



# ALSTON & BIRD 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, as well as new CEQA appellate decisions.

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## New CEQA Decisions Keep Coming Despite COVID-19

### California Environmental Quality Act

#### ***Communities for a Better Environment v. South Coast Air Quality Management District* (2nd App. Dist., April 2020)**

The court upheld an environmental impact report (EIR) prepared for an oil refinery project in Los Angeles County. The owner of the facilities, Tesoro Refining and Marketing Company, proposed a project that would involve the integration of two refineries, which would alter the ratio of outputs for gasoline and jet fuel. The project would also increase compliance with air quality regulations, which would reduce air pollution. The court upheld the EIR, finding that substantial evidence supported the agency's selection of an environmental baseline. The agency chose a baseline based on the "98th percentile" or near-peak emission days over a two-year interval. The court found that baseline to be proper because the agency's objective was to evaluate peak smog days and reduce the health effects associated with those peak days. The court was also persuaded that the U.S. Environmental Protection Agency also uses the 98th percentile analysis in many of its decisions.

#### Opinion

#### ***Coalition for Equitable Westlake/MacArthur Park v. City of Los Angeles* (2nd App. Dist., April 2020)**

The Court of Appeal upheld the trial court's dismissal (on demurrer) of a CEQA lawsuit challenging the approval of a mitigated negative declaration (MND) for a mixed-use project consisting of a hotel and residential tower. The city's Advisory Agency approved a tentative tract map and filed a Notice of Determination (NOD) concerning that approval and adoption of the MND. No person filed a CEQA lawsuit or an administrative appeal within CEQA's 30-day statute of limitation after the Advisory Agency's decision. Thereafter, the Planning Commission approved other entitlements for the project, relying on the previously adopted MND. When the plaintiff brought

a CEQA lawsuit after the City Council's denial of appeals of the Planning Commission's decision, the court found that the lawsuit was barred by the statute of limitation because no one filed an administrative appeal or a lawsuit within the 30-day limitation period.

[Opinion](#)

***Save the Agoura Cornell Knoll v. City of Agoura Hills (2nd App. Dist., March 2020)***

In a case illustrating the importance for the lead agency and a project applicant to provide substantial evidence to support every aspect of the CEQA process, the court struck down an EIR prepared for a mixed-use project consisting of 35 apartments plus retail, restaurant, and offices on an 8-acre site. The number of defects found by the court are too numerous to summarize here. The court found defects primarily in the areas of biological resources and archaeological resources. The defects included failing to provide evidence to support the feasibility of mitigation measures adopted for the project, failure to conduct studies necessary to define the scope of the resources and the project's impact on the resources, not providing updated technical studies and surveys, and failure to address comments from the public and other expert agencies. This case stands for the proposition that when a project is hotly contested by multiple groups, project applicants must provide substantial evidence, whether in the form of studies or other information, to support every aspect of the CEQA process.

[Opinion](#)

***Environmental Council of Sacramento v. County of Sacramento (3rd App. Dist., March 2020)***

The court upheld the EIR prepared for a master planned community, which included a university. The plaintiff attacked the adequacy of the project description in the EIR, claiming that the likelihood that the university would be built was so low that the university was an "illusory element of the project." The court rejected that argument based on evidence in the record, as well as conditions of approval in the entitlements, that supported the lead agency's inclusion of the university in the project description. (There is no discussion in the opinion as to whether the plaintiff also attacked the no project alternative in the EIR.) The court also rejected the plaintiff's challenges to various mitigation measures even though those measures were revised and added after circulation of the draft EIR. The court found that the mitigation measures were consistent with various regulations and provided a quantitative performance standard.

[Opinion](#)

***Canyon Crest Conservancy v. County of Los Angeles (2nd App. Dist., March 2020)***

The court denied the plaintiff's motion for attorneys' fees in a CEQA lawsuit. The project applicant had received approval of a conditional use permit and oak tree permit for the development of a single-family residence on undeveloped property in Los Angeles County. After a CEQA lawsuit was filed, the project applicant asked the county to withdraw the permits because he could not afford to defend the litigation. The county granted that request and withdrew the permits. The court found that even though the project applicant withdrew the permits in response to the litigation, the plaintiff had failed to meet the substantive requirements for an award of attorneys' fees under California Code of Civil Procedure Section 1021.5.

[Opinion](#)

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