

The logo for ALSTON & BIRD LAND USE MATTERS. 'ALSTON & BIRD' is in a white serif font. 'LAND USE' is in a large, bold, green sans-serif font. 'MATTERS' is in a large, white, bold, sans-serif font. The background features a wireframe cityscape and architectural blueprints with rolled-up documents.

ALSTON & BIRD LAND USE MATTERS

A publication of Alston & Bird's Land Use Group

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Each month, *Land Use Matters* will provide information and insights into legal and regulatory developments, primarily at the Los Angeles City and County levels, affecting land use matters, as well as new CEQA appellate decisions.

Please visit the firm's website for additional information about our [Land Use Group](#).

City of Los Angeles

City Council

City Prepares for Revised CEQA Guidelines to Measure Transportation Impacts

In August 2014, the Governor's Office of Planning and Research (OPR) released a draft of proposed changes to the California Environmental Quality Act (CEQA) Guidelines that will change how projects analyze transportation impacts. The proposed revisions implement part of Senate Bill 743 (September 2013), which required the OPR to implement alternative transportation standards. The [September 2014 edition of *Land Use Matters*](#) provided a full summary of the proposed revisions. The period to comment on OPR's draft revisions ended last November, but the OPR has not yet published its final draft of the revised Guidelines.

During that open comment period, the City of Los Angeles Department of Transportation (DOT) and Department of City Planning (DCP) submitted a letter to the OPR requesting additional time to transition to the new vehicle miles traveled (VMT) performance metric evaluation approach to analyzing transportation impacts. City staff expressed concerns that "OPR's current iteration of the proposed Guidelines may define impacts, or lack thereof, too broadly and fails to provide a reasonable timeline for cities to adapt to the proposed changes." The letter includes a list of recommendations to improve the Guidelines language.

In advance of the OPR's release of the final revised Guidelines, the city council approved a motion at its February 24, 2015, meeting directing the DOT and DCP to prepare a report on the scope of work that will be required to comply with the new Guidelines. The city council requested that the report include an implementation schedule, information on how VMT will be calculated, clarification on whether level of service (LOS) will continue to be used and a consideration of how the new Guidelines will align with the proposed Mobility Element of the General Plan. A copy of the city's letter to the OPR and motion outlining the full scope of the report requested by city council can be found [here](#).

Department of City Planning

City Planning Commission Approves Master Planned Development Zone Ordinance

The proposed Master Planned Development (MPD) Zone is intended to facilitate the development of campus-like unified and integrated development projects. The application requirements and development standards were reported in the [April 2014 edition of *Land Use Matters*](#) and previously recommended revisions were reported in the [September 2014 edition](#). At the direction of the City Planning Commission (CPC), planning staff sought additional feedback from stakeholders and revised the draft MPD ordinance to include the following:

- a requirement for a pre-application meeting with applicable city offices;
- the addition of airports and ports as eligible projects;
- an increase in the minimum lot area from three to five acres;
- guidelines for an economic study;
- clarification that development projects in the Downtown Design Guide Project Area must comply with the Downtown Design Guide;
- a requirement that more affordable housing be provided in exchange for density bonuses over 35 percent;
- a requirement that community benefits are provided in exchange for nonresidential floor area bonus; and
- clarification that when the property is subject to any other community benefit incentive program, including affordable housing, the program yielding the most community benefits prevails.

On January 8, 2015, the CPC approved the proposed MPD Zone Ordinance. The CPC also approved a separate ordinance to update the Zoning Code's density bonus provisions regarding the required number of years to maintain affordable units and regulations for vacating and demolishing rent-stabilized units pursuant to Assembly Bill 2222 (see the [October 2014 edition of *Land Use Matters*](#)). The city council will review the ordinance later this year. Click [here](#) to find the staff report and draft MPD Zone Ordinance.

Los Angeles County

Board of Supervisors

General Plan Update

At its March 24, 2015, meeting, the board of supervisors will consider approving the General Plan Update. The General Plan Update is composed of General Plan 2035, the Community Climate Action Plan (CCAP), zone changes and amendments to Title 22, Planning and Zoning Ordinance, for the purposes of zoning consistency and the Final Environmental Impact Report (EIR). General Plan 2035 will serve as the framework for existing community-based plans and the local coastal land use plans and will include seven Elements: Land Use; Mobility, Air Quality; Conservation and Natural Resources; Park and Recreation; Noise, Safety; Public Services and Facilities; and Economic Development. The CCAP will be part of the Air Quality Element.

The rezoning of 4,386 parcels is required to establish consistency between the Land Use Policy Map and the Zoning Map. Amendments to Title 22 are required to implement the General Plan 2035 policies and the Land Use Legend. Amendments include the creation of an Industrial Preservation Combining Zone (-IP), High Density Multiple Residence Zone (R-5) and Major Commercial Zone (C-MJ); removal of the M-4 Zone and the Arts and Crafts Zone; and updating the Hillside Management Area (HMA) Ordinance.

To review the Final EIR, General Plan 2035, staff reports and interactive maps click [here](#).

California Environmental Quality Act

Saltonstall v. City of Sacramento (3rd App. Dist., 2/18/15)

The court upheld the Environmental Impact Report prepared for the new Sacramento Kings basketball arena. The EIR was prepared pursuant to special legislation that provided for expedited review and litigation, although that legislation did not modify the substantive requirements of CEQA. The most notable holding of the court may concern the finding that the city did not pre-judge the project by taking the following actions *before* certifying the EIR – entering into a nonbinding term sheet with the team's owner and acquiring

land for the preferred site of the arena (citing to an exception concerning agencies' acquisition of the land sites in CEQA Guideline 15004(b)(2)(A)). The court also rejected the plaintiff's challenge to the alternative analysis in the EIR, finding that an analysis of remodeling the existing basketball arena was not necessary due to the similarities of other alternatives analyzed in the EIR. The court also rejected claims based on the EIR's omission of potential impacts attributable to "crowd safety" (such a safety issue is not an "environmental impact" within the meaning of CEQA), and the traffic impact analysis did not need to look at the impacts of additional attendees at events with "standing-room-only spaces" because such events were too infrequent. [Download Opinion](#)

CREED-21 v. City of San Diego (4th App. Dist., 2/18/15)

The 4th Circuit Court of Appeal upheld the city's use of the so-called "common sense" exemption under CEQA for a revegetation project. Reversing the trial court, the court found that prior work done under the emergency exemption in CEQA concerning the reconstruction of a failed storm drain and associated hillside was included in the baseline for the analysis of subsequent work done under the common sense exemption because the plaintiff had not timely challenged the emergency exemption. The common sense exemption requires that the agency demonstrate that "it can be seen with certainty that there is no possibility that the activity in question [had] a significant effect on the environment." (Guideline 15061(b)(3).) Applying that test to this case, the court found that the revegetation project would not cause any impacts since the area at issue was mostly bare dirt and the existing vegetation was non-native plants. In addition, the court rejected the plaintiff's argument that the "unusual circumstances" exception applied, primarily because the plaintiff's argument was based on the work done under the emergency exemption, which was barred from challenge. [Download Opinion](#)

City of Inglewood Approves New NFL Stadium

Relying on an exemption in CEQA, the Inglewood City Council voted to approve a new NFL stadium *without* undertaking environmental review under CEQA. This exemption and the recent case law upholding its use was reported in the [November 2014 edition of *Land Use Matters*](#).

Contributing Authors



Edward J. Casey, Partner
Environment, Land Use & Natural Resources
ed.casey@alston.com



Kathleen A. Hill, Planning Director
Environment, Land Use & Natural Resources
kathleen.hill@alston.com

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Doug Arnold
404.881.7637
doug.arnold@alston.com

Skip Fulton
404.881.7152
skip.fulton@alston.com

Geoffrey Rathgeber
404.881.4974
geoff.rathgeber@alston.com

Sarah Babcock
404.881.7632
sarah.babcock@alston.com

Maureen Gorsen
916.498.3305
maureen.gorsen@alston.com

Beverlee Silva
404.881.4625
beverlee.silva@alston.com

Ward Benshoof
213.576.1108
ward.benshoof@alston.com

Ronnie Gosselin
404.881.7965
ronnie.gosselin@alston.com

Jocelyn Thompson
213.576.1104
jocelyn.thompson@alston.com

Meaghan Goodwin Boyd
404.881.7245
meaghan.boyd@alston.com

Maya Lopez Grasse
213.576.2526
maya.grasse@alston.com

Andrea Warren
213.576.2518
andrea.warren@alston.com

Andrew Brady
213.576.2527
andrew.brady@alston.com

Mark Johnson
213.576.1089
mark.johnson@alston.com

Jonathan Wells
404.881.7472
jonathan.wells@alston.com

Nicki Carlsen
213.576.1128
nicki.carlsen@alston.com

Clay Massey
404.881.4969
clay.massey@alston.com

Diane Wizig
404.881.4954
diane.wizig@alston.com

Edward Casey
213.576.1005
ed.casey@alston.com

Elise Paeffgen
202.239.3939
elise.paeffgen@alston.com

Lee DeHihns
404.881.7151
lee.dehahns@alston.com

Bruce Pasfield
202.239.3585
bruce.pasfield@alston.com