



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.

Please visit the firm's website for additional information about our [Land Use Group](#).

California Environmental Quality Act

City of Long Beach v. City of Los Angeles (1st App. Dist. 1/12/18) Demolition of Older Structures

In addressing the adequacy of an environmental impact report (EIR) that exceeded 5,000 pages and an approval process dating back to 2005 for a new railyard to be constructed by BNSF Railway Company, the Court of Appeal overturned the trial court on a number of issues and found that the EIR was adequate in many regards. However, the Court of Appeal did affirm the trial court's ruling that the air quality analyses in the EIR were deficient in certain technical aspects. The court found that the project description was adequate and that there was no substantial evidence showing that BNSF's existing railyard would expand to accommodate future growth at the harbor due to development of the project and that any expansion of the existing railyard would take place under BNSF's existing ministerial permits. The court also found that the greenhouse gas (GHG) analysis was adequate because it showed compliance with existing plans and policies aimed at reducing GHG emissions, even though the project's GHG emissions exceeded baseline conditions. However, both the Court of Appeal and trial court dove into the minutiae of the air quality analyses to find certain defects, highlighting the need to carefully review all air quality analyses in EIRs.

[Download Opinion](#)

Heron Bay Homeowners Association v. City of San Leandro (1st App. Dist., 1/12/18)

The court upheld an award of attorneys' fees to a plaintiff homeowners association in its successful challenge to and mitigated negative declaration (MND) for a new wind turbine on adjacent property. The court held that even though certain homeowners would suffer a loss of property value if the project went forward, the financial burden of protecting certain public interest values (such as aesthetic and wildlife resources) outweighed the financial self-interest of the homeowners.

[Opinion](#)

Clews Land & Livestock LLC v. City of San Diego (4th App. Dist., 1/8/18)

In upholding an MND for a school project to be located on land neighboring a commercial horse ranch and an equestrian facility, the court enforced the doctrine of exhaustion of administrative remedies. The court denied the plaintiff's CEQA claim because the plaintiff did not file an administrative appeal of the MND with the city council. The court also addressed the merits of the plaintiff's CEQA and land use claims, including rejecting the plaintiff's claim of a significant fire hazard on the ground that the project would comply with all fire regulations, rejecting the plaintiff's claim of a significant historic resource impact on the ground that the project would comply with the local agency's historic resource regulations, and rejecting the plaintiff's claim of inconsistency with the property's open space designation under the General Plan on the ground that the project site was already developed and was adjacent to existing commercial uses.

[Opinion](#)

Los Angeles Conservancy v. City of West Hollywood (2nd App. Dist., 12/22/17)

The Court of Appeal upheld an EIR that concluded a mixed-use redevelopment project would have significant and unavoidable impacts on historic resources. The court held that the EIR properly rejected as infeasible an alternative that would have retained the historic building because it would not meet the project objectives "to the same degree as the proposed project." The court ruled that the legal test was whether the evidence supported a "fair argument" that the preservation alternative was inconsistent with the project objectives. Notably, a number of those objectives were design in nature, but the court upheld the city's finding of infeasibility based on such evidence as photos of the historic building, renderings of the proposed project, and testimony from an architect and "Senior Planner." The court reiterated that feasibility findings are "entitled to great deference" and are "presumed correct."

[Download Opinion](#)

City of Los Angeles

City Council

Affordable Housing Linkage Fee Ordinance

Implementation of the [Affordable Housing Linkage Fee](#) (AHLF) Ordinance, a new development fee that will generate funds to build affordable housing, will be phased in starting 120 days after the February 17, 2018, effective date. As reported in the [September 2017 edition of Land Use Matters](#), the AHLF would apply to any building activity that results in additional housing units and nonresidential uses, including hotels, and the fee per square foot is based on four residential market areas and three nonresidential market areas based on Community Plan area boundaries. The implementation schedule and specific fees are summarized in the December 14, 2017, [Central City Association report](#).

Value Capture Ordinance

On February 26, 2018, the [Value Capture Ordinance](#) (VCO) becomes effective. The VCO requires the creation of a proportional amount of affordable housing for certain projects that seek to increase density by more than 35% through the conditional use permit (CUP) process.

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This publication by Alston & Bird LLP provides a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

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