

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

Board of Supervisors

Board Approves \$100 Million Fund for Affordable Housing

At its October 27, 2015, meeting, the Board of Supervisors voted unanimously to create a new dedicated [Affordable Housing Program](#) budget unit and approved setting aside \$100 million for the creation and operation of both short- and long-term affordable housing units and rental assistance. The board directed the chief executive officer to identify \$20 million in the fiscal year 2016–17 budget and to recommend ways to increase the annual allocation to the fund by \$20 million per year in each of the subsequent four fiscal years, with the goal to reach an annual allocation of \$100 million per year by fiscal year 2020–21. A report on the proposed funding sources will be presented at a board meeting in spring 2016.

California Environmental Quality Act

North County Advocates v. City of Carlsbad (4th App. Dist., 10/9/15)

The 4th District Court of Appeal addressed an important CEQA “baseline” issue, reconciling a number of earlier appellate decisions, including from the California Supreme Court. The project involves the redevelopment of an existing retail shopping center, which included a large vacant department store. As of the preparation of the environmental impact report (EIR), that department store had been vacant for four years, although it had been fully occupied for the preceding 30 years. The baseline in the EIR assumed a fully occupied department store. The court of appeal upheld that analysis based on two factors – the historical occupancy of the space by the department store and the shopping center developer's right to re-let the department store without any discretionary approval from the city.

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Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority
(2nd App. Dist., 10/22/15)

In the longstanding feud over the extension of the Metro Purple Line, the City of Beverly Hills and its school district challenged the EIR prepared for this transit project, raising claims that the EIR should have been recirculated and the air quality analysis was deficient. The 2nd District Court of Appeal (as well as the trial court) upheld the EIR. The court of appeal ruled that the updated seismic studies included in the final EIR did not require recirculation because the draft EIR disclosed the potential uncertainties concerning different earthquake faults and the project alternative selected in the final EIR was studied to the same extent as an option for the proposed project in the draft EIR. The dispute concerning air quality focused primarily on the analysis of construction impacts. Again, additional technical studies, including the detailed construction scheduling, were added to the final EIR as well as in an addendum to the final EIR. Since those studies confirmed that there would be no new significant impacts based on the “intensity” of the impacts, the court found no error in those analyses. (Notably, the court disregarded the claim concerning the duration of the construction impacts.) Further, the court held that no additional health risk study needed to be prepared concerning those air quality impacts that were deemed significant based on thresholds set by the South Coast Air Quality Management District (SCAQMD).

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Berkeley Hillside Preservation v. City of Berkeley et al. (1st App. Dist., 10/15/15)

This month the First Appellate District revisited its review of the City of Berkeley’s approval of a proposed project to build a 6,478 square foot house and attached 10-car garage on a steep slope in a heavily wooded area of the city. The city had determined the project was exempt from further CEQA review under the Class 3 exemption for single family residences and Class 32 exemption for in-fill development. The appellate court initially invalidated the city’s approval, holding an exception to CEQA’s categorical exemptions applied because the project presented unusual circumstances. Earlier this year, the California Supreme Court reversed the appellate court’s decision and held a potentially significant environmental effect alone is not sufficient to trigger the unusual circumstances exception to the application of CEQA’s categorical exemptions. The supreme court remanded the case for the appellate court to apply the following two standards of review to the different steps in an agency’s application of the unusual circumstances exception to CEQA’s categorical exemptions: (1) whether substantial evidence supports an agency’s determination that unusual circumstances are present; and (2) whether there is a fair argument that the unusual circumstance gives rise to the proposed project having a significant effect on the environment. Applying that two-step approach, the appellate court held on remand that sufficient evidence supported the city’s conclusion that the project is categorically exempt from further CEQA review. The court held that substantial evidence supported the city’s conclusion that the size, scale, and setting of the proposed home did not present unusual circumstances. Having concluded there were no unusual circumstances, the court did not reach the second step in the inquiry. The court also held the application of a traffic management plan did not preclude application of the categorical exemption.

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