

CEQA AND LAND-USE LAW UPDATE



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I. CEQA OPINIONS

- Scope of CEQA
- Exemptions
- Negative Declarations
- EIRs

SCOPE OF CEQA

□ *Bridges v. Mount San Jacinto Community College District*



Bridges v. Mount San Jacinto Community College District

- *Court holds that CEQA did not apply to a College District's decision to enter into a conditional purchase agreement for an 80-acre piece of unimproved rural property*
 - The agreement made the commencement of escrow conditional on the District's completion of an EIR, full compliance with CEQA, and resolution of any CEQA-based legal challenges

Bridges (cont.)

COURT'S OVERALL CONCLUSIONS

- ❑ Petitioners failed to exhaust their administrative remedies
- ❑ In any event, Petitioners' CEQA challenge is without merit
 - “purchase agreement complies with CEQA's land acquisition agreement rule”
 - “The purchase agreement is not a project”
 - District was not required to adopt its own CEQA Guidelines before taking action

Bridges (cont.)

❑ The Purchase Agreement is not a “Project”

- “CEQA review can ... be triggered by a transfer of ownership away from a public agency *if development plans are presented at the same time*”
- “The key consideration is that ‘CEQA review has to happen far enough down the road toward an environmental impact to allow *meaningful consideration in the review process of alternatives that could mitigate the impact*’”

EXEMPTIONS

- ❑ *Respect Life South San Francisco v. City of South San Francisco*
- ❑ *Protect Telegraph Hill v. City and County of San Francisco*
- ❑ *Aptos Residents Association v. County of Santa Cruz*
- ❑ *Don't Cell Our Parks v. City of San Diego*

Respect Life South San Francisco v. City of South San Francisco

- ❑ *Court upholds the use of Class 1, Class 3, and Class 32 categorical exemptions for the approval of a conditional use permit (CUP) allowing the conversion of an office building into a Planned Parenthood medical clinic*
- Court rejects claim that “unusual circumstances” defeated use of exemptions

Respect Life (cont.)

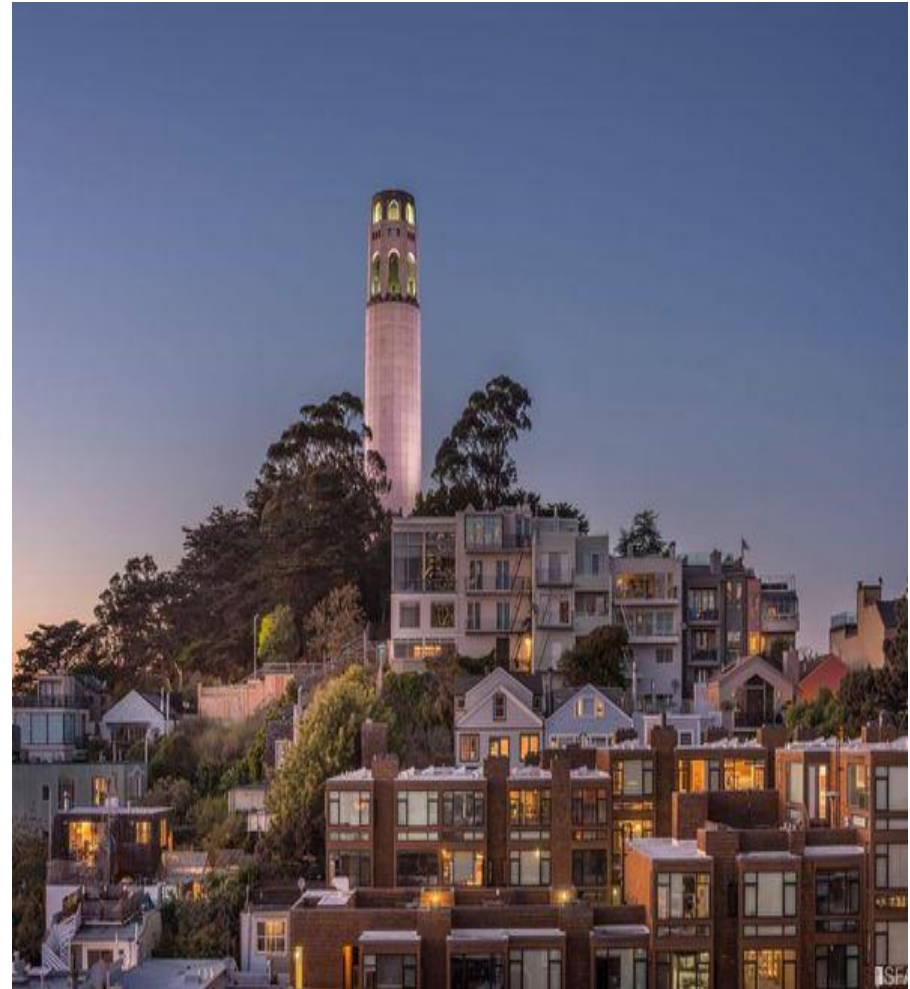
- Because the City made no express findings, court had to determine whether record contained no substantial evidence to support either
 - a finding that any unusual circumstances exist; or
 - a fair argument of a reasonable possibility that any purported unusual circumstances identified by the petitioner will have a significant effect on the environment

Respect Life (cont.)

- The evidence about the possible effects of protests was “minimal, vague, and speculative”:
 - “[N]o evidence ... indicate[d] that the total number of protesters would be large or that the protests would be particularly disruptive”
 - “[N]o evidence was presented that any resulting increase in traffic, sidewalk use, noise, or disruptions to businesses would be consequential”

Protect Telegraph Hill v. City and County of San Francisco

- ❑ *Court upholds use of Class 1 and Class 3 categorical exemptions for a conditional use permit for the restoration of an existing 1,000-square-foot cottage and the construction of 3 new residential units and a “basement” with 3 parking spaces*



Protect Telegraph Hill (cont.)

COURT'S CONCLUSIONS

- ❑ The City did *not* improperly impose “mitigation measures” on the project
- ❑ Project description sufficient for its intended purposes
- ❑ Substantial evidence *supported* City’s determination there were no “*unusual circumstances*” that could cause potentially significant effects that would disqualify project for categorical exemptions

Protect Telegraph Hill (cont.)

COURT'S CONCLUSIONS (cont.)

- ❑ In any event, the project's potential to impair views from Telegraph Hill is *not* a significant environmental effect because the project site is located within a “*transit priority area*” (TPA)
- Aesthetic impacts of certain residential urban infill projects within TPA “shall not be considered significant impacts on the environment” (Pub. Resources Code, § 21099, subd. (d))

Aptos Residents Association v. County of Santa Cruz

- *Court upholds County's reliance on Class 3 categorical exemption in approving permits for 10 microcell transmitters to be placed on existing utility poles scattered across an area zoned "Residential Agricultural"*



Aptos Residents Association (cont.)

COURT'S OVERALL CONCLUSIONS

- ❑ The County did not “segment” the project
- ❑ The “cumulative impact exception” did not apply
- ❑ The “location exception” did not apply
- ❑ The “unusual circumstances exception” did not apply

Don't Cell Our Parks v. City of San Diego

- *Court upholds City's reliance on Class 3 categorical exemption in approving permits for faux eucalyptus wireless telecommunications facility within 8.53-acre neighborhood park*



Don't Cell Our Parks (cont.)

COURT'S OVERALL CONCLUSIONS

- ❑ DCOP not required to exhaust administrative remedies prior to appealing staff's CEQA determination to Council
- ❑ Project falls within scope of Class 3 categorical exemption as a matter of law
- ❑ Unusual circumstances exception does not apply
- ❑ Location exception does not apply

NEGATIVE DECLARATIONS

- ❑ *Covina Residents For Responsible Development v. City of Covina*

Covina Residents For Responsible Development v. City of Covina

- *Court upholds MND adopted by City of Covina for its approval of 68-unit, mixed-use residential infill project located 1/4-mile from the Covina Metrolink commuter rail station*



LEGAL BACKGROUND

- ❑ “Aesthetic and *parking impacts* of a residential, *mixed-use residential*, or employment center project on an *infill site* within a *transit priority area* shall not be considered significant impacts on the environment”
- ❑ Still have to “analyze a project’s potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation”

(Pub. Resources Code, § 21099)

COURT'S OVERALL CONCLUSIONS

- ❑ Project is subject to the statutory exclusion of parking impact analysis from CEQA
- ❑ Petitioner did not identify any potentially significant indirect impacts resulting from a projected parking shortage
- ❑ The traffic analysis in the MND properly tiered from the TCSP EIR and was adequate

ENVIRONMENTAL IMPACT REPORTS

- *Los Angeles Conservancy v. City of West Hollywood*
- *Placerville Historic Preservation League v. Judicial Council of Cal.*
- *Visalia Retail, L.P. v. City of Visalia*

Los Angeles Conservancy v. City of West Hollywood

- ❑ Court upholds EIR and findings for three-acre mixed use project requiring partial demolition of a building that qualifies as an “historical resource” under CEQA



Los Angeles Conservancy (cont.)

COURT'S OVERALL CONCLUSIONS

- ❑ The EIR's discussion of alternatives was adequate
- ❑ The responses to comments were adequate
- ❑ Substantial evidence supported City Council's finding that preservation alternative was infeasible

Placerville Historic Preservation League v. Judicial Council of California

- ❑ *Court upholds EIR for the relocation of El Dorado County Superior Court out of two existing buildings into single new building*



COURT'S CONCLUSIONS

- ❑ Substantial evidence supported EIR's conclusions that the project would not cause urban decay
 - Even in the absence of a formal mitigation measure committing to finding viable reuse of the historic downtown courthouse, substantial evidence supported conclusion that urban decay was unlikely

Visalia Retail, LP v. City of Visalia

□ *Court upholds EIR for update to City of Visalia General Plan against claim that it should have identified significant “urban decay” impacts*



Visalia Retail (cont.)

COURT'S OVERALL CONCLUSION

- ❑ Petitioner did *not* produce substantial evidence from which a fair argument could be made that there is a reasonable possibility that physical urban decay will result from the Neighborhood Commercial designation

Visalia Retail (cont.)

- Generally, an EIR should address urban decay where the lead agency possesses substantial evidence that the economic and social effects of a proposed project *may* result in urban decay or deterioration
- But here the City's administrative record did not include any such substantial evidence, notwithstanding the evidence submitted by Visalia Retail, LP

II. LAND USE OPINIONS

Planning and Zoning Law

- *Kennedy Commission v. City of Huntington Beach* (2017)
16 Cal.App.5th 841

Kennedy Commission v. City of Huntington Beach

- Court held that a charter city is exempt from the statutory requirement that its specific plans and zoning ordinances be consistent with its general plan absent an express, unequivocal statement of intent in the city charter to adopt the consistency requirement.



Kennedy Commission (cont.)

COURT'S CONCLUSIONS

- ❑ City met requirements for charter city exemption, and that the exception to this exemption was inapplicable.
- ❑ Consistency requirement was not adopted by City in its charter.
- ❑ Examining city's zoning ordinance concerning SPs, court determined City did not intend to adopt a consistency requirement there, either.

III. CALIFORNIA SUPREME COURT (PENDING CEQA & LAND-USE CASES)

- ❑ *Sierra Club v. County of Fresno*, S219783 [CEQA]
- ❑ *Union of Medical Marijuana Patients v. City of San Diego*, S238563 [CEQA]
- ❑ *City of Morgan Hill V. Bushey (River Park Hospitality)*, S243042 [referenda, zoning]
- ❑ *T-Mobile West LLC v. City and County of San Francisco*, S238001 [PUC, local land-use authority preemption]

California Supreme Court Review Granted (Cases Pending)

- ❑ *Sierra Club v. County of Fresno*, S219783
- ❑ What is the standard of judicial review regarding whether an EIR provides *sufficient information* on a topic required by CEQA?
 - Is an EIR adequate when it identifies the health impacts of air pollutants and quantifies a project's expected emissions, or must an EIR also *correlate* emissions with specific health impacts?

California Supreme Court Review Granted (Cases Pending)

■ *Sierra Club v. County of Fresno (cont.)*

- Can a mitigation measure retain agency discretion to substitute equally or more effective components later as better technology becomes available without the measure specifying objective criteria of effectiveness for such components?
- Must mitigation measures for significant and unavoidable impacts meet the same (or even heightened) standards of adequacy as those reducing impacts to less-than-significant levels?

California Supreme Court Review Granted (Cases Pending)

- ❑ *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, S238563
- ❑ Is amendment of a zoning ordinance an activity directly undertaken by a public agency that categorically constitutes a “project” under CEQA?
- ❑ Is the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a municipality under certain conditions the type of activity that may cause a reasonably foreseeable change to the environment, categorically?

California Supreme Court Review Granted (Cases Pending)

- ❑ *City of Morgan Hill V. Bushey (River Park Hospitality) S243042*
- ❑ Can the electorate use the referendum process to challenge a municipality's zoning designation for an area, which was changed to conform to the municipality's amended general plan, when the result of the referendum-if successful-would leave intact the existing zoning designation that does not conform to the amended general plan?

California Supreme Court Review Granted (Cases Pending)

- ❑ T-Mobile West LLC v. City and County of SF, S238001
- ❑ Is local ordinance regulating wireless telephone equipment on aesthetic grounds preempted by PUC § 7901, which grants telephone companies franchise to place equipment in public ROW provided they do not “incommode the public use of the road or highway or interrupt the navigation of the waters”?
- ❑ Is such ordinance, which applies only to wireless equipment and not to equipment of other utilities, prohibited by PUC § 7901.1, which permits municipalities to “exercise reasonable control as to the time, place and manner in which roads, highways, and waterways are accessed” but requires that such control “be applied to all entities in an equivalent manner”?

IV. CEQA GUIDELINES UPDATE

- ❑ OPR updating almost 30 sections of the Guidelines, covering nearly every step in CEQA process
- ❑ Includes VMT as recommended traffic metric-to replace LOS per SB 743
- ❑ Final rulemaking expected by end of 2018
- ❑ Amended provisions would apply prospectively only, not to any reviews underway before final rulemaking.