

# CEQA AND LAND-USE UPDATE APRIL-SEPTEMBER 2018

**SEPTEMBER 14, 2018  
(CURRENT AS OF AUGUST 28, 2018)**

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# CEQA – STATUTORY EXEMPTIONS; SCOPE OF PROJECT



*County of Ventura v. City of Moorpark* (2018)  
24 Cal.App.5th 377

- Statutory exemption for beach restoration project encompassed agency's approval of a settlement agreement specifying particular haul routes that trucks had to use to and from the site.
- In portions of the agreement, the agency improperly contracted away its police powers, but this defect did not require invalidating the entire agreement

# CEQA – STATUTORY EXEMPTIONS; MINISTERIAL VERSUS DISCRETIONARY PERMITS



*California Water Impact Network v. County of San Luis Obispo* (2018) 25 Cal.App.5th 666

- Under County Code, well construction permits issued by San Luis Obispo County were ministerial, and therefore did not trigger CEQA.
- Code provisions were directed at protecting water quality, not at protecting groundwater resources from over-pumping.



# CEQA – CATEGORICAL EXEMPTIONS



*World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476

- State Lands Commission's reliance on CEQA's "existing facilities" categorical exemption to approve extensions of two leases to Pacific Gas and Electric for public land used by the Diablo Canyon nuclear power plant for cooling water facilities.
- SLC had basis to conclude that "unusual circumstances" exception did not negate categorical exemption.

# CEQA – NEGATIVE DECLARATIONS



*Jensen v. City of Santa Rosa* (2018) 23  
Cal.App.5th 877

- Negative declaration for a proposal to convert a shuttered hospital into a youth treatment center upheld.
- Noise analysis for separate project did not support claim that center would cause significant noise impacts.

# CEQA – NEGATIVE DECLARATIONS



*Protect Niles v. City of Fremont* (2018) –  
Cal.App.5th – [2018 WL 3769850]

- Record contained a “fair argument” that a mixed-use project in an historic district might have significant aesthetic impacts on the historic character of the community due to the project’s size and scale.
- Residents’ concerns regarding traffic hazards and congestion also constituted a “fair argument.”





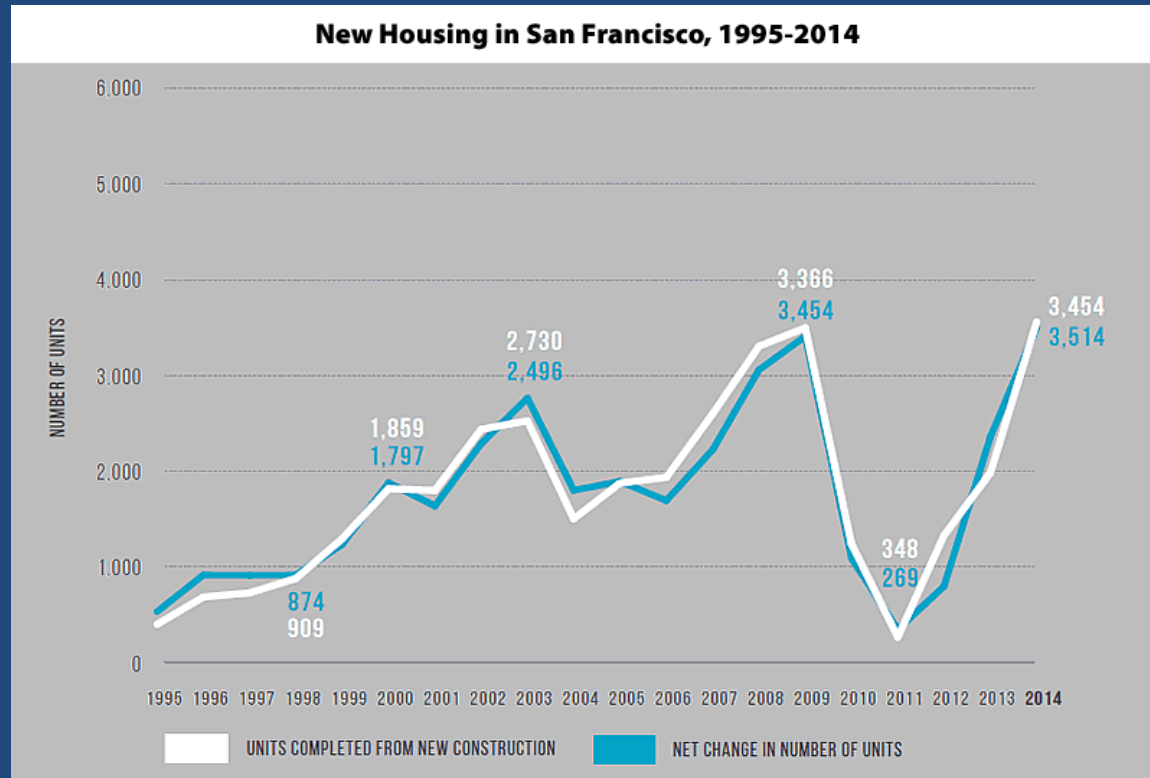
# CEQA – ENVIRONMENTAL IMPACT REPORTS



*Rodeo Citizens Assn. v. County of Contra Costa* (2018) 22 Cal.App.5th 214

- EIR for proposal to add gas recovery facilities to an existing oil refinery.
- EIR upheld – agency did not need to speculate about the impacts from downstream use of recovered gas on greenhouse gas emissions, and contained sufficient information on the hazards of transporting the gas by rail.

# CEQA – ENVIRONMENTAL IMPACT REPORTS



*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) – Cal.App.5th – [2018 WL 4024685]

- EIR prepared for San Francisco's Housing Element Update – upheld.
- No CEQA violation for using “future baseline.”



# CEQA – SUPPLEMENTAL REVIEW; “SPOT ZONING”



*Citizens Coalition Los Angeles v. City of Los Angeles*  
(2018) – Cal.App.5th – [2018 WL 4026019]

- City of Los Angeles complied with CEQA in preparing addendum to certified EIR to support plan amendments allowing Target “superstore” to proceed.
- City did not have to speculate about potential for other superstores to seize upon new zoning, where applications for other superstores were not reasonably foreseeable.
- In establishing new subarea to allow superstore to proceed, city engaged in “spot zoning,” but such zoning was not arbitrary and was therefore permissible

# PLANNING AND ZONING LAW; INITIATIVES AND REFERENDA



*City of Morgan Hill v. Bushey* (2018) – Cal.5th – [slip op. dated August 23, 2018]

- California Supreme Court holds that the voters can use the referendum power to disapprove a rezone, even where that rezone was designed to make the zoning ordinance consistent with a General Plan amendment, at least where the municipality has other options for ensuring consistency.

# PLANNING AND ZONING LAW; INITIATIVES AND REFERENDA



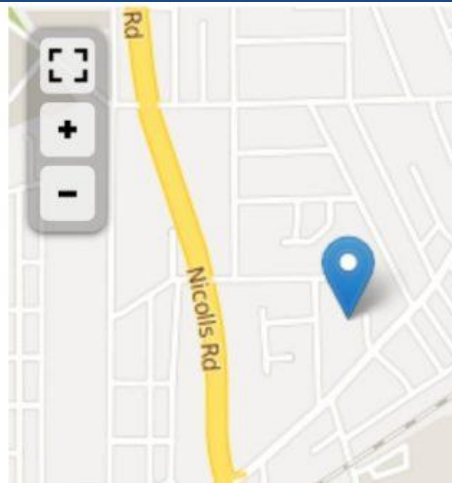
*Center for Community Action and Environmental Justice v. City of Moreno Valley* (2018) – Cal.App.5th – [2018 WL 4025516]

- Although a municipality's approval of a development agreement is subject to referendum, the voters cannot adopt a development agreement by initiative.



# FAIR EMPLOYMENT AND HOUSING ACT - PREEMPTION

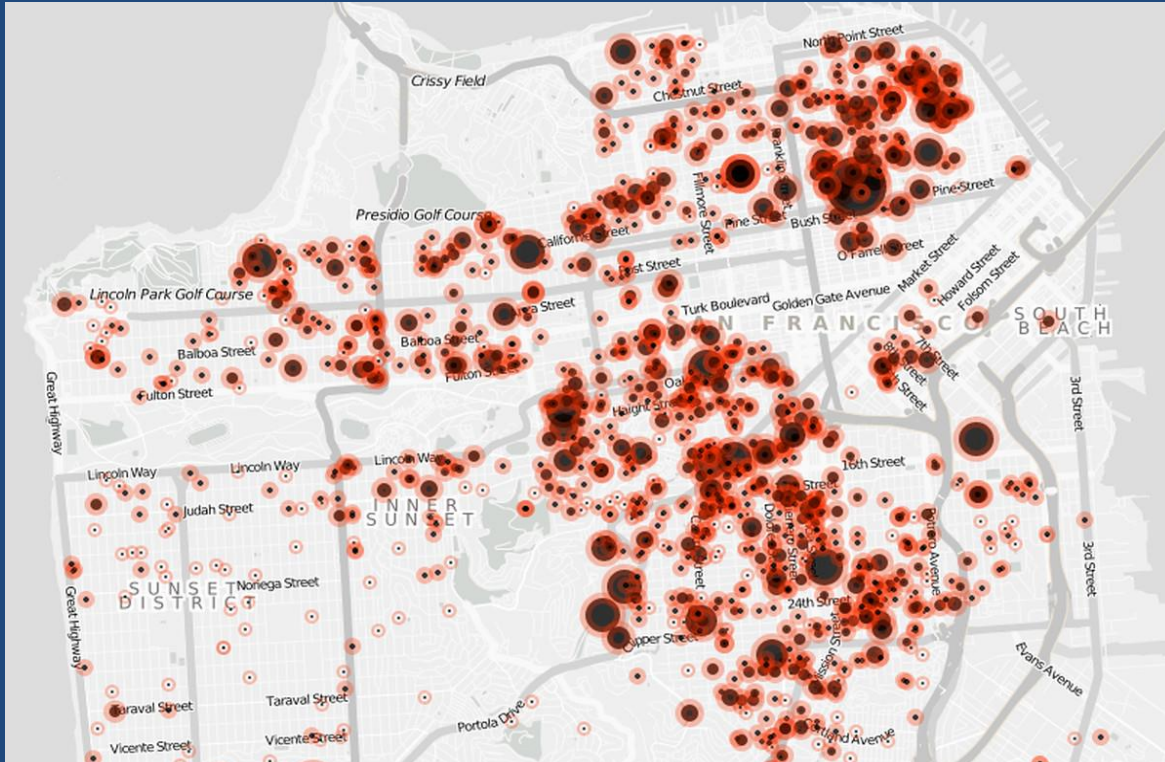
Cute 2 bedroom cottage located in Blue Point on a quiet street 1 mile from the beach. Living room, eat in kitchen, and washer and dryer. Bring your rocking chairs for the porch. Gas heat and central air. No smoking, and no pets. Utilities are not included. Driveway for parking. One month security is required. This is ideal for a couple or 2 professional people. Desirable location. **No section 8.** Serious inquires only please. Must show proof of income. Background check may be done. Available July 1st.



*City and County of San Francisco v. Post*  
(2018) 22 Cal.App.5th 121

- Fair Employment and Housing Act does not preempt a city ordinance prohibiting landlords from refusing to rent to persons who receive Section 8 vouchers.

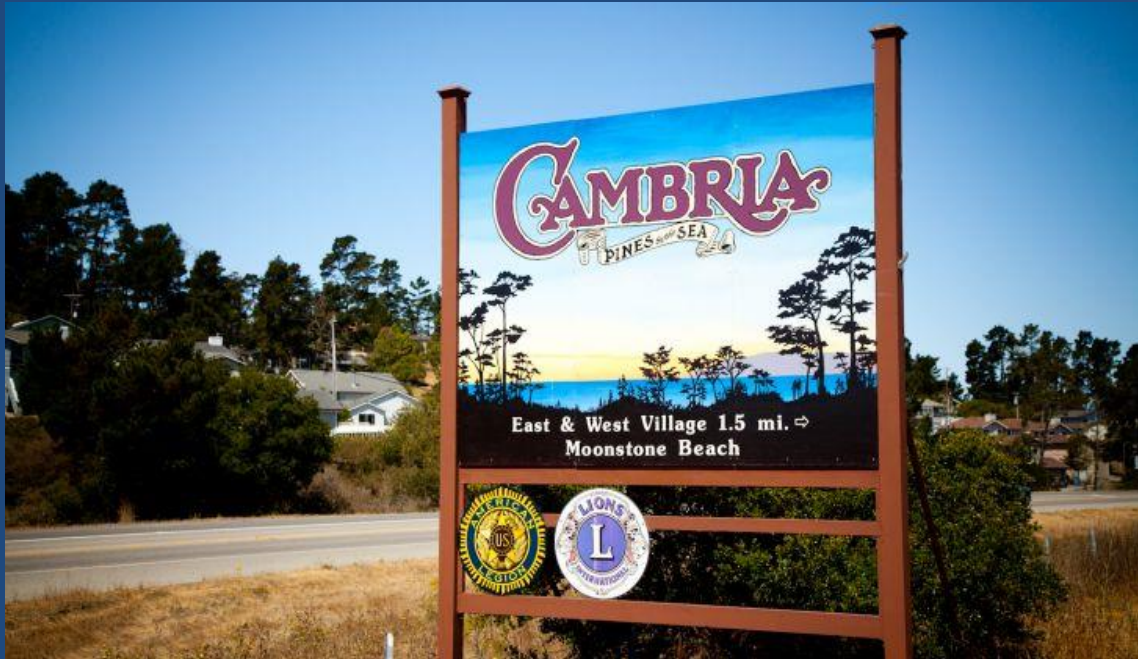
# ELLIS ACT - PREEMPTION



*Small Property Owners of San Francisco Institute v. City and County of San Francisco* (2018) 22 Cal.App.5th 77

- Local ordinance imposing a ten-year waiting period on alterations to non-conforming residential units removed from the rental market imposed a substantive restriction on landlords that was inconsistent with the Ellis Act.

# RECOVERY OF COSTS FOR PREPARATION OF RECORD



*LandWatch San Luis Obispo Co. v. Cambria Comm. Serv. Dist.* (2018) 25 Cal.App.5th 638

- Trial court had discretion to award record-related costs to the respondent agency, even though the petitioner had elected to prepare the record, where the petitioner failed to prepare the record in a timely fashion.



# ATTORNEYS' FEES



*La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149

- Trial court had discretion to award attorneys' fees under "catalyst" theory, where the city responded to losing the first round of litigation by amending its zoning ordinance to allow the disputed project to proceed.

# REGULATORY DEVELOPMENTS

- Update to State CEQA Guidelines
- Technical Advisory re: CEQA Exemptions

# CEQA AND LAND-USE CASES PENDING IN THE SUPREME COURT

- *United Auburn Indian Community of Auburn Rancheria v. Brown*, S238544. Authority of Governor to concur in decision to take off-reservation land in trust for purposes of tribal gaming without legislative authorization or ratification.
- *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, S238563. Whether enactment of a zoning ordinance is necessarily a “project” within the meaning CEQA, and whether a zoning ordinance designating certain areas for the operation of medical marijuana cooperatives may lead to indirect environmental impacts.



# CEQA AND LAND-USE CASES PENDING IN THE SUPREME COURT

- *T-Mobile West LLC v. City and County of San Francisco*, S238001. Whether local ordinance regulating wireless telephone equipment on aesthetic grounds is preempted by Public Utilities Code section 7901.
- *Sierra Club v. County of Fresno*, S219783. Standard and scope of judicial review under CEQA for case involving a challenge to an EIR.

# THE TALLY

	P	$\Delta$
CEQA – exemption	0	3
CEQA – negative declarations	1	1
CEQA – EIRs	0	2
CEQA – supplemental review	0	1
Litigation issues	1	1
Other statutes	3	1
Total	5	9

# THE TALLY

	P	$\Delta$
Supreme Court	1	0
1st District	2	4
2nd District	1	5
3rd District	0	0
4th District	1	0
5th District	0	0
6th District	0	0
Total	5	9