



ALSTON & BIRD LAND USE MATTERS

A publication of Alston & Bird's Land Use Group

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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, as well as new CEQA appellate decisions.

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

State of California

The Governor's Office of Planning and Research released a comprehensive package of many proposed updates to the CEQA Guidelines on November 27, 2017. Alston & Bird will provide detailed analysis of those proposed updates in our next Land Use advisory.

City of Los Angeles

City Council

Demolition of Older Structures

For a building or structure that is more than 45 years old, the Los Angeles Department of Building and Safety (LADBS) is required to post a notice on the property and mail a notice of demolition pre-inspection to abutting property owners and the Council District Office at least 30 days before issuance of a demolition permit. On November 21, 2017, the City Council adopted an [ordinance](#) to increase the notification requirement to include abutting building occupants and the Certified Neighborhood Council. The ordinance also includes a requirement that LADBS verify the placement of the notice before beginning demolition work.

California Environmental Quality Act

Cleveland National Forest Foundation v. San Diego Association of Governments (4th App. Dist., 11/16/17)

The SANDAG case was back before the Court of Appeal following California Supreme Court review and remand to the trial court. At issue was the adequacy of the analysis of impacts attributable to greenhouse gas (GHG) emissions in a program environmental impact report (EIR) prepared for San Diego's Regional Transportation Plan (RTP). The court concluded that the EIR failed on multiple fronts. First, the court ruled that the EIR needed to analyze potentially feasible mitigation measures that had already been identified in the Climate Action Strategy (such as supporting smart growth development planning, incentives for transit-oriented development, and parking management measures that promote walking and transit use). Second, the court held that the EIR did not analyze a reasonable range of alternatives because there was no study of an alternative that significantly reduced vehicle miles traveled. Finally, the court found error in the EIR for not analyzing air quality impacts and providing more baseline information on toxic air contaminants exposure and the location of sensitive receptors.

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Association of Irrigated Residents v. Kern County Board of Supervisors (5th App.Dist., 11/21/17.)

The Court of Appeal rejected an EIR to modify an existing oil refinery in Bakersfield to allow for the unloading of approximately 100 train cars of oil per day. However, in a question of first impression, the court upheld the use of compliance with the Cap-and-Trade program as a basis for finding less than significant GHG impacts. Because GHG emissions from sources and materials subject to the Cap-and-Trade program must be offset through allowances and credits, the court concluded that the proposed project's emissions stemming from such sources and materials could be deducted *before* determining effects on the environment (so long as there was proper disclosure, as there was in this case). The court also upheld the county's decision to use 2007 emissions as the baseline instead of emissions from 2013, when the notice of preparation was published. The court explained that substantial evidence supported this decision because 2007 was "the last full year of operations" and it was "a reasonable representation of the operations actually performed at the refinery."

The court ultimately rejected the EIR because it concluded that the federal Interstate Commerce Commission Termination Act (ICCTA) does not preempt CEQA review of impacts from off-site train rail activities.

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Washoe Meadows Community v. Department of Parks and Recreation (1st App.Dist., 11/15/17)

This case concerns whether an EIR must describe a single proposed project in order to establish an "accurate, stable and finite" project description, or if it is allowable to instead analyze a set of alternatives at a comparable level of detail without identifying a preferred alternative. The lead agency sought to relocate part of a golf course in order to help restore the Upper Truckee River. The agency's EIR analyzed in detail five alternatives but did not state which alternative was its preferred alternative or "project." Affirming the trial court, the Court of Appeal held that EIRs must describe an actual proposed project for there to be a "stable" project description. The court held that a broad range of alternatives with no stated preferred project created a "moving target" for the public since each alternative created a different set of impacts, requiring different mitigation measures. Thus, the court ruled that the failure to select any project at all impairs the public participation process, and for that reason violates CEQA.

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Placerville Historic Preservation League v. Judicial Council of California (1st App.Dist., 10/16/17)

The court upheld an EIR for consolidation of trial court operations in two courthouses, which would result in the closure of a historic courthouse in downtown Placerville. The primary challenge to the adequacy of the EIR was that it did not properly analyze the potential urban decay attributable to the closure of the downtown courthouse. Even though there was no outside expert report on the issue, the court rejected the plaintiff's claim because (1) "urban decay is a relatively extreme economic condition . . . , change is commonplace . . . [and in] the absence of larger economic forces, urban decay is not the ordinary result"; (2) any dislocation caused by the closure of the courthouse was likely to be "temporary"; and (3) there was insufficient evidence to "infer the long-term detriment necessary to result in physical deterioration."

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Protect Telegraph Hill v. City and County of San Francisco (1st App.Dist., 10/13/17)

The court upheld the use of a categorical exemption for a project that would reconstruct a cottage built in 1906 and construct a new three-unit building, rejecting the plaintiff's claim that the project would cause significant impacts due to "unusual circumstances." Although the court recognized that Telegraph Hill is a unique site in the City of San Francisco, the construction of those four residential units on Telegraph Hill did not present any unusual circumstances, despite the plaintiff's claims that the project would cause traffic and pedestrian impacts, view impacts, and geological impacts.

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This publication by Alston & Bird LLP provides a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

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