a state agency may qualify for citizen standing, no such circumstances are present here.

with Maywood over the construction of South Region High School No. 8.[11] Indeed, the LAUSD specifically concedes in its appellate brief that "[t]he core aim of [the current] lawsuit" is to obtain "a judgment declaring [its] project exempt from the Historic Ordinance and Resolution . . . ." This "core aim" has nothing to do with any "public concern" regarding Maywood's statutory duties.

Second, policy considerations militate against applying the public interest exception under the circumstances presented here. The LAUSD is a publicly-funded state agency established "'for the local operation of the state school system.'" (*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc*. (1996) 43 Cal.App.4th 630, 635 (*Laidlaw II*) [citing and quoting *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181 (*Hall*).) Like all school districts, the LAUSD's mission is to "promot[e] . . . the general education purposes of the state." (*People, ex rel. Williamson v. Rinner* (1921) 52 Cal.App. 747, 752; see *also San Francisco Unified School Dist. v. City and County of San Francisco* (2012) 205 Cal.App.4th 1070, 1073 [San Francisco Unified School District's "mission and responsibility is to educate City school children"].) The LAUSD's lawsuit, which challenges a zoning ordinance that cannot be enforced against it, has no apparent connection to its educational mission. The LAUSD has offered no explanation as to why citizen standing should be extended to a state agency pursuing litigation that has no relation to the agency's purpose.

Third, the LAUSD has failed to demonstrate that the public duty at issue here is "sharp" or that the "public interest would suffer greatly from a failure to perform such duty." (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 89; *Waste Management, supra,* 79 Cal.App.4th at p. 1232 ["citizen's suit" appropriate "when the public duty is sharp and the public need weighty"].) The LAUSD contends that its suit is intended to enforce two "compelling" public rights and duties: (1) "to build and operate a high school without unlawful interference by a municipality", and (2) "a city's obligation

---

11 Collectively, the LAUSD and Maywood have filed no fewer than four petitions of writ of mandate regarding the project and at least six additional motions for temporary injunctive relief.

to enact urgency ordinances only when justified by state law mandates." The first "public duty" is not at issue because, as discussed above, it is now settled that Maywood cannot enforce the historic designation ordinance against the LAUSD's project.

The second "compelling" duty identified by the LAUSD merely restates the statutory obligation that Maywood allegedly violated in this case. LAUSD's petition contends that Maywood violated Government Code section 36937 when it elected to immediately implement the historic designation ordinance, rather than waiting "30 days after [its] final passage." The LAUSD has not explained why, under the circumstances of this case, Maywood's alleged violation of this duty is particularly "sharp" in comparison to any other public duty nor has it explained how the public will suffer if the alleged violation is not immediately corrected. Indeed, the LAUSD has not identified a single party that has been, or is likely to be, detrimentally affected by Maywood's alleged failure to comply with section 36937's 30-day waiting period.

In sum, we see no basis for concluding that a school district involved in ongoing litigation with a city should, under the guise of citizen standing, be permitted to challenge a local historic designation ordinance that has no effect on the district and no apparent connection to the district's educational mission.

B. The Trial Court Erred in Concluding that Government Code Section 53097 Requires the LAUSD to Comply with the Provisions of the Encroachment Ordinance Applicable to the Proposed Pedestrian Bridge

The LAUSD argues that the trial court erred in concluding that it had to comply with the encroachment ordinance's requirement that it obtain a city permit prior to constructing a pedestrian bridge across 58th Street. The LAUSD asserts that, as a state agency, it is immune from the permitting requirement.

1. School districts' immunity from local regulation

In *Hall v. City of Taft, supra*, 47 Cal.2d 177, the California Supreme Court considered whether the City of Taft's "building regulations [were] applicable to the construction of a public school building by a school district in the municipality." (*Id*. at

p. 179.) The Court concluded that, as agencies of the state, school districts enjoyed sovereign immunity from local building regulations: "When [a school district] engages in such sovereign activities as the construction and maintenance of its buildings . . . it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (*Id*. at p. 182.) The Court further concluded that because the City of Taft had "referred to no statute or constitutional provision which . . . expressly makes school buildings or their construction . . . amenable to regulation by a municipal corporation" (*id*. at 182), it could not enforce its building ordinance against the school district.

Two years later, in *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, the court of appeal concluded that "school districts were likewise exempt from municipal zoning ordinances . . ." (*City of Santa Clara v. Santa Clara Unified School District* (1971) 22 Cal.App.3d 152, 156 (*Santa Clara*).) The court explained that, "[i]f, as the *Hall* case holds, the construction and maintenance of a school building is a sovereign activity of the state, it is obvious that the location and acquisition of a school site is necessarily and equally such an activity. Obviously, too, neither the Constitution nor the Legislature has consented to a municipal regulation of school sites." (*Atherton, supra*, 159 Cal.App.2d at p. 428.)

The "broad language" in *Hall* and *Atherton* "appeared to immunize all state agencies from local regulatory control, creating potential problems for local governments as well as the state, which suddenly had to assume regulatory and supervisorial responsibilities previously shouldered by local governments." (*City of Santa Cruz v. Santa Cruz City School Bd. of Education* (1989) 210 Cal.App.3d 1, 5 (*Santa Cruz*).) In 1959, the Legislature addressed these problems by adopting Government Code section 53091, subdivision (a), which states: "Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated."

However, the Legislature also adopted section 53094, which permits "the governing board of a school district, by vote of two-thirds of its members . . . [to] render

a city or county zoning ordinance inapplicable to a proposed use of property by such school district . . . ." The legislative history of section 53094 indicates that "the Legislature deliberately accorded different treatment to school districts than to other local agencies because it was well aware that school construction was subject to almost complete control by the state. . . . The Legislature accordingly provided in section 53094 that school districts, as opposed to other local agencies, should retain the right to exempt themselves from local zoning ordinances." (*Santa Clara, supra*, 22 Cal.App.3d at p. 158 fn. 3.)

In 1984, the Legislature consented to additional forms of local regulation of school districts when it adopted Government Code section 53097, which "requires school boards to comply with local controls concerning drainage, roads, and grading." (*Santa Cruz, supra*, 210 Cal.App.3d at p. 7.) The legislative history of section 53097 indicates that the "statute . . . was a response to an occurrence where storm water runoff from a school site in San Bernardino County allegedly caused damage to surrounding properties." (*Id*. at p. 7, fn. 4.) The statute was "designed to . . . prevent a [similar] []occurrence" (71 Ops. Cal.Atty.Gen. 332 (1988) by clarifying that school districts could not use section 53094 to exempt themselves from local regulations pertaining to either drainage and roads improvements or the review and approval of grading plans.

2. Maywood has failed to demonstrate that the Legislature intended to waive school districts' immunity from local ordinances regulating encroachments into the air space above public roads

The trial court ruled that, under section 53097, the LAUSD had to comply with any provisions in the encroachment ordinance applicable to the "58th street overpass." On appeal, the LAUSD contends that, as a state agency, it is immune from the ordinance's requirement that it obtain a "permit . . . [to] . . . build a pedestrian bridge over 58th Street."[12] Therefore, the narrow issue on appeal is whether section 53097 waives

---

12 The trial court's order includes language implying that, under section 53097, the LAUSD must also comply with Maywood's permitting requirements for "any other encroachments occasioned by the construction of the project. . . ." The LAUSD's

school districts' sovereign immunity from local ordinances regulating pedestrian overpasses or other forms of encroachments into the air space above public roads.[13]

As explained above, "'State agencies, including school districts, enjoy immunity from local regulation unless the state, through statute or provision of the California Constitution, has consented to waive such immunity." (*Laidlaw II, supra,* 43 Cal.App.4th at p. 635 [citing and quoting *Hall, supra,* 47 Cal.2d at p. 181.) "[I]t is settled that[,] . . . to be effective, . . . a waiver [of sovereign] immunity must be express, and not inferred by implication." (*Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1358.) Thus, the Legislature's intention to waive immunity must be "clearly expressed." (*Greene v. Franchise Tax Bd. (*1972) 27 Cal.App.3d 38, 42 (*Greene*).) Moreover, "[l]aws which tend to limit sovereignty are strictly construed in favor of the State." (*Id.* at p. 42; see also *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th

---

opening appellate brief, however, only discusses the trial court's conclusion that the district was subject to the permit requirements relating to the 58th Street overpass. We therefore limit our decision to that particular issue.

13 Maywood contends that the LAUSD has forfeited any argument regarding sovereign immunity because it did not raise the issue in the trial court. According to Maywood, LAUSD's theory before the trial court was that it was "statutor[il]y exempt[]" from complying with the city's ordinance pursuant to section 53094, not that it was immune from the ordinance. Generally, we will not consider arguments unless they were raised in the trial court. (See *In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 826.) "The policy behind the rule is fairness. 'Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider.'" (*Ibid*.) In this case, however, we find no unfairness in addressing whether section 53097 waives the LAUSD's immunity from provisions of the encroachment ordinance applicable to the pedestrian bridge. Although not specifically couched in terms of sovereign immunity, both parties' trial briefs addressed whether section 53097 applied to the encroachment ordinance and the trial court's ruling was largely predicated on its interpretation of the statute. Moreover, prior to hearing this appeal, we requested and received from both parties supplemental briefing on the issue of sovereign immunity. (See Gov. Code, § 68081.) Thus both parties have had an opportunity to address the argument. Moreover, "we have discretion to review a question of law, even if not raised in the trial court, where the underlying facts are undisputed and the matter is of public importance." (*Neumann v. Melgar* (2004) 121 Cal.App.4th 152, 164.)

1512, 1533 (*Coso*) ["Laws which tend to limit sovereignty are strictly construed in favor of the State"].)[14]

To ascertain whether the Legislature intended section 53097 to waive immunity from regulations relating to encroachments above public roadways, we "begin[] by examining the plain language" of the statute. (*People v. Thomas* (1992) 4 Cal.4th 206, 210.) Section 53097 states: "Notwithstanding any other provisions of this article, the governing board of a school district shall comply with any city or county ordinance (1) regulating drainage improvements and conditions, (2) regulating road improvements and conditions, or (3) requiring the review and approval of grading plans as these ordinance provisions relate to the design and construction of onsite improvements which affect drainage, road conditions, or grading, and shall give consideration to the specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements. If a school district elects not to comply with the requirements of city or county ordinances relating to the design and construction of offsite improvements, the city or county shall not be liable for any injuries or for any

---

14 Maywood argues that, when interpreting statutes limiting state agencies' immunity from local regulation, courts should conduct a balancing test that considers the city's interests in having its ordinance enforced. We are aware of no decision that has articulated or applied any such test in the context of sovereign immunity. As the California Supreme Court stated in "the *Hall* case . . ., the test of whether local regulations may control . . . state buildings is whether the Constitution or Legislature has consented to such regulation." (*City of Santa Ana v. Board of Ed. of City of Santa Ana* (1967) 255 Cal.App.2d 178, 180.) The city's interests in having its ordinance enforced against the state are not relevant to that inquiry. Maywood also argues that, rather than applying rules of construction applicable to statutes limiting sovereign immunity, we should apply rules of construction applicable to "statutory exemptions from particular regulations, once immunity has been waived by statute." In this case, however, we are not interpreting a statute that exempts an agency from a statute restricting sovereign immunity; we are interpreting a statute (section 53097) that actually restricts sovereignty. In such instances the waiver of immunity must be "strictly construed in favor of the State." (*Greene, supra,* 27 Cal.App.3d at p. 42; *Coso, supra,* 122 Cal.App.4th at p. 1533.)

damage to property caused by the failure of the school district to comply with those ordinances."

The statute requires school districts to comply with three categories of local ordinances: (1) regulations on drainage improvements and conditions; (2) regulations on road improvements and conditions; and (3) regulations requiring the review and approval of grading plans relating to the design and construction of certain types of onsite improvements. (See 71 Ops.Cal.Atty.Gen., *supra,* at p. 332 [§ 53097 requires school districts to comply with "city and county ordinances relating to drainage and road improvements and conditions, or which require review and approval of grading plans for the design and construction of onsite facilities and improvements"]; see also *Santa Cruz, supra,* 210 Cal.App.3d at p. 7 [statute waives immunity regarding "local controls concerning drainage, roads, and grading"].) In addition, the statue requires that school districts "consider" other types of local ordinances in the design and construction of offsite improvements.[15]

Maywood contends that, although section 53097 does not refer to bridges or any other form of encroachment extending into the air space above public roads, the statute requires compliance with local ordinances regulating pedestrian overpasses because such structures "can directly affect" either "road conditions" or "storm drainage flow." There are several problems with this interpretation. First, the statute contains no language that "clearly" and "expressly" waives school district immunity from local ordinances regulating encroachments that cross above the surface of a road. (*Bame, supra*, 86

---

15 The LAUSD contends that the statute only requires school districts to "comply" with local ordinances regulating drainage, road conditions and grading plans for "onsite" improvements, but not "offsite" improvements. The LAUSD further contends that because the pedestrian bridge spans a public roadway, it is an "offsite" improvement which is not subject to the mandatory requirements pertaining to "onsite" improvements. Maywood disagrees with the LAUSD's interpretation, arguing that the statute requires compliance with local ordinances regulating drainage and road conditions for both "onsite" and "offsite" improvements. For the purposes of this appeal, we need not resolve this dispute because we conclude that section 53097 does not include a clear and express waiver of immunity from local regulations pertaining to encroachments that cross above the surface of a roadway.

Cal.App.4th at p. 1358 [waiver of "immunity must be express"]; *Greene, supra,* 27 Cal.App.3d at p. 42 [intention to waive immunity must be "clearly expressed"].) In effect, Maywood asks us to infer that because overpasses could conceivably have an impact on road conditions or drainage, the Legislature necessarily intended to waive immunity from regulations on overpasses. Waivers of sovereign immunity, however, may not be "inferred by implication." (*Bame, supra,* 86 Cal.App.4th at p. 1361; see also *ibid*. ["although it can be fairly argued that the . . . statute[] suggest[s] [a waiver of immunity from a city tax], . . . nothing in them expressly authorizes the City to impose [such taxes]."].)

Second, Maywood's interpretation contravenes the rule that waivers of sovereign immunity must be "strictly construed in favor of the State." (*Coso, supra,* 122 Cal.App.4th at p. 1533.) The statute states only that school districts must comply with ordinances "regulating" drainage and road improvements and conditions. Maywood, however, proposes that we broadly interpret such language to include ordinances that either regulate drainage and road conditions or that regulate structures that could potentially affect drainage and road conditions. Under well-established rules of construction applicable to statutory waivers of sovereign immunity, such an expansive reading of section 53097 would be improper.

Third, other enactments demonstrate that if the Legislature had intended section 53097 to include ordinances regulating pedestrian overpasses or other encroachments over a roadway, it was capable of including direct language to that effect. The Legislature has adopted numerous statutes that specifically authorize cities to regulate "bridges" and "encroachments." For example, Government Code section 38775 provides cities "authority to prevent encroachments upon or obstruction in or to any . . . street and provide for the removal of such encroachment or obstruction"; section 37356 authorizes cities to build "passageways or other structures under or over any public alley in the city"; and section 4041 Streets and Highways Code section 5101 authorizes cities to "establish, build and repair bridges." By contrast, section 53097 does not include any

language referring to "bridges" or any other form of encroachment situated above the surface of a road.

Maywood argues that the California Supreme Court and the Attorney General have both issued opinions indicating that section 53097 was intended to waive immunity from local regulations pertaining to pedestrian overpasses. First, it cites *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, which was decided almost 20 years before the Legislature passed section 53097. The plaintiff in *Irwin* filed a complaint alleging that the City of Manhattan Beach had no legal authority to issue a permit allowing private parties "to construct a pedestrian overpass connecting their respective business establishments, said overpass to span a public street of the city." (*Id*. at p. 16.) The Supreme Court disagreed, concluding that several statutes, including Government Code section 40401 and Streets and Highways Code section 5101, expressly authorized the city "to construct an overpass spanning a public street." (*Id.* at p. 22.) The court further concluded that these statutes provided the city implied authority to delegate "the construction [of an overpass to] . . . private parties. . . subject to . . . municipal control as to design, maintenance, and future use." (*Id*. at pp. 23-24.)

The holding in *Irwin* has little relevance here. The issue in this case is whether section 53097 expressly waives school districts' sovereign immunity from local regulations pertaining to structures that encroach into the air space above a public road. *Irwin* does not refer to section 53097 nor does it discuss state agencies' sovereign immunity from local regulations. The decision merely concludes that cities have statutory authority to construct pedestrian overpasses, which they may properly delegate to third parties.

Maywood also argues that an opinion letter from the California Attorney General implies that section 53097 extends to any ordinance regulating structures or encroachments that could affect municipal streets. In Opinion Number 88-308, the Attorney General was asked to address whether "school facilities financed pursuant to the Leroy F. Greene State School Building Lease-Purchase Law 1976 (Ed. Code, § 17700 et seq.) [Lease-Purchase Law] [were] exempt from compliance with section 53097 . . ."

The Attorney General explained that the question had arisen because section 53097 "is specifically directed to an undertaking of 'the governing board of a school district,' whereas when a project is financed under the Lease-Purchase Law, a state agency, the State Allocations Board, 'has full charge of the acquisition, construction, completion and control' of the project. . . . Accordingly, it has been suggested that these factors . . . make school construction projects under the Lease-Purchase Law projects of the state rather than those of the governing boards of local school districts, thus rendering Government Code section 53097 inapplicable to them." (71 Ops.Cal.Atty.Gen., *supra* at p. 338.)

The Attorney General provided two reasons why it believed that schools financed under the Lease-Purchase Law were subject to section 53097. First, it explained that, although the State Allocations Board technically controlled the construction of school facilities financed under the Lease-Purchase Law, school districts were still responsible for "tak[ing] all of the actions necessary for the construction of the[] facilities. The reality . . . of the construction of school facility under the [Lease-Purchase Law], is one of school districts building needed facilities but using state funds and availing themselves of the lease purchase mechanism to do so. There is nothing in the wording of section 53097 to suggest that it was not intended to apply to that activity of . . . local school districts, even though they act as 'agent' of the state . . ." (71 Ops.Cal.Atty.Gen., *supra,* at pp. 340-341.)

Second, the Attorney General concluded that "the circumstances prompting the enactment of section 53097 supports the view that the Legislature intended that construction of school facilities under the . . . Lease-Purchase Law should comply with the local ordinances mentioned in the section." The Attorney General explained that the legislative history indicated the statute was designed to "ensure that school districts would comply with local drainage and grading ordinances to prevent . . . damage . . . from water runoff from a school site. . ." In the Attorney General's view, exempting school facilities constructed pursuant to the Lease-Purchase Law would effectively undermine these purposes: "it matters not to the runoff of rain water, whether the grading and drainage of a school site was accomplished with state or district funds. And the

runoff of waters from a school site is not dependent on the niceties of title, or whether a school district acted as agent of the state in constructing it. The purpose of the statute, avoiding . . . damage from water runoff from an improperly graded or drained school site, would require heed to local drainage and grading ordinances during construction in either case." (71 Ops.Cal.Atty.Gen., *supra*, at pp. 341-342.)

The Attorney General's opinion letter did not address whether section 53097 was intended to waive school districts' immunity from ordinances regulating pedestrian overpasses or other encroachments into the air space above a roadway. The opinion only addresses whether the statute applies to schools facilities financed under the Lease-Purchase Law. Moreover, the opinion's discussion of the purpose of the statute – requiring compliance with local "drainage and grading ordinances" to avoid damage from water runoff – provides no support for Maywood's contention that the statute extends to ordinances related to structures over public rights of way.

In sum, there is no language in section 53097 that clearly expresses a legislative intent to waive school districts' immunity from local ordinances regulating pedestrian overpasses or other encroachments into the air space above a roadway. Moreover, Maywood has identified no other statute that expressly waives school districts' immunity from such regulations. (See *Laidlaw, supra*, 43 Cal.App.4th at p. 636 [school district immune from "exclusive franchise for trash hauling awarded by the City" where plaintiff was "unable to point to any express statutory or constitutional waiver of the immunity school districts enjoy from local waste management regulations"].) The LAUSD is therefore immune from the portion of Maywood's encroachment ordinance that would require it to obtain a permit for the proposed pedestrian bridge traversing 58th Street.

Because we conclude that the LAUSD is immune from the relevant portion of the encroachment ordinance, we need not address the appellant's other arguments as to why it need not obtain a permit for the pedestrian bridge.

DISPOSITION

The trial court's judgment denying the LAUSD's petition for writ of mandate regarding the historic designation ordinance is affirmed. The trial court's judgment denying the LAUSD's petition for writ of mandate regarding the encroachment ordinance is reversed and the matter is remanded to the trial court with directions to enter a new judgment and issue a writ consistent with this opinion. The parties shall bear their own costs on appeal.[16]

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

---

16 The parties have each filed multiple requests for judicial notice regarding a wide range of materials. None of the materials are relevant or necessary to decide either of the appeals at issue here. We therefore deny all outstanding requests for judicial notice. (See *Surfrider Foundation v. California Regional Water Quality Control Board* (2012) 211 Cal.App.4th 557, fn.7 [denying request for judicial notice where documents were "not relevant to [court's] analysis"]; *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary . . . , helpful, or relevant"].)