



ALSTON & BIRD LAND USE MATTERS

A publication of Alston & Bird's Land Use Group

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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 Council

Proposed Affordable Housing Linkage Fee

On August 22, 2017, the Planning and Land Use Management (PLUM) Committee considered reports from the City Planning Commission, the Department of City Planning (DCP), and a joint report from the DCP and Housing and Community Investment Department (HCID) regarding establishing an Affordable Housing Linkage Fee (AHLF). As reported in the [September 2016 edition of *Land Use Matters*](#), the AHLF would apply to any building activity that results in additional housing units, additional nonresidential floor area, or a change of use from commercial or industrial to residential. PLUM directed the city attorney to prepare a final ordinance with amendments establishing four residential market areas and three commercial market areas based on Community Plan area boundaries. The residential market level fees are proposed as \$8.00 per square foot for low-market areas, \$10 per square foot for medium-market areas, \$12 per square foot for medium-high-market areas, and \$15 for high-market areas. For commercial-market areas, the proposed fees are \$3.00 for low market, \$4.00 for medium market, and \$5.00 for high market. The [August 27, 2017, PLUM Report](#) also includes directives that the final AHLF Ordinance include exemptions for certain types of projects, the addition of a project labor agreement, and a requirement that 12 months after adoption of the ordinance, the DCP and HCID prepare a report related to the impacts of the AHLF on housing production, housing cost, commercial development, and the distribution of funds. The final draft is due in early October 2017; however, a date for consideration by the entire city council has not been scheduled.

Draft Value Capture Ordinance

At the same meeting, PLUM recommended approval of the proposed [Value Capture Ordinance](#). As proposed, the ordinance requires the creation of affordable housing for certain conditional use permit (CUP) and public benefit projects that seek increased density, increased floor area ratio (FAR), or height and area changes. The proposed Value Capture Program is intended to align with existing affordable housing requirements established in the Density Bonus, Affordable Housing (Measure JJJ), and Transit Oriented Community Ordinances. The date for a public hearing before the entire city council has not been determined.

California Environmental Quality Act

***Friends of the Eel River v. North Coast Railroad Authority* (Cal. Sup.Ct., 7/27/17)**

In a detailed decision dealing primarily with the Interstate Commerce Commission Termination Act and whether that federal law applicable to the railroad industry preempts the application of CEQA, the California Supreme Court held that federal preemption does not apply to certain actions taken by a railroad owned by the state and its own subsidiary governmental entity. Specific to this case, the court held that CEQA applied to environmental issues arising from track repair and the level of freight service offered on existing lines. (This case may be most interesting as an example of the broad reach of CEQA, as interpreted by the California Supreme Court.)

[Download Opinion](#)

***Bridges v. Mt. San Jacinto Community College District* (4th App.Dist., 8/8/17)**

The court held that CEQA compliance was not required for a college to enter into an agreement to purchase real property. While the court acknowledged that it was “reasonably foreseeable” that the college may build a campus facility on the property, the purchase agreement did not commit the college to a “definite course” of development. Moreover, the purchase agreement expressly conditioned the close of escrow on the college complying with CEQA.

[Download Opinion](#)

***The Highway 68 Coalition v. County of Monterey* (6th App.Dist., 7/31/17)**

Upholding an interesting procedural order from the trial court, the Court of Appeal agreed with the trial court entering an “interlocutory remand” to the county before entering final judgment. The remand sought “clarification” from the county and any additional evidentiary support for a finding by the county concerning consistency with its general plan. The court noted that this remedy was permissible on the non-CEQA claim concerning general plan consistency, but did not address whether the remedy could be available in connection with the CEQA claim.

[Opinion](#)

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