

Land Use and CEQA Litigation Update (April 2019 – October 2019)

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Agenda

- GENERAL OBSERVATIONS re CASES
- SUMMARY OF LAND USE CASES
 - SUMMARY OF CEQA / NEPA/
ENVIRONMENTAL QUALITY CASES
 - LIST OF FILED & UNPUBLISHED CASES
 - SIGNIFICANT LAND USE LEGISLATION

LAND USE CASES

Boatworks, LLC v. County of Alameda

- Park Facility Development Impact Fees (DIFs)
- Must Be Calculated to offset the *actual costs* of burdens caused by the new development
- Nexus Should Not Rely on Existing Infrastructure
- Attorney's Fees Caution

(35 Cal.App.5th 290)

California Charter Schools Association v. City of Huntington Park

- Urgency Ordinance Case & Challenge
- Numerous Inquiries / Requests for Charter Schools
- Insufficient for “Current & Immediate Threat”
- No Pending Permit Applications in the Record

(35 Cal.App.5th 362)

City of Hesperia v. Lake Arrowhead Community Services District

- No Error Setting Aside District Resolution Asserting Exemption from City Zoning Requirements
- Proposed Solar Energy Project *not* Exempt Because Transmits Electrical Energy
- Standard Statutory Construction for Gov.C. §53091(e)
- No Substl. Evid. in Record re: No Feasible Alternative
(37 Cal.App.5th 734)

Cleveland National Forest Foundation v. County of San Diego

- Williamson Act & Subdivision Map Act case
- Residential Use on Land Under W/Act Contract *cannot* be Merely Minor to Agricultural Use
- Res. Use MUST be Functionally Necessary and Facilitate Agricultural Use (Here: Grazing Cattle)
- NOT Controlling: (i) Small Number of Homes, and (ii) Infrastructure Timing. (37 Cal.App.5th 1021)

County of Sonoma v. Gustely

- Trial Court Cannot Decrease Abatement Penalties Lawfully Enacted & Assessed by a County
 - Code Violation / Unpermitted Walls / Mudslide on Road
 - Admin. Hearing Upheld Penalty Fines
 - County filed Complaint & Had Default Judgment Entered
 - Trial Court Unilaterally Reduced from \$45 to \$20/day; Court of Appeal Reversed – No County Abuse of Discretion
- (36 Cal.App.5th 704)

Sacramentans for Fair Planning v. City of Sacramento

- Land Use Summary:
- No Due Process or Equal Protection Violations when Charter City Approves Project Per General Plan Policy Allowing More Intense Mixed-Use Development
- Exceeding FAR limit Per General Plan Policy Not “Spot Zoning” & Consistent with Findings Allowing Intensity
- Rationally Related to Legitimate Public Interest for High Quality In-Fill Development
- “Significant Community Benefit” Not Unconstitutionally Vague, Similar to “General Welfare” (continued next slide)

Sacramentans for Fair Planning v. City of Sacramento (cont.)

- CEQA Summary:
 - Streamlined SCEA Instead of Neg. Dec. or EIR
 - Substantial Evidence Standard of Review
 - City May Rely on Regional Transportation & Emission Reduction Plans (Here: SACOG's SCS & Other EIRs)
 - SCEA Not Improperly Tiered to Prior EIRs to Avoid Cumulative Impact Analysis for the Project
- (37 Cal.App.5th 698)

Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School District

- School District Does Not Need to Separately Analyze Development “Sub-types” for Nexus Fee Study
 - 100-Unit Agricultural Employee Housing Project
 - Challenge to Impact Fee Because No School Children
 - Court Held: Adult-Only Restriction Does Not Alter Range of “Residential” Housing as Broadly Defined
- (34 Cal.App.5th 775)

Weiss v. City of Del Mar

- 90-day Filing *and* Service (Gov.C. §65009(c)(1)(E))
- Even If Ordinance Not Codified in Zoning Code
- Applies for Any Attack on Zoning Board Decisions
- Broad Construction of “Any Other Powers” (§65901)
- No CCP §1094.6 Inconsistency – Service Requirement
(2019 WL 4170912; 2019 Cal.App. LEXIS 834)

CEQA / NEPA ENVIRONMENTAL QUALITY CASES

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

- Resolved Conflict Among Courts of Appeal
- Definition of “Project” / Pub.Res.C. §§21065 and 21080
- Examples in §21080 Not Always “Projects”
- Must Meet Requirements in §21065 for CEQA Review
- NOTE: New Cannabis Ordinance WAS “Project” Here
(7 Cal.5th 1171)

Center for Biological Diversity v. Ilano

- U.S. Agency Action: Designation of Land Facing Risk of Harms from Pine-beetle Infestation
- No Environmental Review Required under NEPA
- Projects *may* Happen in Future
- Court Deferred to Agency's Study re: No Extraordinary circumstances, Even with Contradicting Studies
(9th Cir. (2019) 928 F.3d 774)

Center for Biological Diversity v. Department of Conservation

- EIR re: Potential Fracking Impacts
- Statewide Review Required by SB 4 (2013)
- No CEQA Violation:
 - Agency NOT Carrying Out Project or Program / Not Ripe
 - No Substantive Conflicts with Other Studies
 - Consistent with Program EIRs / Defer Site-Specific Impacts
(36 Cal.App.5th 210)

Hollywoodians Encouraging Rental Opportunities v. City of Los Angeles

- Case re: Review of Housing-Related Impacts under CEQA
 - Baseline *may* Assume No/Less than Significant Impact for Demolition when Property Was Lawfully Vacated
 - 18-Unit Rent-Controlled Apts. / Ellis Act Withdraw in 2013
 - Appx. 2 Years Later, Application for Hotel Project
 - In 2015, Project Was Not in Residential Market
 - No Violation under Fair Argument Test / No EIR Required
- (37 Cal.App.5th 768)

Hubbard v. California Coastal Commission

- Coastal Not Required to Revoke CDP when:
 - Misleading Information Is Immaterial;
 - Would Have Granted Permit with No More Conditions Even If Accurate Information Had Been Provided
- Applicant Submitted Other Agencies' Approvals that Had Misleading Information
- Procedurally Complex, but Coastal Would Have Issued CDP
- Applicant Had Coastal-Approved Property Management Plan
(38 Cal.App.5th 119)

San Diego Gas & Electric v. San Diego Regional Water Quality Control Board

- Porter-Cologne Act (Water C. §13300 *et seq.*) case
- Multi-year Investigation; 2,000+ Page Report
- Link between toxic chemicals and SDG&E's cooling tunnels, switchyard, and wastewater ponds into Bay
- Regional Water Board Issued Cleanup/Abatement Order
- Court held: No “Substantial Factor” Test Applicable
(36 Cal.App.5th 427)

The Lake Norconian Club Foundation v. Department of Corrections and Rehabilitation*

- State Agency's Inaction To Repair Historic Structure Not "Project" or "Demolition by Neglect"
- Historic Hotel Part of Medium-Security Prison
- EIR Certified to Close Prison / Legislation Prevented
- Trial Court Ruled on SOL / Appellate Court on "No Project" / Looked to "Activity" per NEPA as Persuasive (2019 WL 4386029; 2019 Cal.App. LESIS 866) *Added

LIST OF FILED (FOR PUBLICATION) AND UNPUBLISHED CASES

Cases Filed - For Publication

- *Lindstrom v. California Coastal Commission*
 - CDP Conditions for Single Family Home on Coastal Bluff
Generally OK Except Remove Home If Gov't Hazard Declared
(4th District Court of Appeal, Case No. D074132)
- *San Diego Navy Broadway Complex Coalition v. California Coastal Commission*
 - Master Port Amendment OK under Coastal Act & CEQA
(4th District Court of Appeal, Case No. D072568)

Unpublished Cases

- *Inland Oversight Committee v. City of Diamond Bar*
 - Mitigation Measures Followed per Tent. Subdivision Map
(2d District Court of Appeal, Case No. B291318)
- *Protect Our Homes & Hills v. County of Orange*
 - Reversed b/c No Evidence of Rooftop Solar Infeasibility
(4th District Court of Appeal, Case No. G055716)

Unpublished Cases

- *Los Padres Forestwatch v. County of Ventura*
 - Addendum Sufficient for Oil & Gas Drill Operation Based On 30-40+ Years Old EIR, Focused EIR, & MND
(2d District Court of Appeal, Case No. B291481)
- *Crenshaw Subway Coalition v. City of Los Angeles*
 - GPA & EIR Sufficient for Transit Oriented District Project
(2d District Court of Appeal, Case No. B285588)

Unpublished Cases

- *Olivera St. Apartments v. City of Guadalupe*
 - No §1983 Violations & Reverse of Jury-Awarded Damages from Boardinghouse Urgency & Permanent Ordinance
(2d District Court of Appeal, Case No. B286285)
- *Capistrano Unified Sch. Dist. v. County of Orange*
 - CEQA Petition Dismissed b/c Statute of Limitations
(4th District Court of Appeal, Case No. G056177)

Unpublished Cases

- *Bootleggers2 v. City of Lancaster*
 - CEQA Case Dismissed for Liquor Store's Failure to Timely Name and Serve Indispensable R.P.I. Circle K Developer
(2d District Court of Appeal, Case No. B289315)
- *Carmichael v. City of Pacifica*
 - CEQA Case Dismissed - Failure to Exhaust from Failure to Identify or Describe Categorical Exemption in City Hearings
(1st District Court of Appeal, Case No. A153630)

Significant Land Use Legislation (2019)

- AB 101 (Stats. 2019, Chapter 159)
 - More AG & Court Roles in Housing Element Enforcement
 - “Pro-housing” Points to Cities for State-Funded Programs
 - By-Right Approval for “Low Barrier Navigation Centers”
 - Amendments to Density Bonus & Housing Program Laws
- AB 1110 (Rent Increase Noticing)
- AB 1483 (Collecting & Reporting Housing Data)
- AB 1763 (Density Bonus Amendments)

Significant Land Use Legislation (2019)

- SB 5 (Housing / Community Development Investment)
 - SB 329 (“Source of Income” Definition & Allowances)
 - SB 330 (Housing Crisis Act of 2019)
 - Accessory Dwelling Unit Bills (AB 68, AB 881, SB 13)
- (Green = League Support &
Red = League Opposition)

QUESTIONS