

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 and new CEQA appellate decisions.

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City of Los Angeles

State Approves the City's Housing Element Update for the 6th Cycle (2021–2029)

On June 29, 2022, the California Department of Housing and Community Development (HCD) informed the City of Los Angeles that its 2021–2029 Housing Element was in full compliance with state law. The Housing Element identifies four specific citywide housing priorities:

- Addressing the Housing Shortage: Increase the production of new housing, particularly affordable housing.
- Advancing Racial Equity & Access to Opportunity: Proactively address racial and economic segregation in the city by creating housing opportunities that address historic patterns of discrimination and exclusion.
- Preventing Displacement: Protect Angelenos—especially persons of color—from indirect and direct displacement and ensure stability of existing vulnerable communities.
- Promoting Sustainability & Resilience and Environmental Justice through Housing: Design and regulate housing to promote health and well-being, increase access to amenities, contribute to a sense of place, foster community and belonging, and protect residents from existing and future environmental impacts.

The 2021–2029 Housing Element was originally adopted by the city council on November 24, 2021. However, targeted amendments related to affirmatively furthering fair housing (AFFH) requirements in state law ([Assembly Bill 686](#)) were needed to obtain HCD approval. On June 14, 2022, the full city council adopted the targeted amendments. The Housing Element and related documents are available on the [Housing Element webpage](#).



Affordable Housing Linkage Fee

The city's Affordable Housing Linkage Fee (AHLF), adopted June 29, 2018, places a fee per square foot on certain new market-rate residential and nonresidential development projects to generate local funding for affordable housing. The AHLF is adjusted annually for inflation based on the Consumer Price Index for all urban consumers (CPI-U) for the Los Angeles-Long Beach-Anaheim Area. The calculated inflation adjustment effective July 1, 2022 is 7.9%. The AHLF is payable at the time of building permit issuance, and the new fees are shown on the table below.

The AHLF Market Area Maps are attached to the [City Planning memorandum dated June 1, 2022](#).

	Low Market Area	Medium Market Area	Medium-High Market Area	High Market Area
Type of Use	Fee Per Square Foot			
Nonresidential Uses, Including Hotels	\$3.48	\$4.64	n/a	\$5.80
Residential Uses (6 or more units in a development project)	\$9.28	\$11.61	\$13.93	\$20.89
Residential Uses (2–5 units in a development project)	\$1.16	\$1.16	\$1.16	\$20.89
Residential Uses (single-family detached home)	\$9.28	\$11.61	\$13.93	\$20.89
Development Projects That Result in a Net Loss of Housing Units (in addition to any other fees)	\$3.48	\$3.48	\$3.48	\$3.48

California Environmental Quality Act

We Advocate Through Environmental Review v. County of Siskiyou (3rd App. Dist., May 2022)

This case arose from a project proponent's efforts to revive a bottled-water facility that had been closed since 2010. The court held the County of Siskiyou's environmental impact report (EIR) was inadequate because the project objectives, which focused on using or modifying the existing facilities to create a bottled-water facility, were "largely defined ... as operating the project as proposed" such that "no alternative other than the proposed project would do" and the alternatives analysis was a "foregone conclusion." The court also held that recirculation of the EIR's greenhouse gas (GHG) emissions analysis was required. In the draft EIR, the county estimated the project would emit 35,486 metric tons of carbon dioxide equivalent (MTCO₂e) per year, which would constitute a significant and unavoidable impact under the county's 10,000 MTCO₂e threshold of significance. In the final EIR, the county projected emissions of 61,281 MTCO₂e, but contended recirculation was not required because the upward revision did not change the EIR's ultimate conclusion that



GHG emissions would be significant and unavoidable. The court rejected this argument, reasoning that the additional 25,795 MTCO₂e in GHG emissions could not be characterized as an “insignificant detail” in light of the county’s 10,000 MTCO₂e threshold and that the public was entitled to meaningfully comment on the project’s significant GHG impacts.

***We Advocate Through Environmental Review v. City of Mount Shasta* (3rd App. Dist., May 2022)**

In a companion case to the above action, the petitioner challenged the City of Mount Shasta’s reliance on the County of Siskiyou’s CEQA review to issue a wastewater permit for the proposed bottled-water facility. Addressing the city’s obligations as a responsible agency, the court found that the city failed to make the findings required by CEQA Section 21081. The city’s findings stated that it had considered the county’s EIR and found the project would have no unmitigated adverse environmental impacts. The court held that this blanket finding violated CEQA, which required the city, for each significant impact identified in the EIR, to find (1) the effects have been mitigated or avoided; (2) the necessary mitigation is within the responsibility and jurisdiction of another public agency; or (3) that mitigation is infeasible. Separately, the court rejected the petitioner’s argument that the city should have performed additional environmental review based on alleged deficiencies in the county’s EIR because this suit against a responsible agency could not be used to challenge actions taken by the lead agency.

***Southwest Regional Council of Carpenters v. City of Los Angeles* (2nd App. Dist., March 2022)**

This case involved the adequacy of an EIR’s project description for the city’s approval of a version of a mixed-use development project that was not specifically identified in the draft EIR, revised draft EIR, or final EIR. The trial court held that the EIR was invalid because it failed to include a stable project description. The appellate court reversed, after first providing a detailed assessment of five leading decisions on the adequacy of an EIR’s project description. The court concluded that the EIR’s project description was adequate because, from inception to approval, the project involved a mixed-use commercial/residential project on a defined site. The only changes involved the composition and ratio of the residential to commercial footprint, but the overall size of the project and the proposed site were consistent throughout the process. While the approved project had a slightly different mix of residential versus commercial development than the alternatives studied in the EIR, it was very similar in scope and use to the alternatives, with no evidence of widely varying environmental impacts. The court also held that there is no requirement under CEQA for the public to have an opportunity to comment on the specific project that is approved and that recirculation was not triggered under CEQA Guidelines Section 15088.5.

***Committee for Sound Water & Land Development v. City of Seaside* (6th App. Dist., May 2022)**

In this case, the petitioner challenged the EIR for a development project at the former Fort Ord military base, asserting that the City of Seaside had violated CEQA in approving the project. The petitioner also asserted a cause of action challenging the approval issued by the Fort Ord Reuse Authority (FORA), claiming that FORA violated the petitioner’s due process rights by failing to provide notice of FORA’s hearing to evaluate the project’s consistency with the Fort Ord Reuse Plan. The real party in interest demurred on statute of limitations grounds, arguing that, although an emergency rule had initially tolled the usual 30-day limitations period for CEQA actions to a future time contingent on the COVID-19 state of emergency declared in California, the rule had been revised such that the tolling period ended a month before the petition was filed. The court determined the revised rule applied and had given the petitioner two additional months—twice the usual 30-day limitations period—to file its petition. The City of Seaside separately demurred to the petitioner’s due process argument based on mootness. While the case was pending,



the statutory scheme requiring the consistency review at issue was repealed and FORA was dissolved. As a result, the court upheld the city's demurrer, explaining that the relief requested—a renewed notice and consistency hearing—could no longer be granted due to the intervening change in law repealing the consistency requirement. The court also upheld the trial court's rejection of the petitioner's request for leave to amend the writ petition to insert claims for declaratory relief on due process grounds, explaining that the petitioner had not met its burden to show that amendment would cure the defect in its case—namely, that there was no longer a statutory requirement that would require the consistency-review procedures FORA allegedly did not comply with.

***Save the Hill Group v. City of Livermore* (1st App. Dist., March 2022)**

In this case, the court determined that the City of Livermore had failed to adequately investigate and evaluate the no-project alternative to a residential development in an area the petitioner sought to have preserved as open space. The court determined that the EIR was deficient because the city failed to include adequate information about the no-project alternative, including the availability of existing conservation funding, such that the city council could not make an informed decision on project approval. In reaching this decision, the court rejected the trial court's holding that the petitioner had failed to exhaust its remedies by not citing the deficiency of the no-project analysis during the administrative process. On appeal, the court determined that, although the petitioner had not specifically referred to the EIR's project alternatives evaluation, comments by the petitioner and others were sufficient to fairly apprise the city of its failure to adequately consider the feasibility of not going forward with the project. Additionally, the court held that an exception to the doctrine of exhaustion applied—the court determined that the city's decision would have been the same even if the petitioner had precisely commented on the EIR's failure to evaluate the no-project alternative. The court rejected the remainder of the petitioner's assertions of EIR inadequacy and held that the petitioner lacked standing to challenge the city's compliance with certain settlement agreements compelling it to acquire environmentally important properties because it was not a party to those agreements and had in any event failed to raise the issue before appeal.

***Buena Vista Water Storage District v. Kern Water Bank Authority* (2nd App. Dist., February 2022)**

This case focused on the adequacy of an EIR affected by fluctuating water availability. The petitioner challenged the EIR underlying approval of a water diversion project on several grounds, each of which was rejected by the court. First, the EIR's description of a proposed maximum amount of water diversion and estimates of water availability based on historical data was deemed sufficient, with the court holding that if a project is subject to future changing conditions, a project description may use a flexible parameter and still remain accurate, stable, and finite as required by CEQA. Second, the court concluded that the project description did not need to include a specific quantification of existing water rights and that the EIR's general description about the process for obtaining rights and the locations and processes for diversion was adequate. The court further held that the EIR's description of the environmental settings and its environmental impacts analysis likewise did not require precise quantification of existing water rights. Finally, the court held that the EIR adequately evaluated the project's potential to result in groundwater depletion and that substantial evidence supported the conclusion that there would not be a significant impact, given that the project would not increase long-term groundwater recovery beyond baseline levels.

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