

ALSTON & BIRD

LAND USE MATTERS

A PUBLICATION OF ALSTON & BIRD'S LAND USE GROUP

February 2025

Land Use Matters provides information and insights into legal and regulatory developments, primarily at the Los Angeles City and County levels, affecting land use matters and new CEQA appellate decisions.

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Los Angeles County

Executive Order Streamlines Path to Rebuild Homes, Businesses, and Communities Destroyed by Los Angeles Firestorms

In response to the multiple firestorms in Los Angeles County that started on January 7, 2025 and destroyed thousands of homes, Governor Gavin Newsom issued [Executive Order N-4-25](#) to streamline the rebuilding process. In pertinent part, the executive order:

- Suspends California Environmental Quality Act (CEQA) and California Coastal Act permitting requirements for the reconstruction of structures and properties damaged or destroyed by the fires. The suspension applies only to like-for-like reconstruction of structures for the same use at the same location, as long as the new structure does not exceed 110% of the floor area, size, height, or building footprint of the damaged or destroyed structure.
- Directs state agencies to identify other permitting requirements, including the California Building Code, that can safely be suspended or streamlined to accelerate rebuilding and reduce the costs.

The County of Los Angeles and the City of Los Angeles have established Disaster Recovery Centers to assist residents and business owners with the rebuilding. The centers, located in [West Los Angeles](#) and [Altadena](#), are currently open seven days a week with staff available to provide information on debris removal, demolition and permitting processes, utilities, school enrollment, obtaining copies of vital records, and other services to assist individuals and families.

City of Los Angeles

Hollywood Community Plan Operative on February 11, 2025

On January 7, 2025, as part of the [Hollywood Community Plan update](#), the city council adopted [four implementing ordinances](#): (1) an ordinance to establish the Hollywood Community Plan Implementation Overlay District (CPIO);

(2) an ordinance to amend the Vermont/Western Transit Oriented District Station Neighborhood Area Plan (SNAP); (3) an ordinance to amend the Hollywood Redevelopment Plan; and (4) an ordinance to amend the zoning map to add certain parcels in the plan area to the Hillside Construction Regulation Supplemental Use District. The Hollywood Community Plan, one of the city's 35 community plans that make up the Land Use Element of the General Plan, was last updated in 1988. Unless expressly indicated as mandatory, the plan's goals, policies, and programs are designed to provide residents, businesses, developers, and public officials with guidance for community development. Compliance with the General Plan Land Use Map, however, is mandatory.

California Environmental Quality Act (CEQA)

Westside Los Angeles Neighbors Network v. City of Los Angeles (2nd App. Dist., July 2024)

This case involved a challenge to actions taken by the Los Angeles City Planning Commission (CPC) in March 2018 geared toward implementing the Westside Mobility Plan. The plan focused on improving mobility throughout western Los Angeles by implementing six "components." The petitioner alleged the CPC's actions on three of the components violated CEQA. The court of appeal affirmed the trial court's denial of the petition, upholding the CPC's actions to implement the plan. On appeal, the petitioner asserted three arguments: (1) the city of Los Angeles violated CEQA by permitting the CPC, a non-elected body, to certify the environmental impact report (EIR); (2) the city improperly found the Livable Boulevards Streetscape Plan to be categorically exempt from CEQA; and (3) the final EIR was inadequate because it failed to sufficiently account for "growth-inducing impacts" and did not ensure that required mitigation measures would be implemented. The court of appeal rejected all three arguments.

First, the court of appeal affirmed that the CPC was authorized to certify the final EIR as a "non-elected decision-making body" for a portion of a multicomponent project and that "given the overlap" between the components and "by virtue of its power to adopt the Streetscape Plan, the CPC could make a 'decision ... commit[ing] the [City] to a definite course of action'" for the entire project.

Second, the court affirmed that the Streetscape Plan is categorically exempt from CEQA because only minor alterations to existing rights-of-way would occur. Consequently, the court rejected the petitioner's argument that "unusual circumstances" precluded use of the exemption because the petitioner presented no evidence the Streetscape Plan would have significant environmental effects.

Third, the court affirmed the final EIR was legally sufficient because it properly analyzed and addressed public concerns about potential "growth-inducing impacts" and contained substantial evidence that mitigation would be properly implemented. Specifically, the court found that the record contained "substantial evidence" showing how the mitigation measures would be funded by fees and must be implemented upon satisfaction of specific conditions.

Center for Biological Diversity v. County of San Benito (6th App. Dist., July 2024)

The court of appeal considered whether a county's initial approval of a project, which was later appealed administratively, constituted a "final approval" under CEQA. The county board of supervisors filed a notice of determination (NOD) after it certified the EIR and approved a conditional use permit for the project. The petitioners timely filed administrative appeals. Following a public hearing, the board denied the appeals and filed a second NOD giving notice of its decision. The petitioners then filed a petition for writ of mandate challenging the project approval,



including a CEQA claim, more than 30 days after the first NOD was filed but within 30 days of the second NOD. The county filed a demurrer asserting that the lawsuit was untimely.

The court of appeal held that the lawsuit was timely filed. The county's original decision to approve the project was not a "final approval" because it was appealed, and therefore the statute of limitations period did not begin until the board filed its second NOD after denying the appeals. In reaching this conclusion, the court relied on provisions of the county code outlining an appeals process and specifically providing that the approval of a conditional use permit only becomes final when (1) the deadline for appeal expires without the filing of an appeal; or (2) the board takes action to approve or deny an appeal.

***Upland Community First v. City of Upland* (4th App. Dist., Aug. 2024)**

The trial court found that a city's mitigated negative declaration (MND) for a warehouse project lacked substantial evidence supporting the use of two quantitative greenhouse gas (GHG) emissions significance thresholds: a 3,000 metric tons of carbon dioxide equivalent per year (MTCO₂ e/yr.) significance threshold for non-industrial (e.g., commercial and residential) projects, and a 10,000 MTCO₂ e/yr. threshold typically used for large, industrial projects with stationary source emissions.

In reversing the trial court and upholding the project approvals, the court of appeal found that substantial evidence supported the use of the lead agency's GHG significance threshold based on evidence in the record citing minutes from a 2010 South Coast Air Quality Management District (SCAQMD) meeting that explained the derivation of – and rationale for – the 3,000 MTCO₂ e/yr. threshold as more appropriate for non-industrial land uses than the 10,000 MTCO₂ e/yr threshold. In reviewing the evidence and resolving it in favor of the lead agency's decision, the court found that screening non-industrial projects by using the 3,000 MTCO₂ e/yr. threshold was a reasonable way for the lead agency evaluate whether a project's GHG emissions were cumulatively considerable.

The MND included an updated GHG emissions analysis that, in addition to using the lower GHG emissions threshold, increased baseline GHG emissions, making the project's increase in GHG appear less than it appeared in the original analysis. The court, again acting as a finder of fact and resolving uncertainties in favor of the lead agency, also found that although the supplemental analysis did not explicitly state the source of the increased emissions, the original report had explained that its baseline GHG emissions figures conservatively did not include trucks that were later included in the updated analysis.

Finally, the court found that there was no evidence to support the petitioner's assertion that there was a fair argument that the project would result in significant traffic impacts. The court further found that any traffic argument based on the level of service (LOS) threshold in effect at the time of the city's CEQA review was now moot because the CEQA Guidelines were later revised to provide that vehicle miles traveled, not LOS (or congestion, generally) is the appropriate framework for analyzing potential traffic impacts.

***California Natural Gas Vehicle Coalition v. State Air Resources Board* (5th App. Dist., Aug. 2024)**

The petitioner asserted that the California Air Resources Board's (CARB) adoption of the Advanced Clean Trucks (ACT) regulation violated CEQA and the California Administrative Procedure Act (APA) due to CARB's rejection of proposals to incorporate low-NO_x vehicle use as part of CARB's planned transition toward zero-emissions heavy-duty vehicles. The court of appeal affirmed the trial court's denial of the petitioner's lawsuit.



The petitioner argued that the environmental analysis should have considered low-NOx vehicles as part of a reasonable range of alternatives in the EIR. The court of appeal found that CARB's objectives in adopting the regulation, which included transitioning the heavy-duty vehicle sector to zero-emission technology, provided sufficient justification to exclude an alternative that provided for low-emission vehicles in place of zero-emission vehicles. Indeed, given the overall scope of the ACT's objectives, the court likened the rejection of a low-NOx alternative to being akin to an agency's rejection of inland building sites as an alternative to an oceanfront development.

The petitioner also argued that, because implementation of the ACT would result in increased short-term air-quality impacts from construction associated with manufacturing and fueling of zero-emission vehicles, CARB should have required the use of low-NOx vehicles as a mitigation measure for this impact. The court recognized that mitigation measures, unlike alternatives, cannot be deemed infeasible simply because they fail to meet project objectives. However, the record contained substantial evidence justifying CARB's rejection of a low-NOx vehicle measure as infeasible from a policy perspective.

Finally, the petitioner argued that CARB failed to adequately respond to comments on the low-NOx vehicle proposals in violation of both CEQA and the APA. CARB approved the final environmental analysis without considering the responses to comments developed in the final statement of reasons – in contravention of CEQA Guidelines Section 60004.2, which requires consideration of responses to comments before approval of a project. Although both the trial court and court of appeal found this improper, both courts agreed it was a harmless error in this case because CARB had elsewhere disclosed its positions on the low-NOx vehicle proposals.

***Friends of the South Fork Gualala v. Department of Forestry and Fire Protection* (1st App. Dist., Nov. 2024)**

The court of appeal addressed whether the trial court erred in denying a disability accommodation request under Rule 1.100 of the California Rules of Court. More specifically, the petitioner challenged the trial court's denial of its counsel's request for a disability accommodation when he sought extensions of time and flexibility for procedural obligations due to his bipolar disorder. The trial court previously granted six similar requests but denied the seventh, citing undue financial and administrative burdens and the need to move the case forward due to the statutory calendaring priority for CEQA cases.

The trial court denied the seventh request because prior and repeated requests for scheduling accommodations had already significantly delayed the proceedings. The trial court reasoned that further accommodations would fundamentally alter the nature of the CEQA proceeding, which is to be expedited by statute. The court of appeal affirmed the trial court's decision, emphasizing the lower court's discretion to manage its docket and the importance of CEQA cases moving forward promptly. The court of appeal distinguished this case from others whose accommodations were necessary to ensure access to justice, noting that the petitioner could have retained additional counsel to address the scheduling issues as it had previously agreed to do.

***Relevant Group LLC v. Nourmand* (9th Circuit, Sept. 2024)**

The Petition Clause of the U.S. Constitution protects an individual's right to petition the government for redress of grievances. The judicially created Noerr–Pennington doctrine protects this right by requiring courts to “construe statutes to avoid burdening conduct that implicates the protections of the Petition Clause.” Lawsuits are protected under the Noerr–Pennington doctrine, and courts construe statutes broadly to permit the filing of lawsuits. Sham lawsuits, however, are not protected. The question in this case was whether a developer's CEQA lawsuits against



another developer were protected under the Noerr–Pennington doctrine or whether they fell under the sham litigation exception to the Noerr–Pennington doctrine.

In this case, the plaintiff developer sued the defendant developers in federal court after the defendants challenged four of the plaintiff’s proposed projects. The defendants also filed CEQA lawsuits against the city. The plaintiff argued that the defendants abused the processes available under CEQA to extort funds in violation of RICO, 18 U.S.C. §§ 1962(c) and (d). The district court granted summary judgment in favor of the defendants and held that their CEQA lawsuits were not shams and were protected under the Noerr–Pennington doctrine. The Ninth Circuit affirmed.

The plaintiff argued the district court applied the wrong framework to evaluate whether the sham litigation exception applied. According to the plaintiff, the court should have considered whether the defendants’ conduct involved “a series of lawsuits ‘brought pursuant to a policy of starting legal proceedings without regard to the merits’ and for an unlawful purpose.” The Ninth Circuit found that because the defendants had brought only four lawsuits, and because related administrative objections and challenges do not count as separate “proceedings,” the district court applied the correct framework.

Applying this framework, the Ninth Circuit found that the defendants’ activities were not objectively baseless, relying on the fact that the plaintiff settled some of the lawsuits as strong evidence to support its finding. Further, some of the settlements included non-monetary demands that a CEQA litigant would want, such as noise-reduction measures. Since the Ninth Circuit determined the lawsuits were not objectively baseless, it did not need to analyze whether the defendants’ motives in bringing the lawsuits were unlawful.

[Gooden v. County of Los Angeles](#) (2nd App. Dist., Oct. 2024)

The court of appeal considered whether the County of Los Angeles violated CEQA by approving an updated land use plan for the Santa Monica Mountains North Area that initially proposed strict vineyard regulations but was later amended to ban all new vineyards. The county regulates the Santa Monica Mountains through a land use plan and community standards district. In December 2015, the county’s board of supervisors adopted an ordinance to regulate vineyards in the North Area. In 2016, the county began updating these plans, leading to a draft EIR in 2020 that evaluated vineyard standards but not a ban. However, after public comments, the final EIR included a ban on new vineyards. In the trial court, the petitioner challenged the county’s approval on the grounds that (1) the project did not have an accurate and stable description because the board made a change in the final EIR to prohibit new vineyards; and (2) the final EIR needed to be recirculated because new significant information was added.

The court of appeal concluded that the vineyard ban, while a notable change, did not alter the project’s main features or destabilize its description. Agricultural use made up less than 1% of the land, and the vineyard ban was a minor part of a comprehensive plan update. The court found no requirement to recirculate the EIR because the ban did not constitute significant new information. In distinguishing other case law, the court emphasized that the vineyard ban was not central to the project’s scope, which focused on broader land use updates. While the ban carried implications for potential vintners, the court found it insufficient to trigger additional CEQA review.

[Save Our Capitol! v. Department of General Services](#) (3rd App. Dist., Oct. 2024)

In 2016, the state legislature passed the State Capitol Building Annex Act, which authorized construction on the state capitol. This was the third, and ultimately unsuccessful, trip to the court of appeal by the petitioner aimed at



preventing this construction. The first two appeals involved challenges to the EIR prepared by the Department of General Services. By the time the third appeal was heard, the department had revised the EIR and the legislature had passed Senate Bill 174, which specifically exempted the annex construction from CEQA. Accordingly, the petitioner's first argument on appeal – that the annex construction violated CEQA – was unsuccessful. The court explained that SB 174 became effective immediately and was controlling even though it was passed after the appeal was filed.

The court also rejected the petitioner's argument that SB 174 is unconstitutional. The petitioner argued that the bill violated Article IV, Section 28 of the California Constitution, which limits the legislature's ability to alter certain parts of the capitol, including its exterior. But the court explained that by its terms, SB 174 states that the appropriated funds may not be used in a manner inconsistent with Article IV, Section 28. Therefore, there was no conflict.

***JCCrandall LLC v. County of Santa Barbara* (2nd App. Dist., Jan. 2025)**

The landowner petitioner objected to the use of an existing agriculture easement across its property for the transport of cannabis grown on an adjoining parcel of land. The County of Santa Barbara granted the petitioner's neighbor a conditional use permit (CUP) for the cultivation of cannabis. As part of this process, the county was required to, and did, find that the streets and highways connecting the land – in this case, the easement at issue – were adequate for the proposed purpose of transporting cannabis. The petitioner objected to the CUP but appeals to the county board of supervisors and the trial court were unsuccessful. The court of appeal agreed with the petitioner and reversed.

As an initial matter, the court of appeal held that the trial court erred in applying the substantial evidence standard of review. The court of appeal disagreed with the trial court's determination that the lawsuit did not implicate a fundamental vested right. The right to exclude people from one's property is a fundamental right that has long been vested with property owners. Therefore, the proper standard of review was the court's independent judgment. Next, the court of appeal explained that the cultivation and transportation of cannabis remains illegal in California – and every other state – because it is illegal under federal law. The county's reliance on Civil Code Section 1550.5(b), which purports to legalize cannabis, could not be used to *force* the petitioner to allow cannabis to be transported across its property. The court declined, however, to consider whether Section 1550.5 was valid for parties *voluntarily* contracting in the cannabis business.

The court also agreed with the petitioner that Business and Professions Code Section 26051.5(a)(2) requires the consent of the landowner before property is used for commercial cannabis. The court found that "permission for commercial cannabis activities from all landowners where land is so used" is required, including "the owners of servient tenants over which cannabis is transported."

Finally, the court found that transporting cannabis across the petitioner's property exceeded the scope of the easement. The county argued that the easement was created for agricultural purposes and continued to be used for agriculture. But the court determined that there is a significant difference between legal and illegal agriculture. The scope of the easement did not include the latter. Without the easement, there were no streets or highways connecting the land where cannabis was being cultivated, and therefore the CUP was invalid.

***Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2nd App. Dist., Oct. 2024)**

The petitioner challenged a proposed project to subdivide 94 acres of open space into 45 lots for the development of 37 single-family homes, six public facilities, and two open space areas in an unincorporated portion of the Santa



Clarita Valley. An MND was prepared for the project under CEQA. The petitioner's lawsuit raised claims under both CEQA and the Subdivision Map Act (SMA), challenging a conditional use permit, an oak tree permit, and a vesting tentative tract map. In granting judgment on the pleadings in favor of the County of Los Angeles and the real party in interest, the trial court found that the petitioner failed to comply with the SMA's requirement to serve a summons with 90 days under Government Code Section 66499.37.

The question on appeal was whether the SMA's 90-day limitations period made the petitioner's CEQA claim time-barred along with the SMA claim. The petitioner contended that Section 66499.37 did not apply to its CEQA cause of action because its claims (e.g., lack of adequate notice of the MND, failure to consult an agency) did not "concern a subdivision." The real party, on the other hand, maintained that both the SMA and CEQA causes of action were barred because the heart of the petition concerned the vesting tentative tract map and the CEQA claims were intertwined with the SMA claims.

The court found that while the plain language of the SMA is very broad, the legislature did not intend for this provision to apply to causes of action devoid of a connection to the SMA. The court determined that Section 66499.37 applies to claims that "arise from or involve a controversy under the SMA, could have been brought under the SMA, or overlap with an SMA claim." The court further held that the "gravamen" of the petitioner's CEQA cause of action centered on procedural violations, not the SMA, so that the cause of action was not barred in its entirety. However, to the extent the petitioner challenged the reasonableness of the conditions of approval of the vesting tentative tract map (here, specific mitigation measures adopted as a condition of approval), the limitations period under Section 66499.37 applied.

The court noted that a motion for judgment on the pleadings cannot be granted unless it disposes of an entire cause of action. The trial court erred in granting the motion as to the CEQA cause of action because only a portion of that claim was barred by the SMA limitations period. The trial court's ruling was reversed in part and remanded.

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