

ALSTON & BIRD LAND USE MATTERS

A publication of Alston & Bird's Land Use Group

July 2018

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

California Natural Resources Agency

Proposed Revisions to CEQA Guidelines Reach Next Step in Rulemaking

The California Natural Resources Agency recently released an updated version of proposed revisions and additions to the CEQA Guidelines, incorporating comments received on a [draft released late last year](#). The proposed revisions to the initial draft clarify: (1) when a lead agency may execute agreements without first completing environmental review for a proposed project; (2) how a lead agency may contract with consultants to prepare an initial study; (3) significance thresholds; (4) requirements for the new transportation analysis in accordance with SB 743; (5) evaluation of a project's potential greenhouse gas impacts; (6) how a lead agency may rely on a baseline that is different from existing conditions; (7) analysis of a project's potential impacts to energy resources; (8) the addition of details of a mitigation measure after project approval; (9) when certain residential projects that are consistent with the specific plan may be exempt from CEQA; (10) a lead agency's required response to the project after a successful court challenge; (11) when changes to existing facilities related to bicycle facilities and pedestrian crossings may be exempt from CEQA; (12) the updates to the checklist questions in Appendix G for initial studies; and (13) the updates to the checklist for qualified infill projects in Appendix N.

A copy of the proposed revisions can be found [here](#).

California Environmental Quality Act

County of Ventura v. City of Moorpark (2nd App. Dist., 6/12/18)

The plaintiffs, which included the City of Fillmore, challenged a beach restoration project to be undertaken by a "geologic hazard abatement district" in the Broad Beach area of Malibu. Part of the project included a settlement agreement concerning trucks hauling sand and other materials to and from the project site. The court first held that the restoration project and settlement agreement were a single project, noting that the definition of "separate projects" under CEQA included only projects that "have different project proponents, serve different purposes, or can be implemented independently." Second, even though the court found that the restoration project and settlement agreement constituted a single project, the court found that the project was exempt under CEQA due to the statutory exemption in favor of "actions necessary to prevent or mitigate an emergency."

[Download Opinion](#)

World Business Academy v. California State Lands Commission (2nd App. Dist., 6/13/18)

The plaintiff challenged the State Lands Commission's approval of a lease extension in favor of Pacific Gas & Electric Company's (PG&E) continued operation of water intake and discharge structures for its nuclear power plant in Diablo Canyon. The approval extended the existing leases by seven years through 2025, when the facility would cease operation. The lease extension authorized no change in operation of the structures or any new physical work. The court affirmed the commission's adoption of a categorical exemption under CEQA, specifically the "existing facilities" exemption. The court further found that the "unusual circumstances" exception to categorical exemptions did *not* apply. Notably, the court assumed that unusual circumstances existed but found that a fair argument could not be made that such unusual circumstances may cause a significant impact on the environment. In reaching that conclusion, the court relied on the existing environmental baseline, which was premised on the long-term operation of the water intake and discharge structures. The court also upheld the commission's decision that the lease extension would not significantly interfere with the trust values upon which the public lands (leased by PG&E) are held by the commission pursuant to the state's public trust doctrine.

[Download Opinion](#)

Contributing Authors



Edward J. Casey
Partner
Environment, Land Use
& Natural Resources
ed.casey@alston.com



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



Andrea Warren
Senior Associate
Environment, Land Use
& Natural Resources
andrea.warren@alston.com

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.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Doug Arnold
404.881.7637
doug.arnold@alston.com

Maureen Gorsen
916.498.3305
maureen.gorsen@alston.com

Max Rollens
213.576.1082
max.rollens@alston.com

Paul Beard
916.498.3354
paul.beard@alston.com

Ronnie Gosselin
404.881.7965
ronnie.gosselin@alston.com

Chris Roux
202.239.3113
213.576.1103
chris.roux@alston.com

Meaghan Goodwin Boyd
404.881.7245
meaghan.boyd@alston.com

Maya Lopez Grasse
213.576.2526
maya.grasse@alston.com

Phil Sandick
404.881.7632
phil.sandick@alston.com

Nicki Carlsen
213.576.1128
nicki.carlsen@alston.com

Nate Johnson
213.576.1151
nate.johnson@alston.com

Jocelyn Thompson
415.243.1017
jocelyn.thompson@alston.com

Edward Casey
213.576.1005
ed.casey@alston.com

Clay Massey
404.881.4969
clay.massey@alston.com

Andrea Warren
213.576.2518
andrea.warren@alston.com

Roger Cerda
213.576.1156
roger.cerda@alston.com

Clynton Namuo
213.576.2671
clynton.namuo@alston.com

Jonathan Wells
404.881.7472
jonathan.wells@alston.com

Nicole DeMoss
404.881.4945
nicole.demoss@alston.com

Elise Paeffgen
202.239.3939
elise.paeffgen@alston.com

Matt Wickersham
213.576.1185
matt.wickersham@alston.com

Jeffrey Dintzer
213.576.1063
jeffrey.dintzer@alston.com

Bruce Pasfield
202.239.3585
bruce.pasfield@alston.com

Skip Fulton
404.881.7152
skip.fulton@alston.com

Geoffrey Rathgeber
404.881.4974
geoff.rathgeber@alston.com