



San Francisco's Candlestick Point - Hunters Point Project Wins Landmark CEQA Challenge



The California Superior Court recently ruled in favor of the Candlestick Point - Hunters Point Shipyard Phase II Redevelopment Project in San Francisco—worth more than \$2 billion to the City of San Francisco and the project's developer, CP Development Co. LP. Petitioners asserted that the

development's environmental impact report (EIR) failed to comply with the California Environmental Quality Act (CEQA).

G&R Land Use partner, *Robert I. McMurry*, was lead counsel for the developer defending the challenge. The firm's Land Use team also oversaw the preparation of the EIR for the project through the approval process.

This decision allows for the redevelopment of 702 acres of the former Navy shipyard into a mixed-use community with a wide range of residential, retail, office, open space, recreation, research and development, and community uses, including the construction of a new stadium for the San Francisco 49ers and has been in the works for more than 17 years. The magnitude of the project and the controversy surrounding it has been compared to that of the Playa Vista Project in Westchester, also known as the Ballona Wetlands.

Read more about the Candlestick Point - Hunters Point Shipyard project at GilchristRutter.com - News - Announcements.

How a Lender Can Waive Its Security Interest in Environmentally Contaminated Property



By Donald C. Nanney

Lenders with a security interest in real property generally cannot pursue a borrower personally on the debt in case of default (see California Code of Civil Procedure [CCP] §726). A lender's only recourse is to foreclose on the property. That limitation may expose lenders to significant economic risk and potential environmental liability if the property is contaminated.

A statute permits lenders, under certain circumstances, to waive their security interest in an environmentally impaired property and pursue the borrower personally on the debt as an exception to the debtor protection laws. Given the recently increased rate of real estate loan defaults, this little-known, rarely used statute (CCP §726.5) may be more relevant for lenders than ever.

To read additional details about how a lender can waive its security interest, please visit GilchristRutter.com - News - Articles - Environment.

Stay Tuned for Part 2: Other Lender Protections Besides Waiver of Security Interest in Contaminated Real Property, in our next G&R newsletter.

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

By Henry Herrman



The commercial real estate market's plodding recovery is subtly manifesting in a number of ways. First, lease workouts and lease defaults, which have been quite prevalent in recent years, are decreasing in number and complexity. Second, tenants are aggressively renewing their leases for longer terms and better and better economic prospects for landlords—an improvement from short-term renewals or longer-term renewals with significant economic incentive packages for tenants in recent years.

The number of prospective new tenants exploring relocation for expansion and term extensions is increasing—obviously a positive indicator—but many corporate users remain unsure about their growth needs, and are therefore holding off actually “pulling the trigger” on new space. This situation, however, should lead to substantial pent-up demand for office space and better absorption in the mid-term and longer-term outlook. Those corporate users who are signing deals for new space, relocation space and the like are often obtaining longer lease periods with excellent economics.

On the construction front, demand for new commercial, retail and residential development is clearly pent-up. We have seen limited new construction activity but expect a substantial increase in 2012 and 2013. Tenant improvement construction work, however, is strong for large users renewing and expanding leases, as tenants continue to take advantage of a tenant's market to obtain desired improvement packages from landlords.

Henry Herrman is a partner at Gilchrist & Rutter.

California Coastal Commission Approves Subdivision In Carlsbad



Richard Close recently obtained California Coastal Commission approval for a real estate subdivision in the coastal city of Carlsbad.

After previously obtaining approval by the City of Carlsbad, Mr. Close began the Coastal Commission review process in which staff scrutinized such issues as potential impacts to scenic and biological resources, water quality and public access. After several months of interaction with agency staff, he appeared before the Commission at a Hearing where it was determined that the subdivision was consistent with the local coastal plan provisions and would not result in any coastal resource impacts.

Coastal communities create unique economic opportunities for property owners, and although interaction with the California Coastal Commission can be daunting, approval is achievable.

If you have any questions or would like further information regarding Coastal Commission or other state or local agency processes, please contact *Richard Close* or *Susy Forbath*.

Continued ...

Deals & Judgments



Gilchrist & Rutter regularly handles real estate transactions, litigation, and related matters for clients dealing with a range of issues. Below are recent representative deals and judgments. To talk with us about a similar deal or matter, contact the listed attorney.

- Founded and administered a \$100 million joint venture on behalf of the operating general manager of the venture (*Jonathan Gross, Peter Swain*).
- Corporate formation and legal opinion matters for \$70,000,000 acquisition of office and retail complex in Du Page County, Illinois and \$44,700,000 loan (*Duane Montgomery*).
- 10-year 25,000 square foot relocation and expansion lease for a national law firm based in Chicago (*Henry Herrman*).
- 20-year retail ground lease to In-N-Out Burger at Orange County shopping center (*Steven Heller*).
- Drafted and negotiated headquarters lease for major California contractor (*Diane Hvolka*).
- Corporate formation and legal opinion matters pertaining to acquisition of shopping center project in Alexandria, Virginia and assumption of \$26,000,000 loan (*Duane Montgomery*).
- Obtained a judgment to undo a fraudulent mortgage transfer for a valuable residential property in the San Fernando Valley (*Henry Herrman*).

To read more about G&R's latest deals and judgments, please visit GilchristRutter.com/Deals&Judgments.

Recent Court Decisions Help to Clarify CEQA Issues

By *A. Catherine Norian*



The California Courts of Appeal recently issued critical decisions in a pair of cases addressing how pre-existing site conditions should be dealt with under the California Environmental Quality Act (CEQA), specifically when determining whether an environmental impact report (EIR) is or is not required and, when an EIR is prepared, when determining the project's impacts.

In the first case, *South Orange County Wastewater Authority (SOCWA) v. City of Dana Point* (G044059), SOCWA argued that the city was remiss in not preparing an environmental impact report (EIR) for a proposed residential development, because the project would be situated next to a SOCWA-owned sewage treatment plant that released noxious odors. The Fourth District Court of Appeal sided with the city in its June 30 opinion, holding that because the noxious odors were pre-existing site conditions, the odor impacts were not impacts of the project itself and, therefore, would not require the city to prepare an EIR or the project applicant to mitigate for the odors.

To read more about the impacts of these critical court decisions, please visit GilchristRutter.com - News - Articles - Land Use.



Diane Hvolka Named Partner

G&R is pleased to announce *Diane Hvolka* has been promoted to Partner. Her practice focuses on commercial real estate and business transactions with an emphasis on office, industrial and retail leasing.



Don Nanney Selected As Co-Chair of REAL

Don Nanney has been selected as the law Co-Chair of the inaugural Real Estate and Law (REAL) Symposium, which will take place on November 9, 2011 at Stanford University. The REAL Symposium will be co-presented by the Real Property Law Section of the State Bar of California and by the Stanford Professionals In Real Estate (SPIRE).

Gilchrist & Rutter provides updates on legal trends as a service to keep our valued clients and friends informed of the latest legal news. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.

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