



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

Department of City Planning

Draft Value Capture Ordinance

The proposed [Value Capture Ordinance](#) would link approval of certain discretionary entitlements that allow for consideration of increased density or floor area ratio (FAR) with affordable housing requirements. Currently, affordable housing requirements are only imposed on residential development projects proposing more than 10 units that require approval of a general plan amendment, zone change, or height district change. The proposed Value Capture regulations would establish an affordable housing requirement on the following planning entitlements:

- Conditional use permits (CUP) for a density bonus for a housing development project in which the density increase is greater than the maximum permitted by the density bonus program.
- Public benefits projects for density increase for a housing development project to provide additional density exceeding what is permitted by the density bonus program.
- CUPs allowing height and area changes.
- CUPs for mixed commercial/residential uses developments to obtain additional FAR.
- Eldercare facilities that do not meet the use, area, or height provisions of the zone.

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 City Planning Commission public hearing on the draft Value Capture Ordinance is scheduled for July 13, 2017.

Proposed Hollywood Community Plan

On June 13, 2017, the Department of City Planning released the [draft Hollywood Community Plan](#) (HCP). The HCP currently in effect was adopted in 1988; the 2012 update was rescinded by the City Council in response to a judgment by the Los Angeles County Superior Court. The draft HCP update proposes to direct new development near transit stations and away from existing low-density neighborhoods, promote mobility options, improve open space, and provide adequate infrastructure. The draft environmental impact report (EIR) is expected to be released this summer, with a public hearing at the end of the year.

California Environmental Quality Act

***Kutzke v. City of San Diego* (4th App. Dist.; 5/23/17)**

The Court of Appeal upheld a city's decision to not approve a project based on a mitigated negative declaration (MND). The project would have subdivided the property into four lots and built three additional single-family residences. The property is located on a hilltop near the southern end of the Point Loma peninsula. The court found that the city's rejection of the MND was justified because of flaws in the project's geotechnical report, "significant challenges for fire and emergency services personnel" based on the steepness of a private driveway, and inconsistency with the Community Plan's goals of conserving the character of the existing neighborhood.

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***Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (1st App. Dist.; 5/5/17)**

The *San Mateo* case came back to the Court of Appeal after the California Supreme Court rendered its decision in September 2016 (1 Cal.5th 437). In its ruling, the Supreme Court articulated the test for determining when a modification to a previously approved project would be so substantial or different that it constituted a "new project," which would eliminate the ability of the lead agency to use one of the three subsequent CEQA review documents (i.e., subsequent EIR or MND, supplemental EIR or MND, and an addendum). In *San Mateo II*, the Court of Appeal held that the project modification in that case did not constitute a new project and, therefore, a subsequent CEQA review document could be used. However, the Court of Appeal held that the standard of review for determining the appropriate type of subsequent CEQA document is the "fair argument" test if the original CEQA document was an MND.

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***POET v. State Air Resources Board* (5th App. Dist.; 5/30/17)**

This case concerns the adoption by the State Air Resources Board (ARB) of low carbon fuel standards (LCFS) regulations pursuant to the California Global Warming Solutions Act of 2006. In 2013, the Court of Appeal held that the ARB did not comply with CEQA and directed the ARB to take corrective action on certain aspects of the LCFS regulations. In 2015, the ARB adopted replacement regulations. However, in *POET II*, the Court of Appeal again held that the ARB failed to comply with CEQA in adopting the replacement regulations because the ARB interpreted the "project" too narrowly and failed to use the proper environmental baseline (which the court held was 2009, when the ARB adopted the original LCFS regulations).

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