



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](#).

California Environmental Quality Act

Updated CEQA Guidelines

After years of drafting and incorporating revisions in response to public comments, California's Natural Resources Agency recently adopted a comprehensive package of changes to the California Environmental Quality Act's (CEQA) implementing Guidelines, marking the first comprehensive update since the late 1990s. The amendments likely will not streamline the CEQA review process or shorten the timeline for legal challenges under CEQA, but they do provide important clarifications by better aligning the CEQA Guidelines with recent changes in the statute and appellate court decisions. The amendments can broadly be grouped into three categories: efficiency improvements, substantive improvements, and technical improvements.

The efficiency improvements include clarifications related to the formation of significance thresholds and certain CEQA exemptions, clarifying revisions and the deletion of duplicative questions to the Environmental Checklist in Appendix G, new requirements to evaluate a project's potential impacts to energy and wildfire risks, and a new section on remedies for legal actions challenging a lead agency's CEQA compliance. The substantive improvements include new guidance on analyzing a project's impacts to energy, water supply, and greenhouse gases and new methods for analyzing transportation impacts pursuant to Senate Bill 743. The technical improvements include clarifications for how an agency may describe a project's environmental baseline, clarification that lead agencies may defer specific details of mitigation measures when it may be impractical or infeasible to fully formulate details at the time of a project approval, and clarifications that a lead agency may provide only general responses to general comments received on environmental documents.

The amendments became effective on December 28, 2018, applying prospectively to steps in the CEQA process that have not yet commenced by the effective date of the revisions.

[CEQA Amendments](#)

***Sierra Club v. County of Fresno* (12/24/18, Cal. Supreme Ct.)**

The California Supreme Court invalidated an environmental impact report (EIR) for a project known as the "Friant Ranch project" for the lead agency's failure to connect a project's significant and unavoidable air quality impacts (i.e., those impacts that could not be mitigated) to specific health effects. The project consisted of a planned development in Fresno County with approximately 2,500 single- and multifamily residential units for residents 55 and older, other unrestricted residential units, and other recreational uses. While the project's EIR included general information on the health impacts of the project's estimated air emissions, the EIR never connected those adverse health effects to the specific levels of pollutants that would lead to the project's significant and unavoidable air quality impacts. Without connecting those dots, the court held that the EIR failed as an informational document. The court recognized that it may not be scientifically feasible to connect estimated air quality emissions with potential human health impacts. However, if that is the

case, an EIR must explain that such analysis may not be feasible. The court also held that the project's air quality mitigation measures could include a "substitution clause" allowing the lead agency to substitute different air pollution control measures that are equally effective or superior to those proposed in the EIR as new technology becomes available.

[Opinion](#)

San Diegans for Open Government v. City of San Diego (1/15/19, 4th App. Dist.)

The court rejected a challenge to the city's approval of an amended and restated lease for an existing amusement park. The city determined that the "existing facilities" exemption under CEQA applied. In rejecting the plaintiff's challenge, the court found that the "new" facilities had already been built by the time the city approved the lease and adopted the exemption. The court further held that refurbishing existing facilities was within the scope of the existing facilities exemption.

[Download Opinion](#)

McCorkle Eastside Neighborhood Group v. City of St. Helena (1/10/19, 1st App. Dist.)

The court rejected a challenge to development of an eight-unit multifamily building. The only "discretionary" approval was design review. In a decision that may affect the scope of environmental review in future CEQA cases, the court held that the "CEQA Guidelines recognize that the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the local ordinance." In this case, the local design review ordinance limited the city's discretion to design and aesthetic issues. Therefore, CEQA review was limited to those issues and no other potential environmental impact issues because the city lacked the authority to otherwise shape the project beyond design and aesthetic issues.

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Alliance of Concerned Citizens Organized for Responsible Development v. City of San Juan Bautista (11/26/18, 6th App. Dist.)

The court affirmed the city's approval of a revised mitigated negative declaration (MND) for a new gas station, convenience store, and fast food restaurant along a section of a freeway. Previously, the trial court had upheld all aspects of the original MND, but directed the city to reconsider noise impacts. The noise study for the original MND assumed that potentially significant noise impacts could be mitigated through a sound wall and landscaping, although the MND lacked technical studies determining the feasibility of such measures. In the revised MND, the additional noise analysis included modeling demonstrating the quantitative noise increase attributable to the project's traffic, which was one decibel and below the three-decibel significance threshold. Even though no mitigation measures were recommended by the revised MND, the court upheld the revised MND based on the new technical studies.

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High Sierra Rural Alliance v. County of Plumas (11/15/18, 3rd App. Dist.)

The court rejected a challenge to a program EIR certified by the county for its General Plan update. The EIR assumed that the vast majority of future growth would occur in planning areas and not in more rural portions of the county. The court found that growth outside the planning areas was not "reasonably foreseeable" based on the county's shrinking population during the past 10 years. The court also rejected the plaintiff's claim that the EIR should have been recirculated based on the county's addition of building intensity standards in the final EIR. The court found that such standards restricted future development and therefore no new significant impacts would occur that would warrant recirculation.

[Opinion](#)

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Editor's Note: We are pleased to congratulate Ed Casey on his recognition by the *Los Angeles Business Journal* as one of the "Top Litigators in Los Angeles" in land use. You can read more about the award [here](#).

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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