



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

Citizens Coalition Los Angeles v. City of Los Angeles (2nd App. Dist., 8/23/18)

In the continuing saga of the California Environmental Quality Act (CEQA) challenge to a proposed Target store in Hollywood, the Court of Appeal reversed the trial court's denial of the project, clearing the way for the long-awaited development of the Target store. In the first round of litigation, the trial court invalidated the City of Los Angeles approval of variances for the Target project, but upheld the environmental impact report (EIR). The city sought to cure the entitlement defect by adopting an ordinance that amended an existing specific plan to create a new zone for large commercial development, such as the Target store. In the second round of litigation, the trial court again invalidated the city's action, finding that the ordinance was a new project that required a new CEQA document, instead of an addendum to the original EIR, which was the CEQA clearance for the new ordinance. In reversing the trial court and upholding the city's approval of the ordinance and addendum, the Court of Appeal found that an addendum was proper because the original EIR "retained relevance" since the ordinance approved, among other things, the same Target store that was the subject of the original EIR. The court also found that there was no reasonably foreseeable consequence of additional development that required environmental analysis at this time. Finally, the court rejected the plaintiff's claim of spot zoning because the project furthered a number of policies and goals in the General Plan.

[Opinion](#)

Protect Niles v. City of Fremont (1st App. Dist., 8/9/18)

In a decision highlighting the risk of using a mitigated negative declaration (MND), the trial court invalidated an MND used for a mixed-use project on a vacant lot. The court found two defects in the MND. First, the court found that there was substantial evidence of a "fair argument" that the project would have a significant aesthetic impact because of its potential incompatibility with the character of the historic district in which the property was located. The court relied primarily on the determination by the City of Fremont Historical Architectural Review Board (HARB), which determined that the project's density and mass was incompatible with the small-town character of the historic district. In addition to that "expert" opinion, the court also relied on the recognized "sensitivity" of the historic district. The second basis for the court's invalidation of the MND concerned traffic. Even though the city's decision was supported by a traffic study performed in accordance with industry standards, the court found substantial evidence of a fair argument based on the "fact-based" comments made by the residents of "unusual circumstances," which may demonstrate a significant impact despite the use of significance thresholds based on well-recognized traffic standards.

[Download Opinion](#)

City of Morgan Hill v. Bushey (Cal. Supreme Ct., 8/23/18)

The California Supreme Court resolved the potential conflict between the citizens' power to overturn a land-use decision by referendum and the statewide requirement that cities adopt zoning ordinances to resolve inconsistencies between the general plan and zoning. This case involved a future hotel project. The city amended its General Plan from industrial to commercial for the subject property. Thereafter, the city changed the zoning designation for the property from industrial to commercial. A referendum challenging the zoning ordinance was initiated and the voters rejected the change in zoning. In upholding the referendum vote, the court recognized the general requirement that zoning ordinances be brought into consistency with the General Plan. However, the court recognized that the referendum power may be used to invalidate a zoning ordinance that was adopted to resolve an inconsistency because there may be alternative zoning ordinances that the city could adopt to resolve the inconsistency with the General Plan.

[Opinion](#)

San Franciscans for Livable Neighborhoods v. City and County of San Francisco (1st App. Dist., 8/22/18)

The court upheld a program EIR for the city and county's adoption of the housing element for its General Plan. The court rejected a wide range of challenges to the program EIR. Most notably, the court upheld the city and county's use of an environmental baseline that accounted for population growth projections; impact analyses that assumed that the housing element would not, in itself, lead to any new specific project developments; and an alternatives analysis that found a number of alternatives infeasible.

[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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