



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.

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California Environmental Quality Act

Defend Our Waterfront v. California State Lands Commission (1st App. Dist., 9/17/15)

The 1st District Court of Appeal invalidated the use of a statutory exemption applicable to the State Lands Commission's (SLC) approval of a land exchange. The land exchange related to the 8 Washington Street Project, which was a planned waterfront development consisting of condominiums, restaurants, and retail uses. The site of that project included a parcel of land (Seawall Lot 351) that was under the jurisdiction of the SLC and subject to the "public trust." The proposed land exchange would terminate the public trust as to Seawall Lot 351 and convey another parcel of land to the SLC and the City of San Francisco and subject that land to the public trust. The SLC relied on a statutory exemption that applied to "settlements of title and boundary problems" by the SLC and "exchanges ... in connection with those settlements." The court found that this exemption was not applicable because there was no dispute or problem concerning title or boundary.

The court also made an important holding concerning the applicability of the doctrine of exhaustion of administrative remedies. That doctrine generally requires that the plaintiff in a CEQA lawsuit object to the project or the CEQA document at issue during the administrative proceedings. For that doctrine to apply, either a public comment period must be provided under CEQA or an opportunity for public comment at a public hearing must be provided before the final action. In the case of a CEQA exemption (statutory or categorical), the court held that the notice of the public hearing or other documents posted on the lead agency's website (e.g., meeting agenda or staff report) must identify that a CEQA exemption is being proposed; otherwise, the exhaustion doctrine does not apply in cases of a CEQA exemption.

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Save Our Schools v. Barstow Unified School District Board of Education (4th App. Dist., 9/2/15)

In a case directly highlighting the need for public agencies and project applicants to ensure that evidence supporting their action is in the administrative record, the 4th District Court of Appeal invalidated the use of an exemption for the closing of two elementary schools and the transfer of students to other "receptor" schools. A CEQA categorical exemption applies to "minor additions to existing schools" when "the addition does not increase original student capacity" of any receptor school "by more than 25% or ten classrooms, whichever is less." The court found that the administrative record lacked sufficient evidence of the original student capacity or total enrollment for the subject transfers of any of the receptor schools.

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