



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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City of Los Angeles

City Council

Measure JJJ, Build Better LA Initiative

On December 13, 2016, the city council adopted a resolution certifying the results of the November 8, 2016, election and the provisions of Measure JJJ, as reported in the [February Land Use Newsletter](#), which are now in effect. The Department of City Planning (DCP) issued a [memorandum](#) clarifying any development project that 1) will result in 10 or more residential dwelling units and 2) requires a general plan amendment, zone change and/or height district change that results in increased allowable residential floor area, density, height or allows a residential use where previously not allowed is subject to the affordable housing and labor requirements in Section 3 and 5 of the measure. A project with a vesting zone change, vesting tentative map or vesting conditional use permit, which was deemed complete as of December 13, 2016, is not subject to Measure JJJ, and a project with approved entitlements as of that date may be exempt from the provisions, depending on the facts.

Department of City Planning

New Environmental Assessment Form

The DCP has revised the [Environmental Assessment Form](#) (EAF) to include additional questions regarding specific project details and cultural/historic resources and justification for requesting a Class 32 Urban Infill Categorical Exemption. The new form is effective January 2, 2017.

California Environmental Quality Act

East Sacramento Partnership for a Livable City vs. City of Sacramento (3rd App. Dist., 11/7/16)

While rejecting all other claims challenging an Environmental Impact Report (EIR) prepared for a 336-unit residential infill development, the court invalidated the EIR based on a single deficiency. That deficiency related to the significance threshold used by the City of Sacramento for evaluating traffic impacts. Under the city's General Plan, LOS F conditions were acceptable in the core downtown area. Based on that policy, the project's traffic impacts were deemed less-than-significant. The court held that "a project's effects can be significant even if they are not greater than those deemed acceptable in a general plan." In all other respects, the court found the EIR to be valid: (1) the project description in

the Draft EIR (DEIR) was adequate even though it did not mention a development agreement or a driveway variance; (2) a change in the mix of housing units after publication of the DEIR did not warrant recirculation; (3) the EIR did not need to analyze the health risks to the project's residents from a nearby landfill and (4) the EIR properly analyzed only impacts to intersections and not to roadway segments.

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San Diegans for Open Government vs. City of San Diego ((Sunroad Enterprises et al.) (4th App. Dist., 12/7/16)

This case concerns the application of CEQA Section 21151(c), which provides that when a “nonelected decision making body” (i) certifies an EIR, (ii) approves a mitigated negative declaration (MND) or (iii) determines a project is exempt, from, or otherwise not subject to, CEQA, the matter can be appealed to the elected decision making body. In this case, the City of San Diego certified a Program EIR for a master plan development in 1997. The city subsequently approved an addendum to the EIR and an MND for changes to the master plan. Thereafter, a developer proposed a project within the master plan, and the city's Planning Commission determined that it substantially conformed to the prior approvals for the master plan and no additional CEQA review was required. Plaintiffs argued that the Planning Commission's decision was appealable to the city council based on CEQA Section 21151(c). The court rejected that argument because, among other grounds, the city's “substantial conformance” decision demonstrated that the project did comply with the prior CEQA documents and would be subject to the mitigation measures identified therein.

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Mission Bay Alliance vs. Office of Community Investment and Infrastructure (1st App. Dist., 11/29/16)

The court upheld the EIR prepared for the construction and operation of a new basketball arena for the Golden State Warriors. In a lengthy opinion, the court rejected a wide range of claims challenging the EIR. The more notable rulings by the court are:

- The EIR's analysis of the impact attributable to the project's greenhouse gas emissions (GHG) was adequate even though the EIR did not quantify the project's GHG emissions before and after mitigation. Instead, the EIR relied on the project's compliance with San Francisco's greenhouse gas strategy. That 321-page regulatory document contained 42 specific regulations for reducing GHG emissions in the areas of transportation, energy efficiency, renewable energy and solid waste. The court held that this approach satisfied the Supreme Court's test in *Center for Biological Diversity vs. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204.
- The mitigation measures aimed at reducing traffic impacts and impacts to transit were properly based on performance standards. The measure also relied on a mix of funding strategies to be carried out by a variety of agencies, which was deemed proper by the court even though there was no guarantee of full funding. Further, the lead agency properly relied on the “past experience” of these agencies in developing successful programs to avoid significant transit impacts.
- The noise impact analysis was properly based on a significance threshold of a certain increase over ambient noise levels despite elevated existing noise levels.
- Certain land use impacts were properly not analyzed since such impacts were analyzed in a prior program EIR, and substantial evidence supported the lead agency's decision to not further study those impacts in the EIR for the arena. Notably, the court ruled that the “fair argument” test did not control that determination.

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