

CEQA AND LAND-USE UPDATE

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Andrea Leisy, Remy Moose Manley, LLP
Sacramento, California

PRESENTATION OVERVIEW

- Scope of CEQA
- Categorical Exemptions
- Mitigated Negative Declarations
- Environmental Impact Reports
- Subsequent Environmental Review
- PZ & LU Cases Worthy of Mention
- Updates to the CEQA Guidelines
- Cases Pending Before Supreme Court

SCOPE OF CEQA



Golden Door Properties LLC v. County of San Diego
(2018) 27 Cal.App.5th 892

- 2016 Climate Change/GHG Guidance Document found to improperly create a threshold of significance without first complying with CEQA (§ 15064.7); threshold (efficiency metric) lacked substantial evidence.
- GHG Guidance also found to constitute piecemeal review in violation of CEQA and a previously-issued writ of mandate.

SCOPE OF CEQA



McCorkle Eastside Neighborhood Group v. City of St. Helena (2019) 31 Cal.App.5th 80

- Approval of an 8-unit multifamily residential project located in a High Density Residential District upheld.
- Approval found to be non-discretionary after finding consistency with design review criteria per City's zoning ordinance; therefore, no environmental review required.
- City initially relied on Class 32 infill exemption.

SCOPE OF CEQA



Windemere Cottage as it existed in La Jolla, CA.
(La Jolla Historical Society)

Bottini v. City of San Diego (2018) 27 Cal.App.5th 281

- Applicant obtains writ against City requiring consideration of single family home project using existing environmental baseline v. hypothetical pre-demolition baseline, which no longer existed at the time the project was proposed.
- City erred in concluding that the Class 3 exemption did not apply; historical resource exception did not apply.

CATEGORICAL EXEMPTIONS



Berkeley Hills Watershed Coalition v. City of Berkeley (2019) 31 Cal.App.5th 880

- Upholding City's approval of three new single-family homes on adjacent parcels in the Berkeley Hills as exempt [Class 3] ; location "exception" did not apply.
- Bifurcated standard of review: (1) whether project is located within "an environmental resource of hazardous or critical concern" is a factual inquiry subject to substantial evidence; and, if met (2) whether a project "may impact" the resource is subject to fair argument.

CATEGORICAL EXEMPTIONS



San Diegans for Open Government v. City of San Diego (2018) 31 Cal.App.5th 349

- Court upholds amended lease agreement between City and Mission Beach Park amusement park operator as categorically exempt from review pursuant to Class 1 Existing Facilities exemption (§15301).
- Amended lease included option of extending initial 50-year term to operator and refurbishment of existing facilities.

MITIGATED NEGATIVE DECLARATIONS



Friends of Riverside's Hills v. City of Riverside
(2018) 26 Cal.App.5th 1137

- City's adoption of an MND and approval of 6-unit Planned Residential Development in the Residential Conservation Zone upheld.
- Court found no evidence of conflict with PRD/RCZ requirements adopted to protect natural landscapes.

MITIGATED NEGATIVE DECLARATIONS

Georgetown Preservation Society v. County of El Dorado (2018) 30 Cal.App.5th 358

- 3rd DCA finds EIR required for potentially significant aesthetic impacts of a Dollar General store proposed to be located in a “quaint Gold Rush-era hamlet.”
- Application of design review guidelines did not insulate project from environmental review at the initial study phase and under the fair argument standard of review. (cf. *McCorkle* 1st DCA)



ENVIRONMENTAL IMPACT REPORTS

SIERRA CLUB V. COUNTY OF FRESNO (2018) 6 CAL.5TH 502



- California Supreme Court finds flaws in parts of the air quality analysis in County's EIR for the 942-acre Friant Ranch Specific Plan, a proposed 2,500-unit "active adult" master-planned community north of the City of Fresno.
- Standard of Review: "[w]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question."

SIERRA CLUB V. COUNTY OF FRESNO CONT.



- First Holding:
 - When reviewing the sufficiency of an EIR's discussion of environmental effects, the court must be satisfied that the EIR "includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises."
- Second Holding:
 - An EIR must show a "*reasonable effort* to substantively connect a project's air quality impacts to likely health consequences."

SIERRA CLUB V. COUNTY OF FRESNO (CONT.)



- Third Holding:
 - “[A] lead agency may leave open the possibility of employing better mitigation efforts consistent with improvements in technology without being deemed to have impermissibly deferred mitigation measures.”
- Fourth Holding:
 - “A lead agency may adopt mitigation measures that do not reduce the project’s adverse impacts to less than significant levels, so long as the agency can demonstrate in good faith that the measures will at least be partially effective at mitigating the Project’s impacts.”

ENVIRONMENTAL IMPACT REPORTS



SOMCAN v. City and County of San Francisco
(2019) 33 Cal. App. 5th 321

- EIR prepared for mixed-use development project on 4-acres upheld.
- EIR described 2 options for the project: (1) Office Scheme, or (2) Residential Scheme. Court found project description stable and rejected all other claims regarding shade/shadow, cumulative, traffic and alternatives analysis.

SUBSEQUENT ENVIRONMENTAL REVIEW/ADDENDA



Save Our Heritage Organisation v. City of San Diego (2018) 28 Cal.App.5th 656

- Addendum adopted by City to 2016 EIR for modifications to Balboa Park improvements upheld.
- CEQA Guidelines § 15164 found consistent with PRC § 21166 and reasonably necessary to effectuate CEQA.
- New CEQA Findings per § 21081 not required.

RES JUDICATA



- *Inland Oversight Committee v. City of San Bernardino* (2018) 27 Cal.App.5th 771
- *Atwell v. City of Rohnert Park* (2018) 27 Cal. App. 5th 692
- *Ione Valley Land, Air, and Water Defense Alliance, LLC, v. County Of Amador, et al.* (2019) 33 Cal.App.5th 165

PLANNING & ZONING LAW

Save Lafayette Trees v. City of Lafayette (2019) 32 Cal.App.5th 148

- Opinion re-issued with limited modification after granting reconsideration of 2018 decision.
- Court reaffirms 2018 decision: (1) sustaining demurrer without leave to amend P&Z Law claim for failing to file/serve within 90-days; and (2) reversing order sustaining demurrer as to the CEQA cause of action, which was timely.



CALIFORNIA COASTAL ACT



Fudge v. City of Laguna Beach (2019) 32 Cal. App. 5th 193

- CEQA challenge to coastal development permit dismissed as moot due to Commission accepting review.
- Coastal Act takes precedence over CEQA for de novo review of appeals involving the issuance of coastal development permits when there is a conflict between the two statutes.

CALIFORNIA COASTAL ACT



Venice Coalition to Preserve Unique Community Character v. City of Los Angeles (2019) 31 Cal. App. 5th 42

- Upholding summary judgment in City's favor; when land use decisions are ministerial, no due process protections triggered.
- "Venice Sign-Off" process is ministerial since the Director of Planning utilizes nondiscretionary checklist and does not exercise independent judgment.
- Improvements to existing structures, including additions, allowed under Coastal Act.

AMENDMENTS TO THE CEQA GUIDELINES

- December 28, 2018 - Office of Administrative Law approved amendments to the CEQA Guidelines – most comprehensive update since the late 1990s.
- Final Amendments and Statement of Reasons are available at:
<http://resources.ca.gov/ceqa/>
- Examples include:
 - New methodology for considering transportation impacts pursuant to Senate Bill 743– VMT
 - Updated exemptions for residential and mixed-use developments near transit
 - New provisions to address energy efficiency and the availability of water supply
 - Amendments that reflect CEQA case law re: baseline, mitigation and greenhouse gas emissions

CASES PENDING BEFORE THE SUPREME COURT

Union of Medical Marijuana Patients, Inc. v. City of San Diego

Protecting Our Water & Environmental Resources v. Stanislaus County

CWIN v. County of San Luis Obispo [deferred]

THE TALLY

	P	Δ
CEQA – Scope/ exemptions	1	4
CEQA – negative declarations	1	1
CEQA – EIRs	1	1
CEQA – supplemental review	0	1
Litigation issues	0	4
Other statutes	2	3
Total	5	14

THE TALLY

	P	Δ
Supreme Court	1	0
1st District	1	4
2nd District	0	3
3rd District	2	1
4th District	1	5
5th District	0	0
6th District	0	1
Total	5	14