

PREFACE TO THE 2025-2026 EDITION

Welcome to the 2025-2026 edition of *Federal Land Use Law and Litigation*. This year, there were no U.S. Supreme Court decisions within the usual land use scope of this treatise. Several environmental law cases at the Court could have significant effects on some land use projects, however.

In *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, the Court sought to restrict lower court judges' analysis of indirect effects in National Environmental Policy Act cases. While some commentators have viewed the case as a death knell for indirect effects analysis, which could affect the ability to bring climate change into NEPA analysis, we must wait to see how lower courts interpret and apply the ruling. NEPA has further been plunged into uncertainty by a D.C. Circuit case, *Marin Audubon Soc'y v. Fed. Aviation Admin.*, which held the Council on Environmental Quality had no authority to issue the regulations that the council has issued since the Seventies. Soon after, CEQ under President Trump issued an interim final rule eliminating *all* NEPA regulations. These changes will, in the short-term, lead to significant instability for land use projects that require NEPA analysis.

Similarly, the Court's decision in *City & Cnty. of San Francisco, California v. Env't Prot. Agency*, which struck down the Environmental Protection Agency's use of narrative effluent limitations for public wastewater treatment facilities could impact some projects. The immediate effect is that EPA will need to draft more detailed effluent limitations for specific discharges. The difficulty in doing so, coupled with the Trump administration's decision not to focus on environmental enforcement, could result in more lax permitting for private parties that feed into public wastewater treatment facilities depending on the state and local government regulators' interest lessening a regulatory burden.

While there were no major land use cases at the U.S. Supreme Court, there were a number of interesting cases this year in the circuit courts. By far, the case every land use lawyer must read is the Tenth Circuit's magisterial review of the evolution of property law in western states in *Iron Bar Holdings, LLC v. Cape*. The case seems almost certainly destined for the casebooks because of both the clarity and detail of its statement of the law as well as the import of its holding on access to federal lands.

Takings cases provide an example of some of the useful new decisions in the circuit courts this year. *Becker v. City of Hillsboro, Missouri* is a case where the Eighth Circuit conducted a helpful analysis of the categorical rules before ultimately applying *Penn Central* in a case challenging a water connection requirement on annexation. In *Money v. City of San Marcos*, the Fifth Circuit held that a denial of a certificate of appropriateness to remove a wrought iron balcony on a house that reflected the prior owner, a member of the KKK, was a *Loretto* taking. Several cases helped flesh out the exceptions enumerated in *Cedar Point Nursery*. In *Slaybaugh v. Rutherford Cnty., Tennessee*, the Sixth Circuit held that damage arising from a lawful search and arrest was not a *Cedar Point Nursery* taking because it fell into the enumerated privilege to carry out the law enforcement function. Similarly, *Iron Bar Holdings, LLC v. Cape*, mentioned previously, held that corner-crossing on checkerboarded federal and private land was not a *Cedar Point Nursery* taking because private property owners never had a property right to enclose federal lands under a preemptive federal statute.

Tens of other new circuit court cases address timing, ripeness and abstention doctrines, as well as substantive claims under everything from the Telecommunications Act of 1996 to the Religious Land Use & Institutionalized Persons Act to sign and billboard law. Some examples of major cases covered by this update include:

In *Ohio House, LLC v. City of Costa Mesa*, the Ninth Circuit upheld a city's group home and sober-living home zoning regulations against a challenge that they facially violated the Fair Housing Act.

In *Lathfield Investments, LLC v. City of Lathrup Village*, the Sixth Circuit addressed mootness and the importance of filing administrative applications before bringing federal litigation.

In *Lozman v. City of Riviera Beach, Fla.*, the Eleventh Circuit addressed ripeness in the context of a takings claim.

In *National Federation of the Blind of Texas, Inc. v. City of Arlington, Texas*, the Fifth Circuit upheld a city ordinance against several nonprofits' First Amendment challenges to limitations on placement of donation boxes throughout the city.

In *TowerCo 2013, LLC v. Berlin Township Bd. of Trustees*, the Sixth Circuit clarified the "final action" requirement in the Telecommunications Act of 1996.

In *Spirit of Aloha Temple v. Cnty. of Maui*, the Ninth Circuit held that the question of whether a zoning or land use law caused a substantial burden under RLUIPA is a legal question for the judge, not a question of fact for the jury.

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In *Inclusive Louisiana v. St. James Parrish*, the Fifth Circuit addressed whether a non-binding land use plan could be determinative of the RLUIPA limitations period.

In *Mogan v. City of Chicago*, the Seventh Circuit held that a condominium owner's inverse condemnation claim against a city ordinance forbidding short-term rentals in his unit failed because the terms of the condominium association's master declaration gave him no such property interest in a rental.

I hope readers will find much to enjoy in reviewing these cases, as well as the rest of the updates in this year's Edition. Feel free to contact me with comments or suggestions.

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July, 2025*