

ALSTON & BIRD LAND USE MATTERS

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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, as well as new CEQA appellate decisions.

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City of Los Angeles

Department of City Planning

Hollywood Community Plan Update

On April 29, 2016, the Department of City Planning issued a [Notice of Preparation](#) (NOP) of a Draft Environmental Impact Report (EIR) for the Hollywood Community Plan (HCP) Update project. The city council previously approved the Hollywood Community Plan and certified the EIR in June 2012. There was a legal challenge to the approval, and on February 11, 2014, the Los Angeles Superior Court issued a judgment directing the city to rescind its 2012 approvals and prepare, circulate and certify an adequate EIR. The HCP is one of 35 Community Plans that compose the Land Use Element of the General Plan. The HCP was last updated in 1988. The NOP comment period has been extended to June 15, 2016.

California Environmental Quality Act

Center for Biological Diversity v. County of San Bernardino (The "Cadiz Project" cases) (4th App. Dist., 5/10/2016)

On May 10, 2016, the California Court of Appeal ruled in favor of the Santa Margarita Water District and San Bernardino County in two cases challenging the Cadiz water project, a public-private partnership that seeks to pump and beneficially use groundwater from an aquifer in the Mojave Desert located in San Bernardino County.

The cases were brought by a group of nonprofit organizations, including the Center for Biological Diversity (CBD). The first case was a challenge under CEQA in which CBD argued that the Santa Margarita Water District was improperly named as the lead agency because the primary environmental impacts from the project would occur outside its jurisdiction. Santa Margarita Water District plans to carry out the project alongside several other agencies and entered into a written agreement with the county and other agencies to act as the lead agency. The respondents and amicus parties argued that CBD's position was contrary to Section 15051 of the CEQA guidelines, which expressly allow (1) an agency carrying out a project outside its jurisdiction to act as the lead agency; and (2) for parties with competing claims to be lead agency to agree by contract which party will act as lead agency.

The court agreed with the respondents and the amicus parties, ruling that Section 15051 of the CEQA guidelines allowed Santa Margarita to act as the lead agency even though the majority of environmental impacts of the project would occur outside its jurisdiction. The court ruled in complete accordance with project proponents' arguments on the importance of multijurisdictional water projects and key principles of California water law. The decision will be published, adding a valuable legal tool for water agencies carrying out multijurisdictional water projects.

A separate, unpublished ruling issued the same day focused on CBD's challenge to San Bernardino County's project approval under a county ordinance. The court rejected CBD's challenge, ruling that the county's approval of the project and its interpretation of the county ordinance were proper. The court confirmed the core legal principles of groundwater management cited by the respondent and amicus parties, ruling that water agencies must be afforded flexibility in utilizing groundwater resources to the maximum extent possible without causing long-term adverse effects on the state's water supply sources.

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People for Proper Planning v. City of Palm Springs (4th App. Dist., 5/20/16)

The 4th District Court of Appeal invalidated a city's amendment to its General Plan based on the improper use of a categorical exemption under CEQA. The City of Palm Springs amended its General Plan to eliminate the minimum density requirements for all residential land use categories. The city maintained that this General Plan amendment fell within the scope of Categorical Exemption No. 5 under CEQA, which exempts projects that "consist of minor alterations in land use limitations ... which do not result in any changes in land use or density..." The city also argued that the amendment would not cause any significant effects because it conformed to the city's "past and current practice" of only considering the maximum density allowed within each land use category. The court rejected that argument because Categorical Exemption No. 5 applies only to land use limitations that do not result in a change in density. The court also found that eliminating the minimum density requirements may lead to less housing, which may cause a significant cumulative impact on the city's housing stock.

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Contributing Authors



Edward J. Casey
Partner
Environment, Land Use &
Natural Resources
ed.casey@alston.com



Andrew Brady
Associate
Environment, Land Use &
Natural Resources
andrew.brady@alston.com



Kathleen A. Hill
Planning Director
Environment, Land Use &
Natural Resources
kathleen.hill@alston.com

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Doug Arnold
404.881.7637
doug.arnold@alston.com

Roger Cerda
213.576.1156
roger.cerda@alston.com

Bruce Pasfield
202.239.3585
bruce.pasfield@alston.com

Paul Beard
916.498.3354
paul.beard@alston.com

Skip Fulton
404.881.7152
skip.fulton@alston.com

Geoffrey Rathgeber
404.881.4974
geoff.rathgeber@alston.com

Ward Benshoof
213.576.1108
ward.benshoof@alston.com

Maureen Gorsen
916.498.3305
maureen.gorsen@alston.com

Chris Roux
202.239.3113
213.576.1103
chris.roux@alston.com

Meaghan Goodwin Boyd
404.881.7245
meaghan.boyd@alston.com

Ronnie Gosselin
404.881.7965
ronnie.gosselin@alston.com

Beverlee Silva
404.881.4625
beverlee.silva@alston.com

Andrew Brady
213.576.2527
andrew.brady@alston.com

Maya Lopez Grasse
213.576.2526
maya.grasse@alston.com

Jocelyn Thompson
213.576.1104
jocelyn.thompson@alston.com

Nicki Carlsen
213.576.1128
nicki.carlsen@alston.com

Clay Massey
404.881.4969
clay.massey@alston.com

Andrea Warren
213.576.2518
andrea.warren@alston.com

Edward Casey
213.576.1005
ed.casey@alston.com

Elise Paeffgen
202.239.3939
elise.paeffgen@alston.com

Jonathan Wells
404.881.7472
jonathan.wells@alston.com