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# LAND USE MATTERS

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

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## City of Los Angeles

**Expedited and Streamlined Review Process for Community Rebuilding**

On March 18, 2025, Mayor Karen Bass issued Revised Emergency Executive Order No. 1 (EO 1) directing the Department of City Planning, Department of Building and Safety, Housing Department, and Bureau of Engineering to issue Implementation Guidelines for an expedited and streamlined permit review process to aid in the rebuilding of communities ravaged by the wildfires in January 2025. The guidelines, dated April 16, 2025, include criteria for defining an eligible project, development standards applicable to an eligible project, and permit application submittal requirements and review procedures for each department. Qualifying eligible projects must repair, restore, demolish, or replace property or facilities substantially damaged or destroyed by the wildfires, the project must be for the same use as the last use of the structure or facility before the wildfires, and new primary structures must be in the same location and not exceed 110% of the footprint and height of the previously existing primary structures. Eligible projects will not require City Planning review or building permit clearances (except for designated historic resources). The deadline for eligible projects to obtain building permits is January 13, 2032, which may be extended by a subsequent mayor's order or city council resolution. Repair and rebuilding projects not eligible for the EO 1 review process will still receive expedited initial review.

## California Environmental Quality Act (CEQA)

***Western States Petroleum Association v. California Air Resources Board*** **(2nd App. Dist., March 2025)**

The petitioner unsuccessfully challenged the California Air Resources Board's adoption of a regulation imposing emission controls for ocean-going vessels at berth (amendments to what is commonly called the At-Berth Regulation). The petitioner asserted that the board violated CEQA by inadequately analyzing safety hazards and cumulative impacts that could arise from compliance with the regulation.

The court of appeal affirmed the trial court's decision, finding that the conclusions drawn from the environmental analysis (EA) prepared in lieu of an EIR under the board's certified regulatory program were supported by substantial evidence. The EA was part of a tiered analysis comprising the previous 2016 State Implementation Plan (SIP) amendments, the At-Berth Regulation, and future project-specific analyses to be conducted as the regulation is implemented. Therefore, the court found it was appropriate to defer some analysis – including the project-level hazards analysis – to the future project-level environmental review, particularly since compliance options may be different for different vessels and locations.

For its cumulative impacts analysis, the board relied on a summary of projections in the 2016 SIP EA, which, on a program level, analyzed cumulative impacts from a suite of statewide emissions reductions regulations. The petitioner contended that the board should have included specific coastal projects as well, but the court agreed with the board's determination that the programmatic review of the emissions reductions regulations was more accurate and that evidence in the record supported the board's methodology and determination.

***Koi Nation of Northern California v. City of Clearlake*** **(1st App. Dist., March 2025)**

This case involved a dispute between the Koi Nation of Northern California and the City of Clearlake involving a project approved by the city for the development of a hotel and corresponding road extension. Koi Nation contended that the city failed to consult with the tribe under CEQA's "tribal consultation" requirements, as amended by Assembly Bill (AB) 52, relating to tribal cultural resources that could be affected by the project. The city countered that Koi Nation failed to take steps necessary to trigger CEQA's tribal consultation provision, or alternatively, the city complied with any necessary requirements. The court of appeal reversed the trial court's decision, holding that the city failed to comply with CEQA and instructing the trial court to set aside the city's mitigated negative declaration and project approval.

First, the court found CEQA "requires only that a tribe's response be in writing, be timely, and request consultation" to trigger consultation requirements. Koi Nation met this requirement by responding to the city's formal notification and requesting consultation within 30 days through its designated representative.

Second, the court found the consultation "was perfunctory at best" and failed to meet CEQA's requirement of a "meaningful and timely process of seeking, discussing and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement." Among other inactions, the city failed to provide reasons for rejecting two mitigation measures requested by the Koi Nation, failed to inform the tribe's representative of its decision about the project, failed to "consider the value and significance of resources" to the tribe, and failed to seek agreement where feasible. Therefore, the consultation was incomplete and an abuse of discretion by the city.

Finally, the court found the city's CEQA violation was prejudicial because necessary information was not available to decision-makers or included in public documents. The court emphasized that compliance with CEQA provisions added by AB 52 is not optional and agencies must properly consult with tribes regardless of whether a tribe has submitted information to the agency outside the consultation process.

***Cleveland National Forest Foundation v. County of San Diego*** **(4th app. Dist., April 2025)**

To determine whether a proposed project is subject to CEQA, public agencies must assess whether the project could have a significant impact on the environment. To promote consistency with this process, agencies develop "thresholds of significance" to determine whether an environmental effect will be less than significant. In this case, the petitioners challenged two screening thresholds adopted by a county to identify when a project would result in a less-than-significant vehicle miles traveled (VMT) impact. The court of appeal agreed with the plaintiffs that the county's thresholds were not supported by substantial evidence.

The plaintiffs challenged the "infill" and "small project" thresholds. The infill threshold is for projects in certain areas, but no VMT analysis was used to identify the areas that would fall under the threshold. The small project threshold exempted VMT analysis for residential or office projects that are expected to generate fewer than 110 automobile trips.

The county argued that the infill threshold takes VMT into account because Senate Bill (SB) 743 created a presumption that infill development will not cause significant VMT impacts, and no authority mandates a particular methodology to account for VMT. The court found this justification to be insufficient because it was primarily based on general assumptions about infill development that were undermined by statements in the county's own transportation guide. The court held that it was not enough for the county to state that infill development is better than non-infill development involving VMT; rather, the question is whether impacts will be significant or insignificant.

The court also found that there was no substantial evidence supporting the small project threshold. The county argued that the state Office of Planning and Research also included a similar threshold in its recommendations. The court, however, held that the substantial evidence standard requires evidence that the threshold applies as intended under the applicable local conditions. The county failed to provide any evidentiary support to satisfy this standard.

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## Contributing Authors

Jeffrey Carlin
Partner
Environment,
Land Use &
Natural Resources
jeff.carlin@alston.com

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

Maya Lopez Grasse
Counsel
Environment,
Land Use &
Natural Resources
maya.grasse@alston.com

Robia Amjad
Associate
AB Accelerate
robin.amjad@alston.com

Clayton Kinsey
Associate
AB Accelerate
clayton.kinsey@alston.com

If you have any questions, or would like additional information, please contact one of the attorneys with our Environment, Land Use & Natural Resources Group.