



# 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

### **City Planning Commission**

#### ***Baseline Mansionization Ordinance and Baseline Hillside Ordinance***

The City Planning Commission (CPC) voted on July 14, 2016, to approve and recommend that the city council adopt an ordinance amending the [Baseline Mansionization Ordinance \(BMO\)](#) and the [Baseline Hillside Ordinance \(BHO\)](#). The original BMO and BHO regulations were established to change the development standards related to the size and bulk of new homes and to place limits on hillside grading in residential neighborhoods. In May 2014, the city council directed the Department of City Planning (DCP) to prepare an ordinance to address the continued construction of out-of-scale homes in single-family residential neighborhoods and construction impacts related to development in Hillside Areas.

The proposed BMO/BHO was released on April 21, 2016, and following a second round of public hearings, the DCP recommended additional revisions, including reducing the residential floor area ratio and eliminating all bonus options for R1 Zone properties, eliminating all green building options across all single-family zones and adjusting the maximum "by-right" grading quantities. In addition to voting to approve the revisions proposed by the DCP, the CPC approved exempting from the residential floor area calculation up to 200 square feet of a garage attached to the front of a house and to retain the exemption for up to 400 square feet of a detached garage or a garage attached to the rear of the property. A hearing before the Planning and Land Use Management (PLUM) Committee is anticipated in the fall.

## California Environmental Quality Act

### ***Ukiah Citizens for Safety First v. City of Ukiah (1st App. Dist., 6/21/16)***

The court of appeal overturned a city's approval of an environmental impact report (EIR) for a Costco project based on the omission of any analysis of the project's energy impacts attributable to the project's traffic trips. The court primarily relied on the 2014 decision in *California Clean Energy Committee v. City of Woodland* (225 Cal. App. 4th 173), which revived the use of Appendix F in the California Environmental Quality Act (CEQA) Guidelines concerning the evaluation of a project's energy impacts.

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***Spring Valley Lake Association v. City of Victorville (4th App. Dist., 6/15/16)***

The court of appeal overturned the city's approval of a Walmart store on both CEQA and non-CEQA grounds. Critical to most of those issues was a policy in the city's General Plan that *required* all new commercial and industrial development to generate electricity on-site to the maximum extent feasible. While the city made findings that it was economically infeasible for the project to develop on-site solar power, the court found that those findings were *not* supported by substantial evidence. Similarly, another policy in the city's General Plan required that all new construction be 15% more efficient than 2008 Title 24 standards. The court found that there was insufficient (and conflicting) evidence that the project could meet that standard. The lack of evidence for those two General Plan requirements infected, according to the court, the EIR analysis of impacts attributable to greenhouse gas emissions and air quality. Finally, the court held that the section in the EIR concerning stormwater impacts should have been recirculated because revisions made in the final EIR were based on a complete redesign of the project's stormwater management plan.

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***Naraghi Lakes Neighborhood Preservation Association v. City of Modesto (5th App. Dist., 7/1/16)***

The court of appeal upheld the city of Modesto's approval for a new shopping center, rejecting the project opponents' CEQA and non-CEQA claims. The court first rejected the opponents' General Plan claim, noting that the policy in the General Plan concerning the "prototype" of a retail center was not a mandatory development standard. Given the highly deferential standard of review accorded cities when interpreting their general plans, the court rejected this claim. Similarly, the court rejected the opponents' claim based on the city's rezoning policy. Specifically, the court found that the city properly interpreted its policy that new development projects provide "adequate" mitigation of traffic impacts by recognizing that certain mitigation may be infeasible. Further, concerning one of the opponents' CEQA claims, the court found that substantial evidence supported the city's finding that certain traffic mitigation measures were infeasible since the city accounted for a variety of different factors in those findings. The court also upheld the city's assessment of "fair share fees" because there was a reasonable plan for mitigation linked to those fees. Finally, the court upheld the city's rejection of a "reduced project" alternative on the ground that that alternative did not meet the objectives for economic feasibility.

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