



California Court Upholds San Diego on Discretion on Greenhouse Gas Issues

By *Robert McMurry and Elisa Paster*



Two recent court decisions (in the Fourth District of the California Court of Appeals) highlight the court's willingness to side with a municipality, when it comes to discretion regarding whether or how to analyze greenhouse gas issues. While the Fourth District's decisions tend generally to be more sympathetic to developers and municipalities than other appellate districts, these cases support meaningful analysis of climate change instead of a knee-jerk reaction to require climate change analysis for every project.



Citizens for Responsible Equitable Environmental Development (CREED) v. City of San Diego (June 10, 2011, D057524)

The City of San Diego certified a Final Environmental Impact Report (EIR) in 1994 for a 664.8-acre, mixed-use development comprising of approximately 4,000 dwelling units and non-residential development. In 2008, Pardee Homes applied for approval of 1,578 homes and three recreational buildings. Pardee's development was one of the last to be built within the precise plan area. The City determined that only an Addendum was needed for Pardee's development; a supplemental EIR was unwarranted because "no new significant environmental impacts not considered in the previous EIR," "[n]o substantial changes have occurred with respect to the circumstances under which the project is undertaken," and "[t]here is no new information of substantial importance to the project."

To read more about discretion on greenhouse gas issues, please visit GilchristRutter.com/Articles.

Market Outlook - from the G&R Attorneys ...



The rapid expansion in the number of consumer electronic devices is having a significant impact on the commercial real estate market. Increased use of smart phones, gaming devices, social networking and cloud computing services has required an exponential increase in the number of servers required to satisfy consumer demand for these computing services. As a result, while much of the commercial real estate market has been rather sluggish over the past few years, the data center market has remained active as properties have continued to change hands, data centers continue to be developed and leasing activity has been brisk (although perhaps less brisk than it would be in a better economic environment).

Data centers are increasingly becoming a central business asset as they move from a supporting to a sustaining role for more and more businesses. In turn, data center users are focusing more closely on issues of redundancy and uptime, efficiency, scalability and flexibility. Data center leases, which already blend real estate, engineering and electronic concepts, increasingly need to confront and address these issues as well.

David Lambert is an associate at Gilchrist & Rutter.

Lender Protections Regarding Contaminated Real Property (Part 2)

By *Don Nanney and Duane Montgomery*



There are rights and protections available that may affect a lender's decision whether to waive the security interest and otherwise affect how a lender handles an environmental impairment situation. For instance: Environmental Provisions in Secured Loan Documents. With certain exceptions, a lender may enforce environmental provisions in real estate secured loan documents without triggering the debtor protection laws.



To read more about other lender protections, please visit GilchristRutter.com/Articles.

Deals & Judgments



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- Acquisition in Playa Vista of 200,000 square foot value-added office project. (*Peter Swain, Jon Gross, Scott Reynolds, Don Nanney*)
- Lease to New West Charter Middle School for relocation of its Los Angeles Unified School District (LAUSD) charter school to our client's 50,000 square foot property in West Los Angeles. (*Steven Heller*)
- 6.4 megawatt data center lease with expandable options to 18.4 megawatt, in Santa Clara, CA. (*David Lambert*)
- Acquisition of ownership interests in a 305,585 square foot office project in the Energy Corridor in Houston, TX. (*Duane Montgomery*)
- Settlement of contamination claims involving industrial manufacturing in an environmental litigation case in federal court. (*Don Nanney and Frank Gooch*)
- Favorable settlement in a property ownership lawsuit against the owner/investor of a mixed-use building in Burbank. (*Carolyn Alifragis and Kevin Yopp*)
- 25,000 square foot office lease for an international accounting firm in the Central Business District of Downtown Los Angeles. (*David Lambert*)
- Leveraged buyout of \$42 million personal care products company and simultaneous disposition of patent portfolio. (*Peter Swain, Frank Gooch*)
- Lease to towing company of our client's 17,000 square foot West Los Angeles property for operations and vehicle storage for ten-year term. (*Steven Heller*)
- Construction loan for a build-to-suit passenger terminal at the Van Nuys Airport and related long-term lease and services contract with one of the world's largest aircraft operators. (*Peter Swain*)

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Regulatory Takings Case Filed in the U. S. Supreme Court

By *Richard Close and Thomas Casparian*



Richard Close and *Thomas Casparian* of *Gilchrist & Rutter* have filed a petition with the United States Supreme Court asking it to hear James Goldstein's

regulatory takings case against the City of Carson. The City improperly denied their client a fair return on his investment.

Mr. Close and Mr. Casparian will work as co-counsel with R.S. Radford, a nationally renowned expert on constitutional property rights issues at The Pacific Legal Foundation. State courts have been hostile to property rights challenges for years, granting great deference to local governments' decisions without recognition that local agencies are often politically biased. However, the federal courts are perceived as more willing to protect the constitutional rights of property owners.

Entry into federal court on a "takings" claim, however, is almost always thwarted by the so-called Williamson County Ripeness Requirement. This rule requires that a property owner must first seek and exhaust state remedies for a government taking before suing in federal court. Removal or revision of the ripeness rule would eliminate the primary barrier to federal justice for property owners. This case could open the doors of the federal courthouse, enabling property owners to obtain damages for regulatory takings.

If you have questions about this case or other property rights issues, please contact *Richard Close* or *Susy Forbath* at (310) 393-4000.

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