



**Land Use &
CEQA Update**

Presented to the League of California
Cities
2022 City Attorneys' Spring Conference
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AGENDA

- GENERAL OBSERVATIONS re CASES
 - SUMMARY OF FEDERAL CASES
 - SUMMARY OF STATE APPELLATE COURT CASES

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Federal Cases

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Center for Community Action & Environmental Justice v. FAA

(9th Cir. 2021) 18 F.4th 592

- NEPA and CEQA Interplay / State Co-Petitioner
- Review of FAA Decision for Cargo Facility at San Bernardino International Airport
- State asserted FAA needed EIS (NEPA) because EIR (CEQA) found possible significant Air Quality, Greenhouse Gas, Noise Impacts
- State did not argue EA under NEPA must reach the same conclusion as CEQA analysis / BUT, If CEQA Impacts, then NEPA analysis required to explain away
- Court of Appeals Disagreed / State had to identify findings in EA re: Impact under NEPA

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Center for Community Action v. FAA (continued)

- Petitioner CCA Claimed FAA failed to consider State Air Quality and Federal Ozone Standards
- Invoked 40 C.F.R. § 1508.27(b)(10) = Evaluate if impact requires consideration of threat for violation of Federal, State, Local law “imposed for the protection of the environment.”
- Court of Appeals Declined to Consider / CCA failed to identify specific potential violation / EA did discuss the State Clean Air Act / No Evidence Federal Ozone Standard Violated

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Center for Community Action v. FAA (continued)

- Petitioner CCA argued EA failed to assess Impacts per State Green House Gas (GHG) Emission Standards
- Court of Appeals found CCA proffered no specific articulation how the Project would violate State GHG standards or cited State or Federal Laws
- TAKE-AWAYS: Significant environmental impacts under CEQA may be insufficient to require an Environmental Assessment under NEPA. Specific findings that raise substantial questions about environmental impacts under NEPA are required to trigger an Environmental Assessment

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LA Alliance for Human Rights v. County of Los Angeles

(9th Cir. 2021) 14 F.4th 947

- Downtown Homeless & Business Owners sued L.A. City and County
- Local Policies & Inaction Created Dangerous Environment in Downtown
- District Court (J. Carter) Granted Preliminary Inj. / Required to Pay for Shelter of All Unhoused Downtown Residents (\$1BB(!) in Escrow)
- Court of Appeals Vacated & Remanded
- Abuse of Discretion Relying on Extra-record Evidence to Find Facts Supporting Standing
- Protected Class Alleged Violations Not Supported

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Garcia v. City of Los Angeles

(9th Cir. 2021) 11 F.4th 1113

- L.A. City's "Bulky Items" Ordinance / Allowed Discarding of Bulky Items in Public Areas when Not Designed as Shelter
- Homeless & Advocates Facial/Applied Const. Challenge / 4th Am. Unreasonable Seizure
- District Court (J. Fischer) Granted Plaintiffs' Prelim. Injunction Enjoining Enforcement
- Court of Appeals Affirmed = Likely Succeed on Merits, and Bulky Items Not Severable

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Garcia v. City of Los Angeles (continued)

- Ordinance Generally Addressed Publicly Stored Unattended Property / Obstructing Passageways / Impound for 90 Days
- Ordinance Allowed No Impounding if Immediate Threat to Public Health/Safety, Evidence of Crime/Contraband OR “Bulky Item”
- District Court = Likely Unconstitutional per Warrant Requirements
- Court of Appeals followed *Lavan v. City of Los Angeles*, 693 F.3d 1022 (9th Cir. 2012): Bulky Items Provision Violated Fourth Amendment on Its Face / Not Severable Because Not Functionally Autonomous
- Dissenting Opinion = Provision Was Severable

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State Appellate Court Cases

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Ocean Street Extension Neighborhood Association v. City of Santa Cruz

73 Cal.App.5th 985

- Association Challenged Approval of 32-Unit Housing Project Under CEQA and Municipal Code
- Trial Court = OK for CEQA but Violated Municipal Code / Limited Writ Pending Mun. Code Compliance
- Court of Appeal Affirmed CEQA and Reversed on Muni. Code Decision
- OK to Place Bio. Resources Discussion in Initial Study instead of EIR
- EIR OK Even Without Details re: Types of Birds Possibly Impacted / EIR Complied with CEQA's Informational Mandate
- Mitigation Measures Complied with CEQA / Required Preconstruction Survey Not Unlawful Deferment / Specified Actions To Be Taken Based on Survey

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Ocean Street Extension (continued)

- Substantial Evidence supported Cumulative Impacts re: Impact of Additional Water Demand / EIR Recognized Existing Water Shortfalls / Discussed Citywide Measures & Project's Contribution to Water Consumption / Mitigation by Installing Conservation Fixtures and Landscaping / Required Curtailed Use Based on Severity of a Drought / Required Fee for Water Supply
- City Entitled to Deference Interpreting Planned Development Permit (PDP) Ordinance
- Municipal Code Prohibition re Slope Restrictions Did Not Apply to Project Built on 1 Lot

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***Save Civita Because Sudberry Won't v.
City of San Diego***
72 Cal.App.5th 957

- City certified EIR for Serra Mesa Community Plan (SMCP) Amendment Roadway Connection Project / Approved Amendment to SMCP and General Plan for Roadway
- Part of Project was in Civita, a Partially Built-out Mixed-use Development Approved in 2008.
- Petition/Complaint Challenged EIR and Roadway Project under CEQA, Planning and Zoning Law, and Due Process Fair Hearing Rights
- Court of Appeal Upheld City's Actions
- City Acting in Quasi-Legislative Capacity / Procedural Due Process Protections for Quasi-Judicial Hearings Not Applicable / No Violation Even if Evidence Council Staff Solicited Support for Project

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Save Civita
(continued)

- Matter of First Impression: Recirculated Draft EIR Complied with Guidelines Section 15088.5(g) Requiring Summary of Revisions to Previously Circulated Draft EIR
- Recirculated DEIR Did Not Violate Guidelines / Made Overall Nature of Changes Clear / Stated Comments on Previous EIR Would Not Receive Response
- Even If City Failed Compliance with Guidelines, No Prejudicial Error as Merely Procedural / Public Not Deprived Opportunity to Review and Comment on Recirculated DEIR

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League to Save Lake Tahoe Mountain Area Preserv. Foundation v. County of Placer

75 Cal.App.5th 63

- Factually complex / County Approved Specific Plan and Zone Change for Residential & Commercial Development & Preserve Forest Land in Tahoe
- Conservation Groups Filed Separate Petitions/Complaints, Alleging Multiple Claims
- Most Significant Decision by Court of Appeal re: Air Quality, Water Quality, and Vehicle Emissions
- (1) Substantial Evidence Supported County Reliance on Air-Quality Data from Air Basin Where Development Located, Not Adjacent Basin (Tahoe Regional Planning Agency, which used VMT as threshold)
- (2) But... Abuse of Discretion Failing to Describe Lake's Existing Water Quality / Fair Argument that Project-Generated Vehicle Emissions in Lake Tahoe Basin Impact Basin's Air and Water Quality
- (3) Before Preparing EIR, Petitioner Responded to NOP / Twice Stated Project's Traffic Would Increase Basin VMT and Impact the Basin's Air and Lake's Water Quality / Asked County Address These Impacts

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League to Save Lake Tahoe

(continued)

- (4) Air Quality Analysis OK Under CEQA: Project's Emissions Did Not Exceed Threshold of Significance Approved by Placer County Air Pollution Control District (includes Tahoe Air Basin and Mountain Counties Air Basin).
- (5) Water Quality Analysis NOT OK: Did Not Address Impacts of Crushed Abrasives and Sediment from Project-Generated Traffic on Lake
- (6) By Not Using VMT Threshold and Not Providing Alternative Threshold, EIR Did Not Determine Significance of Potential Impact Individually or Cumulatively on Lake Water Quality

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League to Save Lake Tahoe (continued)

- GHG Analysis Insufficient: MM Required Mitigation *IF* Project Conflicted with State GHG Targets / No Such Targets Existed
- EIR Did Not Discuss How Measure Would Apply *IF* No Targets Developed
- Failure to Address Renewable Energy Violated CEQA : Part of Determining Whether Impacts on Energy Resources Are Significant
- Prejudicial Error Because EIR Did Not Comply with CEQA's Procedural Requirements
- NOTE: Other *Sierra Watch* cases in Paper

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Friends, Artists & Neighbors of Elkhorn Slough v. California Coastal Commission 72 Cal.App.5th 666

- Development in Monterey County / Obtained CDP and Other Permits from County / Appellant "FANS" Filed Administrative Appeal with Commission re: County's approval of CDP Violating CEQA
- 2017 Staff Report: "Project Would Have Significant Adverse Effects on Environment" Without Alternatives on (1) Oak Woodland, (2) Water Quality, (3) Visual Resources (4) Agricultural Areas, and (5) Traffic / Recommended Denying/Deferring Project Based Only on Water Supply
- Nov. 2017 Commission *de novo* Hearing: Approve CDP Notwithstanding Staff Recommendation
- 2018 Staff Report: First Time Analysis of "Components" of Project, Mitigation Measures & Conditions / Determined Project as Proposed Already Addressed Potential Adverse Impacts / No Need for Project Alternatives or Additional Mitigation Measures
- Sept. 2018 Commission Hearing: Revised Staff Report Findings Adopted *After* Project Approval

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FANS v. California Coastal Commission (continued)

- Court of Appeal: Commission Required to Consider Project Alternatives, Mitigation Measures, and Conditions Before Approving CDP at 2017 *de novo* Hearing
- Exhaustion of Admin. Process: Prior to 2018 Findings Hearing, FANS Objected to the 2018 Staff Report
- Court of Appeal: On *This Record*, FANS Preserved Dispositive Issue of Appeal = Whether Commission Failed Requisite CEQA Review Before 2017 *de novo* Hearing
 - 2017 Hearing Raised Question Whether Prevailing Commissioners Sufficiently Stated Basis for Action & Allowing Revised Findings Report

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Coastal Act Protectors v. City of Los Angeles 75 Cal.App.5th 526

- Short Term Vacation Rental and Coastal Commission Case
- Advocacy Group Challenged City Ordinance Restricting STVRs in Venice Coastal Zone Area of City / Alleged Restrictions Constitute "Development" under Coastal Act Needing CDP
- Trial Court: Denied Writ Because:
 - (1) Time-Barred under 90-day Period in Gov. Code §65009
 - (2) the Ordinance Had No Change in Intensity of use
- Court of Appeal: Affirmed only on 90-day Limitations Period / Disagreed with Contention 3-year Limitation in CCP §338(a) Applied / Declined to Decide whether "Development" under Coastal Act
- NOTE: Case from Last Presentation: *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089, holding city's ban constituted "Development" under Coastal Act & Required CDP or Amendment to Local Coastal Program

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Save Berkeley's Neighborhoods v. Regents of the University of California

70 Cal.App.5th 705

- CEQA Procedural Case of Note
- Regents Approved Additional Academic Space & Campus Housing / Certified a Supplemental EIR / Filed NOD, Which Identified American Campus Communities & Collegiate Housing Foundation as Developers
- Petitioners Named the Regents, Its President & Chancellor as Respondents / Then, Amended Petition to Add Real Parties in Interest
- ACC and CHF Demurred / Petitioner Failed to Name within Applicable Limitations Period under Pub. Res. Code §21108 & §21167.6.5(a) as Necessary and Indispensable Parties
- Trial Court: Sustained Demurrers, but Declined to Dismiss Action Because ACC and CHF Not Indispensable Parties
- Court of Appeal: CEQA Sections Do NOT Override CCP §389(b) for Determining Indispensable Parties / CEQA Sections Determine Whether RPIs / Then A Court Decides Indispensable Party Issue
- NOTE: Other Issue on Appeal re 30-Day NOD Limitations Period / Court of Appeal Held NOD Adequately Described Project / NOD Not Required to Disclose Supp. EIR Analyzed Student Enrollment Impact

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Bankers Hill 150 v. City of San Diego

74 Cal.App.5th 755

- Density Bonus Case (Gov. Code, §65915) / Court of Appeal Affirmed Denial of Writ
- 20-Story Mixed Use Project Next to Balboa Park in San Diego
- Petitioners (Community Association) Focused on Deviation from City's Setbacks: Argued Did Not Maintain or Enhance Views of Balboa Park or Respect Scale of Neighboring Buildings
- Court of Appeal: City Required to Grant Incentive Absent Certain Findings - In fact, City Council Found Contrary Findings, But Court noted City Was Not Required To Do So
- Court of Appeal: Rejected Petitioners' Contention Project's Design Could Have Been Accomplished without Courtyard, Allowing Shorter & Wider Development / Density Bonus Law Cannot be Used to Require Applicant to Strip the Project of Amenities
- Court of Appeal: Rejected Petitioners' Contention of Nonconformance with General Plan Policy to be Sensitive to "Natural Features" / Balboa Park Not "Natural Feature" Warranting Minimal Development / Park Modified Natural Environment / Constituted an Urban Use

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Schreiber v. City of Los Angeles

69 Cal.App.5th 549

- Another Density Bonus Law Case / Court of Appeal Affirmed Denial of Writ
- City Approved 7-Story Residential/Commercial Mixed Use Project / 54 Units Total & 59,000sq.ft. Floor Area / City Memo re AB 2105 (Stats. 2016, ch. 758)
- Court of Appeal: Applicant NOT Required to Show Incentives Necessary for "Economic Feasibility"
- City Ordinance Requiring Financial Feasibility Study to Support Incentives or Waivers Preempted by State Law
- City's Approval Supported by Substantial Evidence / City Not Required to Make Negative Finding That Incentives Would Not Result in Cost Reductions / City Made No Finding Incentives Would Not Result in Cost Reductions / Financial Feasibility Analysis Was in Administrative Record / Court Would Not Re-weigh Evidence

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Schmier v. City of Berkeley

76 Cal.App.5th 549

- 1996: Property Owner Converted 2 Apartments to Condos / Municipal Code Required Recording a Lien Obligating Owner to Pay Affordable Housing Fee
- 2008: City Revised Formula for Fee
- 2019: Owner Advised City Intent to Sell
- City Calculated Fee (\$147,202.66) Under Old Muni. Code / Under Revised Formula Much Less
- Trial Court: Sustained City's Demurrer Finding Suit Barred by 90-Day Limitations Period in Subdivision Map Act (i.e., commenced running more than 20 years ago)
- Court of Appeal Reversed: Dispute Could Not Have Existed at Condo Conversion / Moreover: Lien Language and Alleged Rescission of Then-Operative Muni. Code Provision Was At Issue
- Even If 90-Day Limit, Had Not Begun to Run / Events of Dispute (New Code Section) Did Not Exist in 1996 / Challenge Is City's Interpretation of Lien / Statute Begins to Run When City Rejects Owner's Assertion Old Muni. Code Rescinded

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Protect Tustin Ranch v. City of Tustin

70 Cal.App.5th 951

- CEQA Class 32 In-Fill Exemption Case as Part of Larger Separately Permitted Big-Box Area
- City Approved Gas Station Project Next to Costco, with 2 Components: (1) Construction of 16-pump Gas Station, and (2) Demolition of Existing Tire Center and Adjacent Surface Parking, Replaced with 56 Stalls
- Costco's CUP Application was for 11.97 Acres, but Gas Station Project was 2.38 acres
- Petitioner Claimed In-Fill Exemption Not Applicable Because Entire Site was More than 5 Acres (Nearly 12) and Within Scope of "Unusual Circumstances" Exception in Guidelines §15300.2(c)
- Court of Appeal: Substantial Evidence in Administrative Record That Project Was Less than 5 Acres / Multiple Documents Confirmed This
- Court of Appeal Agreed with City that Petitioner Did Not Meet Burden for "Unusual Circumstances" / Project Not Unusual in Relation to Other Costco Gas Stations & Within Existing Expansive Retail Center

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Farmland Protection Alliance v. County of Yolo

71 Cal.App.5th 300

- County Adopted Revised Mitigated Negative Declaration & Issued CUP For B&B and Commercial Event Facility Supported by Onsite Crop Production (Project)
- Petitioner Challenged CUP under CEQA
- Trial Court: Substantial Evidence supported Fair Argument Project May Have Significant Impact on Specific Species of Blackbirds, Beetles, and Eagles / Ordered County to Prepare Limited EIR re: Impacts on 3 Species / Also Ordered Pending the Limited Environmental Review, Project Could Operate and Mitigation Measures Remain in Place
- Court of Appeal Reversed: County Must Prepare Full EIR When the Fair Argument Test is Met / Trial Court Erred and Was Required to Order Full EIR Instead of Limited Report
- Pub. Res. Code §21168.9 Does Not Authorize Trial Court to Split Project's Environmental Review Across 2-types of Review Documents (i.e., MND and "Partial" EIR)
- NOTE: On the Williamson Act Claim: Petitioner Failed to Show County Abused Discretion Finding Project Would Include Agriculture Operations

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Crenshaw Subway Coalition v. City of Los Angeles

75 Cal.App.5th 917

- Case re: Revitalization/Gentrification Project and Alleged Violations of Federal Fair Housing Act (FHA) and California's Fair Employment and Housing Act (FEHA)
- Court of Appeal Affirmed Trial Court Decision to Dismiss Claims
- Take Aways: (1) Cal. Supreme Court Depublication of *AIDS Healthcare Foundation v. City of Los Angeles* (2020) 264 Cal.Rptr.3d 128 Did Not Mean No Basis for Trial Court Ruling; (2) Disparate Impact Claim Based on Gentrification Not Cognizable Under FHA and FEHA
- Regarding *AIDS Healthcare* Depublication: Court of Appeal Must Review Dismissal of Claims, Not Trial Court's Rationale / Court Could Not Infer Disapproval from the Depublication.
- Regarding Gentrification Claim: Court of Appeal relied on *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (2015) 576 U.S. 519 / *Inclusive Communities* Held FHA Does Not Encompass Disparate Impact claims Making the Act an "instrument to force housing authorities to reorder their priorities" and "displace[] ... valid governmental policies."

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Questions?

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