



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.

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City of Los Angeles

Office of the Mayor

Executive Directive on Planning and Developing Housing and Transportation

On March 9, 2017, Mayor Eric Garcetti issued [Executive Directive No. 19](#), outlining reforms to make the planning process more efficient and transparent. Executive Directive No. 19 includes four orders:

- (1) Prohibit members of the City Planning Commission, the Area Planning Commissions, and the Cultural Heritage Commission from initiating, permitting, or considering private ex parte communications concerning a pending quasi-judicial proceeding unless the commissioner is recused from the proceeding.
- (2) Within 30 days of the date of the directive, the Director of Planning shall formulate the programs and timelines for updating the General Plan and Community Plans in a manner that prioritizes the implementation of Measure M, planning around transit, and Proposition HHH, providing affordable housing for people experiencing homelessness.
- (3) Create the Mayor's Planning Task Force to ensure interdepartmental cooperation in the development and implementation of the General Plan and Community Plans and ensure that the plans to address growth of the city align with plans for developing and improving infrastructure.
- (4) Create the Mayor's Transportation Infrastructure Steering Committee to unite city departments in partnering with the Los Angeles County Metropolitan Transportation Authority to invest the approximately \$860 million a year from Measure M in transportation projects as quickly as possible.

Department of City Planning

Transit Oriented Communities Affordable Housing Incentive Program

Measure JJJ, adopted by voters on November 8, 2016, instituted new labor and affordable housing requirements for projects that receive General Plan amendments or zone changes. Section 6 of the measure requires the Department of City Planning (DCP) to create the Transit Oriented Communities Affordable Housing Incentive (TOC) Program to establish incentives for residential or mixed-use projects located within one-half mile of a major transit stop. On March 13, 2017, the DCP issued [proposed TOC Guidelines](#) for qualified development seeking to provide at least 38% more affordable housing than is currently required under the City's existing density bonus program. The TOC Program establishes a tier-

based system with development bonuses and incentives such as increased density and/or floor area ratio and reduced parking, based on the project's distance from different types of transit. The City Planning Commission is tentatively scheduled to consider the TOC Guidelines on May 11, 2017. The TOC Program will expire 10 years from the final approval date unless the City Council extends the program for an additional five years.

California Environmental Quality Act

Banning Ranch Conservancy v. City of Newport Beach (Cal. Supreme Ct., 3/30/17)

In a long-running feud over the development of the Banning Ranch in Orange County (within the sphere of influence of the City of Newport Beach), the California Supreme Court weighed in and invalidated the city's environmental impact report (EIR) on the ground that it failed to address areas on the project site that could constitute an environmentally sensitive habitat area (ESHA) under the Coastal Act. The city defended that omission in its EIR by asserting that the project, which sought to develop 1,375 residential units, 75,000 square feet of retail, and 75 hotel rooms in the Coastal Zone, required a coastal development permit from the Coastal Commission, and the Coastal Commission would therefore make the binding determination whether those areas constituted an ESHA. The Supreme Court rejected that argument on a number of grounds:

- (1) CEQA Guideline 15124(d)(1)(C) requires the lead agency's EIR to integrate CEQA review with related environmental review and consultation requirements, which includes the Coastal Act.
- (2) Regulatory limitations imposed by other statutes, such as the Coastal Act, could affect the analysis of feasible alternatives and mitigation measures in the EIR.
- (3) While the lead agency under CEQA may not be required to make legal determinations that are within the province of another agency, its EIR must provide a comprehensive review of other applicable regulatory schemes.
- (4) The lead agency's EIR should disclose competing views on the project from other permitting agencies.

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Aptos Council v. County of Santa Cruz (6th App.Dist. 3/30/17)

The County of Santa Cruz engaged in an overhaul of its various municipal code sections, including code sections dealing with zoning. Specifically, the county approved (1) an ordinance allowing certain variances to development standards that could be approved administratively without a public hearing, called "minor exceptions" due to small percentage variances from the code's development standards; and (2) an ordinance eliminating density and height limits and reducing parking requirements for new hotels. Both ordinances were approved by separate negative declarations. These ordinances were first challenged on the basis that the county had engaged in "piecemeal" review by not addressing all of the ordinances in a single CEQA document. While the court determined that the question of piecemealing is a question of law that is reviewed independently, the court concluded that no piecemealing had occurred. The ordinances served different purposes and could be implemented independently, which, in the court's view, meant that piecemealing had not occurred under the California Supreme Court's test in the *Laurel Heights* case. In *Laurel Heights*, the court held that piecemealing occurs when a "future expansion or action is a reasonably foreseeable consequence of the project." Second, the ordinance concerning the hotel development standards was challenged on the ground that the county's negative declaration did not consider the impacts of future development that could occur in light of the less restrictive standards adopted under the ordinance. The court rejected that argument because such future development was too speculative to be reasonably foreseeable, and the plaintiff had not provided any substantial evidence to the contrary.

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