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# Land Use & CEQA Litigation Update

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## A. CEQA Compliance Issues -- Greenhouse Gas, VMT, and Related Issues

***Cleveland National Forest Foundation v. County of San Diego***
**(2025) 110 Cal.App.5th 948**

**Nutshell**

A county's study supporting new VMT thresholds of significance was not sufficient evidence to support adoption of such thresholds because the study specifically stated that additional evidence would be necessary to confirm that certain infill areas would have less than significant VMT impacts, and because it included evidence demonstrating that VMT impacts in some of the infill areas proposed to be screened out actually exceeded the countywide average.

**Holding**

The County's thresholds of significance for VMT analysis were invalid because the assumptions underlying such thresholds were not supported by substantial evidence.

**Practice Tips**

When establishing screening thresholds of significance, local agencies cannot rely on generally applicable statewide standards. Instead, thresholds must be based on evidence (e.g., local facts and conditions) supporting their applicability. Cities may use the OPR Technical Advisory for guidance but cannot rely on that document or other statewide or general analysis that does not refer to specific, local conditions.

**Summary**

In 2022, the County had adopted a revised Transportation Study Guide that included these thresholds (along with 5 unchallenged thresholds of significance). The Transportation Study Guide and updated thresholds were intended to implement SB 743 (Steinberg, 2013), which required cities to use the vehicle miles traveled ("VMT") metric rather than level of service ("LOS") metric, to evaluate transportation-related CEQA impacts. The State Office of Planning and Research ("OPR") also published a Technical Advisory for SB 743 which noted that cities could develop their own VMT thresholds based on certain types of project characteristics, including smaller projects generating fewer than 110 trips per day.

Petitioner challenged the County of San Diego's use of two thresholds of significance to screen out the need for a developer to perform a VMT analysis: the infill project threshold of significance (for projects proposed to be built within the County's unincorporated villages) and the small project threshold of significance (for projects that are expected to generate no more than 110 automobile trips per day).

The County based its infill threshold on the general assumption that development in more dense areas, including infill development, does not significantly impact VMT. The County noted that

SB 743 was purposefully targeting a switch from direct traffic impacts to VMT to promote infill development and concluded that "[d]evelopment in more dense areas with high job accessibility leads to more diversity in land use, demand for transit (bus and trolley) and multimodal infrastructure (walking and biking), and shorter vehicle trips, which reduce greenhouse gases and VMT." The County further characterized the method its infill consultant used to identify infill locations as substantial evidence supporting adoption of the threshold.

The court held that adoption of the threshold was not supported by substantial evidence because the Transportation Study Guide itself stated that the County "would require evidence to support the determination that projects in these locations would have a less than significant transportation impact and meet the intent of [Senate Bill] 743" and that associated maps showed that infill development in the westernmost unincorporated areas of the County will likely generate per capita VMT *in excess* of the County average. The court concluded: "The County has chosen to identify specific unincorporated areas as infill, where development can presumptively occur without performing a VMT analysis. But it has done so without providing any evidence that developing infill, as it has chosen to define it, would generally result in an insignificant transportation effect at the local county."

The County based its small project threshold on OPR's Technical Advisory, which advised that projects producing 110 trips or fewer per day could be considered not to lead to a significant impact. However, the court stated that the mere fact that OPR suggested or recommended a small project threshold cannot, by itself, excuse the County's failure to provide any evidentiary support for the assumption that small projects do not create significant transportation impacts under local conditions. The record thus lacked evidence of such local conditions or facts supporting the 110-trip threshold.

### ***Center for Biological Diversity v. County of Los Angeles*** **(2025) 112 Cal.App.5th 317**

**Nutshell**

An EIR for a massive (12,000-acre, 19,000+ residential units plus commercial and industrial) specific plan development project cannot rely upon state cap-and-trade regulations to offset the project's significant unmitigated greenhouse gas emissions.

**Holding**

Los Angeles County's certification of the Centennial Specific Plan's EIR violated CEQA, as it improperly relied on the state cap-and-trade program to offset the project's estimated greenhouse gas emissions, despite the project not being a "covered entity," and the EIR improperly double-counted certain carbon offsets as mitigation.

**Practice/Litigation Tips**

Local agencies may not rely on cap-and-trade compliance by upstream energy providers to offset its GHG emissions impacts. CEQA mandates that mitigation must be project-specific in addition to any reductions already required by law.

## Summary

The Center for Biological Diversity and Climate Resolve challenged Los Angeles County's certification of an environmental impact report ("EIR") for the Centennial Specific Plan ("Plan"). The Plan proposed a massive mixed-use development in northern Los Angeles consisting of 12,323 acres that proposes approximately 20,000 residential units. Both groups allege that the EIR violated CEQA by improperly relying on California's cap-and-trade program to offset the Project's unmitigated greenhouse gas ("GHG") emissions and by failing to analyze wildfire impacts beyond the project site.

Under the cap-and-trade program, certain covered entities, including large industrial facilities and energy providers, must obtain allowances for their GHG emissions, which may be purchased, sold, banked or offset through reduction projects. The EIR acknowledged significant emissions estimated of the Project at 157,642 metric tons of $CO_2$ annually but proposed to mitigate 96% of this impact using cap-and-trade compliance by upstream energy providers. The trial court found this approach misleading because the Centennial Project was not a covered entity under the cap-and-trade regime and because the CEQA guidelines prohibit relying on emission reductions already mandated for other entities. Offsets must meet an "additionality" requirement which requires they occur in addition to reductions required by law or regulation and beyond what would otherwise occur. The court ruled the County failed to proceed in the manner required by law because the EIR's disclosure misrepresented the Project's environmental impact.

The Court of Appeal affirmed, holding that the EIR's mitigation of GHG through upstream compliance was "prejudicially misleading," that it violated the additionality requirement, and failed to proceed in the manner required by law. First, the Court of Appeal agreed with the trial court that the EIR's analysis regarding GHG mitigation was flawed, as the cap-and-trade program does not authorize the offset of carbon emissions by "downstream" users (i.e., retail users) of fossil fuels or electric power delivered by "upstream" covered entities (i.e., energy producers and suppliers). Further, the Court agreed that the Project does not fall within the cap-and-trade program because, as a mixed-use land use project, it is not a covered entity (like an oil refinery) and because the "additionality" requirement *disqualifies* mandatory carbon offset reductions from counting as permissible mitigation under the Project. The court thus affirmed the decertification of the EIR and the requirement that the County correct the deficiencies before recertifying the environmental review.

## B. CEQA Litigation Procedural Issues -- Indispensable Parties

***Citizens for a Better Eureka v. City of Eureka***
**(2025) 111 Cal.App.5th 1114**

## Nutshell

Another example of a CEQA challenge being dismissed because the petitioner failed to timely name the developer/applicant as a necessary and indispensable party, though this case has the added wrinkle that the developer was not even known until three months after the challenged action.

**Holding**

The court held that the Wiyot Tribe was a necessary and indispensable party with an interest in petitioner's CEQA challenge to a city's approval of an affordable housing project on a city-owned parking lot, given that the Tribe itself was to be the developer of the project, even though the Tribe's role had not even been known at the time the action was originally filed. The Tribe could not be joined due to the statute of limitations barring joinder; therefore, dismissal of the petition was appropriate.

**Practice/Litigation Tip**

It is less common these days for a petitioner to neglect to name a developer/applicant as a real party in interest, but it can still sometimes provide for an effective procedural defense.

**Summary**

Citizens for a Better Eureka ("CBE") challenged the City of Eureka's April 2023 resolution authorizing the modification of public parking from a City-owned lot for the development of affordable housing, to be developed by the Wiyot Tribe. The City determined the action was exempt from CEQA under Class 12 categorical exemption for sales of surplus government property. In its petition for a writ of mandate, CBE alleged the City improperly "piecemealed" the CEQA analysis by limiting review to the parking lot decision rather than considering the environmental effects of the anticipated redevelopment of the lot into housing.

Three months later, the City selected the Tribe as the developer, executing a memorandum of agreement granting it development rights and filed an NOE for the project. The Tribe had invested a significant amount of time and resources into planning, securing funding, and contracting for the project.

In February 2024, the Tribe (which had not been named in the lawsuit) specially appeared to move for dismissal of CBE's petition, arguing that it was a necessary party under Public Resources Code section 21167.6.5, subdivision (a) and Civil Procedure section 389. The Tribe asserted it could not be joined due to its sovereign immunity and that proceeding without it would prejudice its interests. The trial court agreed, finding that the Tribe was an indispensable party and that CBE failed to join it within the statute of limitations triggered by the NOE.

The Court of Appeal affirmed. It concluded that the project CBE sought to challenge encompassed the redevelopment of the parking lot into affordable housing, not merely the resolution authorizing the reduction of parking. CBE repeatedly argued in its petition that the basis for its CEQA challenge was respondents' failure to consider the environmental impact of the entire redevelopment project, not just the removal of parking. Therefore, the redevelopment resulting from the April resolution served as the crux of CBE's CEQA challenge. CBE's failure to join the tribe (which was selected as the developer in July) within its limitations period barred joinder, and the trial court did not abuse its discretion is dismissing the action.

## C. CEQA Claims Asserted for Economic or Other "Non-Environmental" Reasons (Abusive CEQA Litigation?)

***Camarillo Sanitary District v. State Water Resources Control Board***
**(2025) 113 Cal.App.5th 407**

**Nutshell**

In a highly technical opinion, the court held that the State Water Resources Control Board could not use certain toxicity requirements as enforceable standards in NPDES permits (a holding that is likely to be to the partial relief of a wide range of permittees, including our municipal clients). But the court otherwise rejected various state-law grounds for invalidating such requirements, including rejection of relatively weak arguments that the Board improperly determined that its requirements would not result in potentially significant CEQA impacts. The decision thus allows for some use of these standards outside the specific context of NPDES permits (including in the context of waste discharge requirements imposed under California, rather than federal, law).

**Holding**

The Board properly utilized a substitute CEQA document and properly determined that its use of more stringent NPDES permitting requirements would not result in potentially significant CEQA impacts.

**Practice/Litigation Tip**

Courts continue to cast a skeptical eye on industry-proffered CEQA challenges to regulatory actions that are, in fact, designed to better protect the environment.

**Summary**:

This case involves the Toxicity Provisions regulations adopted by the State Water Resources Control Board. The Toxicity Provisions comprise a combined state-wide water policy and state water quality control plan intended to apply to both waters of the United States and surface waters of the state. These Toxicity Provisions are designed to implement the test of significant toxicity for both acute (short term) and chronic (long term) toxicity water quality standards in California. The Toxicity Provisions were adopted in December 2020 and were readopted in conjunction with a subsequent court order in October 2021.

In very technical portions of the opinion unrelated to CEQA, the court held that the Board could not incorporate such Toxicity Provisions as enforceable standards in NPDES permits under the Federal Clean Water Act. Interestingly, in so holding, the court expressly found that the Board's statements in support of such requirements were not entitled to deference, as those findings were not adequately supported with evidence and analysis (and, indeed, were partly contradicted by the Board's own evidence).

However, the court otherwise rejected various challenges to the Board's adoption and enforcement of such standards outside the specific context of federal NPDES permits. With respect to CEQA, the Appellants argued that the State Board was not authorized to use a substitute environmental document to complete its environmental review and the State Board failed to adequately consider potentially significant environmental impacts.

The court concluded that the State Board did not violate CEQA or its internal regulations. First, the court held that the State Board was authorized to use a substitute environmental document (the basin plan) under its CEQA certified regulatory program because all water policy decisions fall within this program, as the program referred to the entire planning process related to water quality. Second, the State Board properly found there were no potentially significant environmental impacts coming from the Toxicity Provisions. An essential component of this analysis relied on the fact that substitute environmental documents must include an analysis of "reasonably foreseeable methods of compliance" by regulated entities and of "any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance[.]" Stated differently, future actions that are reasonably foreseeable warrant a discussion of its possible environmental effects, but not necessarily a detailed analysis of specific acts that are too speculative at the time the substitute environmental document is prepared.

While the State Board went further than required for transparency and disclosure purposes and also identified potentially significant environmental impacts that could arise should certain polluters seek to correct future toxicity issues, the court held that the State Board had no obligation to then mitigate those potential effects. The State Board's analysis, according to the Court, "provided a wealth of relevant information covering those activities it deemed too speculative to be reasonably foreseeable means of compliance … [and] [i]ts overall discussion constitutes substantial evidence supporting its conclusion that toxicity control efforts are not reasonably foreseeable means of compliance with the Toxicity Provisions."

## II. Land Use Case Summaries

### A. Mitigation Fee Act and *Nollan/Dolan* Regulatory Takings

***Sheetz v. County of El Dorado***
**(2025) 113 Cal.App.5th 113**

**Nutshell**

No, the sky is not falling after the U.S. Supreme Court's (unanimous) decision in *Sheetz v. County of El Dorado* (2024) 601 U.S. 267 applying the *Nollan*/*Dolan* nexus and rough proportionality requirements to legislatively adopted development fees. On remand, the Third District had no trouble finding that the County's $23,420 traffic impact fee imposed on development of a new prefabricated single-family home satisfied these requirements. The court relied on the nexus analysis that the County had previously conducted prior to legislatively adopting the fee, and rejected various (rather dubious) arguments Sheetz made in his attempt to challenge that analysis.

**Holding**

A traffic impact fee did not constitute an unlawful taking without just compensation in violation of the takings clause. The court upheld the analysis in the County's nexus study it had prepared before adopting the traffic impact fee, finding that it adequately demonstrated an essential nexus between the County's interest in reducing traffic congestion from new development and the permit condition requiring a property owner to pay a traffic impact fee to mitigate the traffic impacts, and that the amount of the fee was roughly proportionate to the traffic congestion caused by the new development under *Dolan*.

**Practice/Litigation Tips**

- It should go without saying that the preparation of adequate nexus studies to justify development impact fees requires a lot of careful work and analysis in order to satisfy the requirements of the Mitigation Fee Act. Once prepared, however, an adequate nexus study should have ample analysis to rebut any later *Nollan*/*Dolan* takings challenges brought against impact fees when they are actually imposed on individual projects.
- However, local governments cannot rest on their laurels after adopting fees. Perhaps the most frustrating result of the *Sheetz* holdings is that new arguments may be raised years after fees are initially adopted. Thus, agencies must continue to review and update nexus studies to ensure that sufficient evidence supports its conclusion that the impact fees are roughly proportional to the impacts of the development.
- Bear in mind that the petitioner in this case made very weak "after the fact" arguments that the County was able to readily rebut. A more sophisticated developer applicant could raise more difficult challenges. Agencies thus should work proactively to make sure the administrative record for each development project adequately documents the need for existing development fees. The CEQA analysis for each project may provide a useful mechanism for documenting development impacts warranting the imposition of existing impact fees.

**Summary**

This decision is on remand from the United States Supreme Court decision *Sheetz v. County of El Dorado, California* (2024) 601 U.S. 267. This dispute resulted from a challenge to El Dorado County's traffic impact fee, which was imposed as a condition for a (ministerial) building permit. Sheetz paid the $23,420 fee under protest and obtained the building permit, but later challenged the fee in state court, alleging that the conditioning of a building permit on the payment of a traffic impact fee constituted an unlawful exaction of money, and therefore an unconstitutional taking, under the Fifth Amendment. While the California court of appeal previously held that the *Nollan/Dolan* test applies only to permit conditions imposed administratively, not legislatively, the United States Supreme Court rejected this holding, finding that the *Nollan/Dolan* test applies to both legislative and administrative permit conditions. However, the Supreme Court did not address the parties' disputes over the validity of the traffic impact fee at issue and declined to rule as to whether a permit condition imposed on a class of properties must be tailored to the same degree of specificity as a permit condition imposed on a specific development.

On remand, the California Court of Appeal held that the challenged traffic impact fee did not constitute an unlawful monetary exaction under the *Nollan/Dolan* test. The Court first analyzed whether the fee has an essential nexus because of the County's interest and the permit condition. The Court found that an essential nexus exists because reducing traffic congestion is a legitimate government interest in the land use context where the landowner seeks a permit for new development that obviously will incrementally add traffic to the existing road network.

As to the rough proportionality standard, the Court first concluded that "the same constitutional rules apply whenever the government seeks to offset the public costs of new development through land-use exactions, regardless of whether the exaction (e.g., impact fee) is generally applicable to a class of permit applicants (as here) or is imposed on an individual basis in connection with a specific development project." Next, the Court found that the traffic impact fee satisfied the rough proportionality standard. In doing so, the Court reasoned that although *Dolan* did not explicitly endorse the reasonable relationship test used by California courts, the "rough proportionality" standard essentially adopted this reasonable relationship test. Under this test, the local government has the burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." Applying the above test, the Court found that the administrative record included sufficient evidence establishing that the traffic impact fee satisfied the "rough proportionality" standard.

## B. General Plan Consistency

***Solano County Orderly Growth Committee v. City of Fairfield***
**(2025) __ Cal.App.5th __ (2025 WL 2476476)**

**Nutshell**

A city's agreement to treat raw water to serve development approved by a county outside its borders was not the type of land use approval that needed to be consistent with the city's general plan. But, even if it was so required, the court upheld the city's (mostly implied) findings that it was so consistent, notwithstanding language in the City's general plan that frowned upon "urban" development outside of the city's urban limit line.

**Holdings**

1) Where a city is acting purely as a utility service provider, here to provide treated water, for the benefit of a development project approved by the county, and it's not exercising any land use/zoning discretion to actually approve development, it need not make any findings of general plan consistency.

2) Even if such general plan consistency findings were required, under the appropriate deferential standard of review, the court had no trouble upholding the city's determination that the limited provision of such water service was consistent with the City's general plan, notwithstanding policies that discouraged urban development outside the city.

**Practice/Litigation Tips**

Where a city is acting solely to provide some type of utility service (such as water) to development outside its boundaries, and is not itself exercising its land use discretion to actually approve such development, its actions are not subject to review for general plan consistency. The city may essentially defer to the county's discretion in approving such development.

**Summary**

At the request of the County of Solano, in 2022 the City of Fairfield and the Solano Irrigation District entered into an agreement by which the City would receive "raw water" from the District, treat the water at existing City facilities, and supply the District with an equivalent amount of potable water for use in a new mixed-use development that had been approved by the County in an unincorporated area known as Middle Green Valley, just outside the Fairfield city limits. The City would simply treat water provided by the District and make it potable; the District would do the rest, including distribution, operations, maintenance, and billing, and would bear all costs associated with serving the potable water. In written materials prepared before the Fairfield City Council voted on the resolution authorizing the City to enter into the agreement, the City stated that it had the right to serve water as a wholesaler for use outside the City's boundaries, that entering the agreement was consistent with the City's current practice, and that the agreement was modeled on an existing water treatment agreement between the City and the District.

After the resolution was passed and the potable water service agreement was signed, petitioner citizen group filed a petition for writ of mandate to invalidate it, alleging that the City's approval of the agreement conflicted with an express policy in the City's 2002 General Plan and therefore violated the Planning and Zoning Law (Gov. Code, § 65000 et seq). Petitioner specifically relied on a general plan policy that stated: "What is urban shall be municipal, and what is rural shall be within the County."

The trial court agreed with Petitioner, issuing mandamus relief to invalidate the agreement, but the court of appeal reversed on two alternative grounds.

First, as a threshold matter, the court held that nothing in the Planning and Zoning Law, or any other law, required that the City's agreement to provide such municipal services even needed to be consistent with the City's general plan in the first place. The City here was not even making a "local decision affecting land use," as that decision was made by the County, not the City.

Second, even assuming "for the sake of argument" that the water service agreement needed to be consistent with the City's general plan, the court held that the City did not abuse its discretion in so finding (even though the City's findings were mostly made by implication rather than explicitly). The court identified two separate rationales for the City's determination. First, it reasoned that "a reasonable person could conclude that in treating raw water supplied by the District for the District then to provide to its own customers, the City is not providing a 'basic municipal service.'" And second, it held that the City could reasonably determine that the development project was "rural" rather than "urban" in nature:

> "The description of the Project on which the Committee relies shows that the Project is part of a specific plan, approved by the County, that provides for 'clustered development on 257 acres' (that is, the mixed-use development at issue) while preserving the majority of the land in Middle Green Valley, 1,490 acres, for agriculture and open space. Although 123 acres of agricultural land would be converted to non-agricultural uses, more than '577 acres of prime farmland, 50 acres of unique farmland and over 1,200 acres of non-prime farmland and natural open space will be permanently protected.' Further, the preserved prime farmland is much greater than the amount of land currently used for agriculture, because only about 200 acres are currently under cultivation. Thus, a reasonable person could conclude that the Project is compatible with agriculture and open space, and therefore does not constitute urban development even under the Committee's own proposed definition."

Thus, the court concluded: "In sum, assuming that California law requires the City's approval of the Agreement to be consistent with the General Plan, we conclude that the City reasonably determined that the approval was consistent with its General Plan."

## C. Permit Streamlining Act

***Old Golden Oaks LLC v. County of Amador***
**(2025) 111 Cal.App.5th 794**

**Nutshell**

The court invalidated a county's vague "catch-all" requirement that an application for an encroachment permit must include "other information as may be required by the director," as that requirement clearly lacked the specificity mandated under the Permit Streamlining Act. However, this deficiency really had no practical impact in this case, because the county's requirements for applications for grading permits were adequately specific.

**Holdings**

1) A "catch-all" provision on an encroachment permit submittal checklist violates the Permit Streamlining Act ("PSA") because it does not specify in detail the information required for a development project application.

2) The local agency may condition completeness of a grading permit application on a requirement that the project application include sufficient information to comply with CEQA.

**Practice/Litigation Tip**

- Make sure your local agency is complying with current requirements of the Permit Streamlining Act in specifying what information an applicant must include in order for any development application to be deemed complete. These requirements apply even to applications for encroachment permits.
  - But this particular case appears to be much ado about nothing. The county's requirements in this case for grading permits adequately detailed what information was needed for a complete application, and thus the court found that the county properly determined that the application was not complete. The county was just slightly tripped up because it also did not include such specificity in its requirements for encroachment permit applications.

**Summary**

This project involves a residential subdivision created by a map Amador County approved back in 1973. In 2023, Old Golden Oaks applied for a grading permit and an encroachment permit from the County to construct streets and water service facilities. The County's submittal checklist for the grading permit application required a proposed erosion control plan, a copy of any right-of-way agreements, a notice of intent, a stormwater pollution prevention plan, engineered plans, and an indemnification agreement if the project is subject to CEQA. The County's submittal checklist for the encroachment permit included the following catch-all provision for "[o]ther information as may be required by the director [of transportation and public works]." The County informed Old Golden Oaks that its applications were incomplete, and Old Golden Oaks then filed suit.

Regarding the encroachment permit, the court held that the application violated the Permit Streamlining Act because the "catch-all" provision contrasted with the PSA's mandate to "specify in detail" the requisite information for a permit. In fact, the "catch-all" provision frustrated the PSA's purpose to "ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects." While the county may seek to condition an encroachment permit's application on supplying the correct environmental information, such information must be specifically apart of the submittal checklist under the PSA.

Regarding the grading permit, because all of the reasons the County declared the application incomplete were specified in the submittal checklist, the County's decision was correct. In fact, the submittal checklist explicitly asked the applicant whether the project was subject to CEQA, which is sufficient to comply with the PSA. Additionally, the fact that the County keeps the information on multiple checklists is not a violation of the PSA.