



ALSTON & BIRD LAND USE MATTERS

A publication of Alston & Bird's Land Use Group

April 2019

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.

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City of Los Angeles

Department of City Planning

Los Angeles City Planning Commission Adopts Recommendation to Change Los Angeles' CEQA Traffic Significance Thresholds from LOS to VMT

On March 11, 2019, the [City Planning Commission adopted](#) a recommendation that the city council update the city's transportation significance thresholds under the California Environmental Quality Act (CEQA) pursuant to Senate Bill 743. To evaluate a project's potential transportation impacts, SB 743 and the implementing CEQA guidelines require local agencies to implement significance thresholds that no longer focus on measuring automobile delay and level of service (LOS) but instead focus on a project's impacts on vehicle miles traveled (VMT). The VMT approach is intended to reduce greenhouse gas emissions, help prioritize safety and access of all street users, and promote a diversity of land uses.

The city council has not yet indicated when it will formally adopt the VMT thresholds, but there will be a phase-in process for projects undergoing environmental review. Projects that have already initiated obtaining a Memorandum of Understanding (MOU) from the Los Angeles Department of Transportation (LADOT) and have filed an application with the Department of City Planning (DCP) may analyze traffic impacts under the existing LOS thresholds. Projects that have not yet initiated an MOU with LADOT or filed an application with the DCP will need to prepare a VMT analysis. Because the applicable CEQA guidelines require that all local agencies apply the VMT threshold by July 1, 2020, the city will require any projects expected to complete the CEQA process after that date to include a VMT analysis.

Draft Citywide Design Guidelines

On March 22, 2019, DCP Urban Design Studio released the [draft Citywide Design Guidelines](#), an update and consolidation of three existing documents that contain over 150 guidelines for residential, commercial, and industrial projects into a single document with 10 guidelines of the city's most important design expectations. Applicants submitting projects that are subject to design review authority such as a general plan amendment, zone change site plan review, density bonus, conditional use permit, and discretionary transit-oriented community application will need to include a written statement describing how their project complies with each of the 10 guidelines. Comments on the guidelines are due by May 24, 2019.

Los Angeles County

Department of Regional Planning

Technical Update to Title 22

The Technical Update to Title 22 – Planning and Zoning of the Los Angeles County Code (Title 22) was adopted by the Board of Supervisors and became effective on February 28, 2019. Title 22 has been reorganized into nine divisions, combining information that was spread across the prior code into logical sections and chapters and streamlined administrative and case reviews into four standard sets of application-processing procedures. The Department of Regional Planning is in the process of having the [new Title 22](#) uploaded to a web format.

California Environmental Quality Act

South of Market Community Action Network v. City and County of San Francisco (1st App. Dist., 3/25/19)

The Court of Appeal upheld an environmental impact report (EIR) for a large mixed-use project in San Francisco, rejecting a broad range of legal arguments mounted by the project opponents. Specifically:

- The court upheld the description of the project even though it included two options for different allocations of residential and office uses, noting that the number of new buildings would be the same under either option and the total amount of square footage was essentially the same.
- The cumulative impact analysis was upheld because it was based on a project list that was current as of the date of the Notice of Preparation (NOP). The court held that the NOP date was the appropriate cutoff date for determining the related projects list. The court also noted that the lead agency took the additional step of updating the related project list before publication of the draft EIR. The court also gave substantial deference to the lead agency's determination of the appropriate geographic scope of the cumulative impact studies, including traffic.
- The traffic impact analysis was upheld, with the court giving deference to the lead agency's methodology for excluding certain intersections beyond the study area. The court also rejected a challenge based on the EIR's failure to consider a city traffic plan adopted almost three years after the NOP and two years after the draft EIR.
- The court rejected challenges to the analysis of open space, finding that there is no case authority for the proposition that sunlight on a park's open space constitutes a "rare or unique resource" under CEQA.
- The court rejected the challenge that the EIR had to analyze potential inconsistencies with a draft land use plan because EIRs are only required to analyze adopted plans.

[Download Opinion](#)

Ione Valley Land, Air, and Water Defense Alliance LLC v. County of Amador (3rd App. Dist., 3/20/19)

A trial court had previously rejected challenges to an EIR for a quarry project, except for the analysis of traffic impacts. In response, the county decertified the EIR, prepared a revised traffic analysis, and recertified the EIR. The project opponents sued again and the Court of Appeal rejected their challenge to the recertified EIR. Most notably, the court found that the plaintiff was precluded from challenging any of the impact analyses other than traffic due to the doctrine of res judicata. However, the court did not address the plaintiff's argument that the county had to consider changed circumstances relating to the non-traffic impact analyses because the plaintiff raised that legal argument too late in the litigation.

[Opinion](#)

Fudge v. City of Laguna Beach (4th App. Dist., 2/13/19)

The City of Laguna Beach approved a coastal development permit (CDP) for the demolition of a single-family house. A neighbor filed an appeal with the Coastal Commission and filed a lawsuit challenging the city's action. The Court of Appeal upheld the dismissal of the lawsuit because the Coastal Commission had accepted the appeal for consideration, which precluded any further challenge to the CDP in court until the Coastal Commission took final action on the appeal.

[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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