Perkins Coie

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Land Use & Development Law Briefing

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Move Eden Housing v. City of Livermore, 114 Cal.App.5th 1282 (2025)

A court found that the City's approval of a development agreement was legislative—and therefore subject to referendum—because it included a new policy commitment to fund a public park. The City then repealed the development agreement approval and simultaneously adopted a new resolution approving the same development agreement without the park provisions. The Court of Appeal held that this approach complied with Elections Code section 9241, which specifies that when a city council repeals a measure to avoid a referendum, it may not re-enact the same legislation for a period of one year following the repeal. Because the only legislative element of the earlier resolution (the park funding) was fully repealed and not reenacted, the City did not violate the one-year reenactment bar. The revised development agreement, stripped of new policy commitments, was administrative in nature and not subject to referendum.

2. Housing

New Commune DTLA LLC v. City of Redondo Beach, 115 Cal.App.5th 111 (2025)

The City could not rely on a residential overlay applied to commercial and industrial zones to satisfy its RHNA obligations where the underlying zoning still allowed development with no housing. Government Code section 65583.2(h)(2) requires rezoning that guarantees minimum residential density on sites counted toward lower-income RHNA, or compliance with strict mixed-use alternatives. Because the City's overlay permitted all-nonresidential projects and did not require that a minimum portion of mixed-use development be residential, it failed both

requirements. The court also addressed site-specific challenges, upholding inclusion of an underutilized parking area but rejecting parcels constrained by existing grocery-store leases, underscoring the need for substantial evidence that nonresidential uses are likely to end during the planning period.

Kennedy Commission v. Superior Court of San Diego County, 114 Cal. App. 5th 385 (2025)

The expedited procedures and mandatory judicial remedies in Article 14 of the Government Code apply to charter cities that lack a compliant housing element. Rejecting Huntington Beach's home-rule argument, the court concluded that Article 14 addresses a matter of statewide concern and hence governs actions challenging the validity of any city's general plan. The court directed the trial court to issue a new order enforcing the statute's 120-day compliance deadline and limiting or mandating land-use approvals until substantial compliance was achieved.

3. Assessments and Taxes

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Thacker v. City of Fairfield, 113 Cal. App. 5th 1049 (2025)

The Court of Appeal held that Proposition 218 applies to all increases in special assessments enacted before the 1996 effective date of the initiative, including flat, per-parcel charges. The court determined that Fairfield's increases in a pre-1996 maintenance district assessment constituted an "increased assessment" requiring compliance with Proposition 218's procedural and substantive requirements. The decision confirms that grandfathered assessments are effectively capped at their 1996 levels absent voter or property-owner approval.

Carachure v. City of Azusa, 110 Cal.App.5th 776 (2025)

Ratepayers challenging municipal sewer and trash fees under Proposition 218 were not required to exhaust administrative refund procedures or pay fees under protest under Health and Safety Code section 5472. The court held that section 5472 applies only to actions seeking refunds, not to suits seeking constitutional review of a city's fee structure and revenue-transfer practices. Because petitioners did not seek refunds of fees paid, but instead challenged the legality of the City's practices and sought prospective relief, exhaustion was not required.

4. Land Use Litigation

Coalition of Pacificans for an Updated Plan v. City of Pacifica, 2025 WL 3764279 (2025)

The court vacated a $1.2 million attorney fee award, holding that the trial court misapplied Government Code section 65589.5(p)(1), which requires a court to give "due weight" to state housing policies when deciding whether to award attorneys' fees in an action challenging a housing approval. The court clarified that a project's contribution to housing needs must be assessed against regional targets, such as the City's RHNA, rather than a statewide deficit of two million units, which the court deemed an "unreasonable" benchmark. The court also rejected a categorical approach to urban designations, ruling that a trial court must focus on the specific area of a project rather than an entire community in evaluating whether the project advances the policy of focusing development in urban areas.

Make UC A Good Neighbor v. Regents of University of California, 2025 WL 3687803 (2025)

Petitioners originally prevailed in the Court of Appeal on their claims that the University violated CEQA by failing to evaluate noise impacts from new student housing in People's Park and failing to consider alternative locations for the project. However, the Court of Appeal held they were not entitled to attorneys' fees under Code of Civil Procedure section 1021.5 after the Legislature passed a bill that abrogated petitioners' victories and the California Supreme Court reversed the appellate court's decision on that ground.

Herron v. San Diego Unified Port District, 109 Cal. App. 5th 1 (2025)

The Port District's lease of public trust tidelands to a private yacht club was a discretionary decision not subject to traditional mandamus. Because the statute governing the Port expressly authorizes leasing tidelands for yacht club use and does not require continuous public access, the Port had no ministerial duty to deny the lease or solicit bids. Any challenge to the Port's discretionary decision could be brought only as an administrative mandamus action, and was barred by the 90-day statute of limitations.

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Marin County's requirement that new residential units on coastal agricultural land be subject to a restrictive covenant tying occupancy to active agricultural use did not effect an unconstitutional taking. Relying on *Sheetz v. County of El Dorado*, the court held that facial *Nollan/Dolan* challenges are permissible, but rejected the challenge on the merits, finding a sufficient nexus and rough proportionality between the covenant and the County's interest in preserving agricultural land. The court also rejected a substantive due process claim, concluding the requirement was rationally related to longstanding farmland-preservation policies.

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The California Supreme Court held that under the Subdivision Map Act, a pre-1972 deed referencing multiple lots does not by itself create separate legal parcels. A legal parcel is created only when a conveyance separates a portion of land into distinct ownership from contiguous property. Because the deed at issue conveyed multiple contiguous lots together and no lots were ever separately conveyed, no separate parcel was created, and the City properly denied a Certificate of Compliance.

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A recorded agreement with the City requiring the owner of a residential unit to rent exclusively to low-income households for at least 30 years survived a foreclosure action and remained enforceable against successor owners. The agreement was equivalent to a condition attached to a building permit and, under Government Code section 65009, ran with the land once the benefits under the permit were accepted.

Sandton Agriculture Investments III, LLC v. 4-S Ranch Partners LLC, 113 Cal.App.5th 519 (2025)

Floodwater captured and stored in an aquifer beneath property is not personal property but part of the real property, appurtenant to the land. Rejecting the theory that the capturing of floodwater renders it personal property, the court reaffirmed that water in its natural state underground becomes real property unless severed from the land. Because the groundwater was not severed, rights to the water were transferred with the property as part of a foreclosure sale.

8. Surplus Land Act

Airport Business Center v. City of Santa Rosa, 116 Cal.App.5th 501 (2025)

The City of Santa Rosa did not abuse its discretion under the Surplus Land Act by declaring a City-owned public parking garage to be surplus land, even though the property continued to serve a parking function and the City required retention of some parking in future development. The court explained that land may be deemed surplus if it is not necessary for the agency's own operations, and that an ongoing public benefit does not preclude a surplus land designation. Substantial evidence—including parking utilization studies, available excess capacity elsewhere, and the cost of structural repairs—supported the City's determination, and conditioning disposition on retention of some parking spaces did not invalidate the surplus designation.

9. Rent Control

CP VI Admirals Cove, LLC v. City of Alameda, 113 Cal. App. 5th 1167 (2025)

Former military housing was not exempt from local rent control under the Costa-Hawkins Act despite extensive rehabilitation and issuance of a post-1995 certificate of occupancy. Relying on prior caselaw, the court concluded that the certificate-of-occupancy exemption under the Act applies only where the certificate predates any residential use. Because the units had been used for residential purposes before rehabilitation—even though vacant for years and formerly limited to military families—the new certificate did not trigger the exemption, and the City's rent control ordinance applied.

Land Use and Development Case Summaries

Long-Form Case Summaries

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1. Planning and Zoning

Old Golden Oaks LLC v. County of Amador, 111 Cal.App.5th 794 (2025)

The Court of Appeal held that a provision in the County of Amador's checklist for an encroachment permit requiring "[o]ther information as may be required" violated the Permit Streamlining Act. However, the court found that the County's grading permit application checklist was sufficient to justify its determination that the developer's application was incomplete.

A developer applied for an encroachment permit and a grading permit to grade over 50,000 cubic yards for a residential subdivision. The County deemed both applications incomplete and requested several additional items, including wastewater treatment designs, a water agency plan, an indemnity agreement and "information necessary to comply with CEQA." The developer sued, arguing that the request for information not listed on the County's official checklists violated the Permit Streamlining Act (Gov't Code section 65920 *et seq*.).

The PSA requires public agencies to maintain "one or more lists that shall specify in detail the information that will be required from any applicant for a development project" (Gov't Code § 65940(a)), and to "indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it." Gov't Code § 65941(a).

The County's grading permit submittal checklist required "a completed application, an erosion control plan, and a copy of right-of-way agreements." The application itself asked whether the requested permit was subject to the CEQA. The County Code specified that an application to grade over 5,000 cubic yards of soil was subject to CEQA, and separately required an indemnification agreement for CEQA projects.

The court held that these County Code provisions were sufficient to support the County's determination that the grading permit application was incomplete. The County was therefore justified in requesting additional information to support its CEQA review, as well as a signed indemnification agreement. The court rejected the argument that the PSA required the County to provide applicants with "all information required for a permit on a single checklist rather than maintaining several checklists in its municipal code and local ordinances," noting that the PSA allows "one or more lists" of required information. Gov't Code § 65940(a)(1).

Further, the County was not required to "list the exact environmental information needed in its criteria for issuance of grading permits." The court agreed with the County that "it is impossible to foresee the unique environmental issues presented in each development project and to include them in a standard checklist." Such a requirement would "frustrate the agencies' authority to seek this exact information during a permit application process" under the PSA's section 65941(b) and CEQA section 21160(a).

Conversely, the court agreed with petitioner as to the encroachment permit. The application form and submittal checklist made no mention of information needed for CEQA compliance. The checklist included a "catch-all provision" listing "'[o]ther information as may be required by the director [of transportation and public works].'" In the absence of any reference to CEQA in the checklist or County Code, this catch-all provision was insufficient to support a determination that an encroachment application was incomplete for failing to include CEQA-related information.

Solano County Orderly Growth Committee v. City of Fairfield, 113 Cal.App.5th 1027 (2025)

The City of Fairfield was not required to demonstrate that an agreement to receive, treat, and return water to Solano County Irrigation District was consistent with the City's general plan. Not every decision that affects land use is a "land use decision" that requires consistency with the general plan under California Planning and Zoning Law.

The City entered into a water supply agreement with the District which would allow the District to use the City's water treatment system to provide potable water service to a new mixed-use development community, Middle Green Valley, in unincorporated Solano County. Under this "treat and wheel" agreement, the District would route raw water to the City, and the City would treat it and then convey an equivalent quantity of potable water back to the District for distribution to end-users in Middle Green Valley.

Appellants, the Solano County Organized Growth Committee, challenged the agreement, arguing that it directly conflicted with an "express policy" in the City's general plan which, according to the Committee, precludes the City from providing municipal services for development beyond the City's urban limits.

The appellate court first addressed whether state law requires that an agreement of this nature be consistent with the City's general plan, and held it does not. The parties agreed—as a threshold matter—that there is no specific statutory requirement that such an agreement be consistent with the City's general plan; however, the Committee argued that the agreement was nonetheless a "decision affecting land use" and must be consistent on that basis.

The court declined to interpret California's Planning and Zoning Law so broadly. The Court explained that the Planning and Zoning Law enumerates the categories of actions (e.g., zone change, adoption of a specific plan, issuance of a tentative map, etc.) that must be consistent with a general plan. Other categories that are not expressly enumerated, such as approval of a conditional use permit, are either derivatives of zoning law or, in the case of a public works project, relate to physical development within the local jurisdiction's boundaries. That the water supply agreement might have an effect on land use, generally, did not make it a "land use decision" that must be consistent with the City's general plan.

Even assuming, for the sake of argument, that the City's action to enter into the agreement with the District was required by law to be consistent with the City's general plan, the court engaged in a detailed analysis of the policy in question (LU 3.1), as well as other policies in the plan, and held that it was. The court reiterated the deference afforded to a local jurisdiction's interpretation of its own general plan, and that "consistency" with a general plan is determined by whether an action is in "agreement or harmony" with a plan—perfect conformity is not required.

Policy LU 3.1 provides, in relevant part, that "[a]ny urban development requiring basic municipal services shall occur only within the incorporated City and within the urban limit line established by the [City's general plan]." The court stated that the meaning of this policy is "far from clear," evidenced by parties' differing interpretations and because "urban development" and "basic municipal services" are not defined in the general plan. To the City, the policy means that it may not approve urban development beyond the City limits, and "basic municipal services" includes the distribution, service, and billing of utilities—not the transfer

of treated water to another entity for end-use. The court held that a reasonable person could interpret the policy this way, and the Committee has not met its burden of proof to show otherwise.

Move Eden Housing v. City of Livermore, 114 Cal.App.5th 1282 (2025)

The First District Court of Appeal clarified how California cities and developers should structure approvals for housing projects in light of the electorate's referendum power. The court ultimately green-lit an affordable housing development agreement in the City—but only after multiple rounds of litigation and city council action.

In 2022, the Livermore City Council approved a development agreement between the City and Eden Housing, Inc. for the development of affordable workforce housing in downtown Livermore. A local anti-housing group, plaintiff Move Eden Housing, submitted a referendum petition seeking to undo the agreement. The City argued that the 2022 resolution merely implemented prior approvals for the affordable housing project and thus was not legislative in nature, but an administrative action not subject to referendum.

In *Move Eden Housing v. City of Livermore*, 100 Cal.App.5th 263 (2024) (Move Eden I), the Court of Appeal rejected that argument. It held that the resolution went beyond administrative implementation of existing city law because it included a new policy initiative—namely, the City's commitment to spend $5.5 million on Veterans Park, a new public park adjacent to the development. That discretionary action, the court explained, rendered the 2022 resolution legislative in nature and therefore subject to referendum under California law.

Following the Move Eden I decision, in 2024, Livermore's City Council repealed the 2022 resolution. It acted pursuant to Elections Code section 9241, which provides that once a city council faced with a referendum petition repeals the challenged measure in its entirety, the referendum is nullified and the measure is no longer subject to a vote. Section 9241 also specifies that when a city council repeals a measure to avoid a referendum in this manner, it may not re-enact the same legislation for a period of one year following the repeal.

Separately—but on the same day as it repealed the 2022 resolution—the city council adopted a new resolution that reaffirmed the 2022 resolution in all respects, except that it omitted all provisions relating to the new park. Displeased with that outcome, Move Eden Housing returned to court, arguing that the city council's actions violated section 9241—both because, in its view, the 2022 resolution had not been repealed in its entirety and the city council had violated the one-year stay requirement.

The trial court agreed, but the Court of Appeal reversed, ruling in favor of the City. The court explained that Livermore's 2024 repeal fully satisfied section 9241 because the only legislative element of the 2022 resolution—the park funding—was no longer in effect and was not revived by the City's reaffirmation of the 2022 resolution. And the City had not violated the one-year stay requirement because it had eliminated the provisions relating to the new park that had made the 2022 resolution subject to referendum. Because the development agreement without those provisions was administrative rather than legislative in nature, it was not subject to referendum. The court explained: "By giving full effect to the voters' ability to challenge approval of Veterans Park—the only legislative act in the 2022 Resolution—this court complies with its duty to jealously guard and liberally construe the referendum power.

That distinction between legislative and administrative acts—and between repeal and re-enactment—matters significantly for future housing developments. The court's reasoning reaffirms that while an implementing resolution that includes new policy decisions may be vulnerable to referendum, a resolution confined to administrative execution of existing approvals is not. It also signals that cities may respond to a referendum petition by repealing a legislative act and replacing it with a narrower administrative one, so long as the new resolution truly omits the earlier policy choices.

Both cities and developers can draw important lessons from the two Move Eden decisions. Cities should be cautious about deferring major policy commitments—particularly public spending, park improvements, or infrastructure obligations—to later-stage development agreements. When such commitments are first made, they constitute legislative action subject to referendum. But where a city confines its later actions and development agreements to implementation of existing policy, the referendum power no longer applies. Developers, in turn, should be attentive to when and how project-related public benefits are formalized: the more a resolution involves discretionary policymaking, the greater the potential for delay or reversal at the ballot box.

At the same time, the decision underscores that cities retain tools to navigate the intersection of housing approvals and direct democracy. By clearly distinguishing between legislative and administrative actions—and ensuring that later resolutions stay within the administrative category—local governments can reduce referendum risk while keeping projects on track. For housing proponents, the key takeaway is that careful sequencing and structuring of approvals remain essential. In California's politically charged housing environment, the Move Eden cases serve as a reminder that the form and timing of a city council resolution can determine whether a project advances smoothly or faces another round of public challenge.

2. Housing

New Commune DTLA LLC v. City of Redondo Beach, 115 Cal.App.5th 111 (2025)

The Court of Appeal concluded that the City's reliance on a residential overlay applicable to multiple commercial and industrial districts to meet its Regional Housing Needs Allocation violated the law because the base zoning still allowed projects with no housing on the sites counted toward the RHNA.

State law requires that the housing element of a city's general plan include zoning and building sites that can realistically accommodate the city's RHNA across income levels. In Redondo Beach, the sixth-cycle RHNA totaled approximately 2,490 units, including 1,444 lower-income units. After several iterations and correspondence with the Department of Housing and Community Development, the City adopted an amended housing element that HCD found compliant. A central feature of the plan was a residential overlay allowing up to 55 dwelling units per acre across several commercial and industrial districts. This overlay preserved underlying commercial and industrial entitlements, so developers could still build completely nonresidential projects on sites the City counted toward its lower-income need. A housing developer challenged the housing element's use of the overlay and the inclusion of two specific properties in the City's RHNA inventory.

The court held that Redondo Beach's overlay approach did not comply with Government Code section 65583.2(h)(2), which requires true minimum density and site-designation controls on the rezoned sites. Reading the statute as a whole, the court identified two independent defects: (1) the overlay failed to guarantee the required minimum residential density because a developer could lawfully construct no housing; and (2) the City did not satisfy the site-designation rule requiring that at least 50% of the lower-income need be placed on sites where nonresidential and mixed uses are not permitted. Alternatively, the City could have met the mixed-use exception by allowing 100% residential and requiring residential use to occupy at least 50% of total floor area, which the overlay did not do. The opinion expanded on the holding from *Martinez v. City of Clovis,* treating "minimum" density as a mandatory floor rather than an aspirational target, and declined to defer to any contrary reading in HCD guidance where that guidance could not be reconciled with the statute's text.

The court split on two site-specific challenges involving nonvacant land. To be counted for RHNA purposes, the city must show "substantial evidence that the [existing] use is likely to be discontinued during the planning period." The court upheld the inclusion of an underutilized shopping-center parking lot based on substantial evidence of physical and financial feasibility. In contrast, it rejected inclusion of parcels serving a grocery store center because lease provisions created a practical veto on redevelopment and the record did not show that the claimed capacity could be achieved outside that zone.

The court's housing overlay holding has statewide implications. Many jurisdictions obtained HCD findings of compliance using residential overlays that sit atop commercial or industrial base zoning. Where those overlays still allow all-nonresidential buildouts, this decision suggests those elements may be vulnerable to challenge and require corrective rezoning. Cities relying on overlays should re-evaluate whether their programs guarantee minimum residential yield on the specific sites used to meet lower-income need or, if relying on mixed-use sites, should satisfy the opinion's standards for 100% residential permissibility and a substantial residential share of floor area.

Kennedy Commission v. Superior Court of San Diego County, 114 Cal.App. 5th 385 (2025)

The Fourth District Court of Appeal confirmed that the expedited procedures and judicial remedies against municipalities that lack a compliant housing element apply to charter cities.

State law requires the housing element of a city's general plan to identify adequate sites and plan for future housing needs for residents of all income levels. If a court finds noncompliance, Article 14 (Gov. Code §§ 65750–65763) establishes expedited procedures and mandatory judicial remedies to achieve compliance. These remedies include a 120-day deadline to amend the plan or element into substantial compliance, bringing zoning into consistency within 120 days of such amendment, and the inclusion of at least one provisional remedy limiting permitting, zoning, or subdivision approvals—or mandating approvals meeting statutory criteria—until the city achieves substantial compliance.

Huntington Beach, a charter city, failed to adopt a compliant housing element despite the California Department of Housing and Community Development (HCD) indicating that a draft would substantially comply if adopted. The Attorney General and HCD secured a writ of

mandate compelling compliance, but the decision omitted Article 14's 120-day deadline and any provisional remedies.

The key issue on appeal was whether Article 14's procedures and remedies apply to charter cities. The court held that it did, noting that Article 14 applies to "any action" challenging the validity of "the general plan of any city," and that Section 65754(b) directly references charter cities. The court also relied on recent legislation, Senate Bill 1037, clarifying that Article 14 remedies apply to actions against charter cities enforcing housing element requirements. The City argued that the new statutory language impinged on its "home rule" authority under the California Constitution that empowers charter cities to govern themselves when dealing with municipal affairs. But because the statute addresses a statewide concern—housing supply and affordability—and is narrowly tailored, the court rejected home-rule objections. The court directed the trial court to enter a new order that included the 120-day deadline and one or more provisional remedies, and to give calendar preference to remaining matters.

Under this decision, cities like Huntington Beach should expect accelerated timelines to adopt compliant housing elements and constraints on their land use authority until such compliance is achieved. Developers, in turn, may see fewer delay tactics and will benefit from provisional remedies limiting downzoning or even mandating approval of certain projects.

3. Assessments and Taxes

Howard Jarvis Taxpayers Association v. Coachella Valley Water District, 116 Cal.App.5th 520 (2025)

The Court of Appeal held that a water district's groundwater replenishment charges were unconstitutional "taxes" because the District failed to prove the cost-allocation requirement of Proposition 26's "specific-government-service" exception.

The Coachella Valley Water District provides potable water and relies primarily on groundwater, making conservation and replenishment necessary. The District has statutory authority to levy and collect "water replenishment assessments" to replenish groundwater supplies. The District imposed replenishment charges associated with three "areas of benefit" (AOBs). Although domestic customers did not see a replenishment line item, they paid replenishment charges indirectly through the District's enterprise fund structure. Howard Jarvis challenged the replenishment charges.

The court treated the replenishment charges as "exactions" imposed by a local government. The dispositive issue was whether the charges satisfied an exception to the constitutional definition of "tax." The District relied on the Proposition 26 exception for "a charge imposed for a specific government service or product provided directly to the payor" that does not exceed reasonable costs. The court explained that this exception entails both an "aggregate cost" requirement and an "allocation" requirement, under which the District must prove the manner of cost allocation bears a fair or reasonable relationship to the payor's burdens or benefits.

Although the court found that projected revenues and expenses satisfied the aggregate-cost requirement, it concluded the District failed the allocation requirement. The court focused on the significant rate disparity between the West and East AOBs and found the District's central justification for that disparity—an alleged barrier significantly impeding groundwater flow

between the areas—was not reasonably supported by the record. The District thus did not meet its burden to show cost allocation was fairly or reasonably related to burdens/benefits, and the replenishment charges were unconstitutional taxes.

The court ordered judgment awarding refunds measured by the difference between what each AOB paid and what they would have paid under district-wide allocation, plus prejudgment interest, and permanently enjoining continued collection of the rates imposed during the years at issue.

Thacker v. City of Fairfield, 113 Cal.App.5th 1049 (2025)

The First District Court of Appeal clarified how Proposition 218 applies to special assessments that predated its enactment. Proposition 218, adopted by California voters in 1996, generally requires voter approval for new or increased local government taxes and property-related assessments, and limits how local governments can impose fees, charges, and assessments on property owners.

The case arose from Fairfield's Rolling Hills Maintenance District, created in 1988. At that time, the district levied a flat annual charge of $196.23 per residential lot for landscaping, lighting, and related services. In the years since 1996, Fairfield gradually raised the assessment, reaching $300 per lot by the 2022-2023 tax year.

A property owner challenged the increase, arguing that any post-1996 hikes violated Proposition 218's procedures, which require mailed notice, a majority protest hearing or election, and compliance with substantive limitations. The trial court sided with the City, reasoning that the assessment fell under a constitutional exemption for certain preexisting assessments (Cal. Const., art. XIII D, § 5(a)), and that the increase was permissible because it followed a methodology established before Proposition 218.

The Court of Appeal reversed. It held that Proposition 218 defines an "increased assessment" broadly, covering not only variable rates (per gallon or per square foot) but also flat, per-parcel charges like the one in Fairfield. The court also rejected the notion that a pre-1996 "range" or formula can shield later increases. Unless a range or escalation mechanism was adopted using Proposition 218's procedures, it cannot justify post-1996 increases beyond the rate in effect when the initiative became law.

The Court of Appeal's opinion underscores the continuing vitality of Proposition 218 as a significant limitation on local revenue measures. For public agencies, the decision is a cautionary reminder that grandfathered assessments are effectively frozen at their 1996 levels unless voters or property owners approve an increase using the procedures in Proposition 218. Property owners faced with escalating assessments should examine whether increases were tied to a lawful post-1996 range or methodology. If not, *Thacker* offers a strong precedent supporting a legal challenge. The opinion also suggests that courts may read the definition of "increase" expansively, leaving little room for agencies to argue that flat charges fall outside Proposition 218's protections.

Developers should take note as well. In many cases, participation in an assessment district is a condition of development approval, and charges may escalate over time. *Thacker* could provide additional leverage to contest unlawful increases, and potentially to negotiate more favorable arrangements with local governments.

Carachure v. City of Azusa, 110 Cal.App.5th 776 (2025)

Petitioners challenging a city's sewer and trash fees were not required to pay fees under protest or otherwise exhaust administrative remedies.

Petitioners alleged that the City of Azusa violated Proposition 218 by charging sewer and trash fees that exceeded the cost of providing those services and by transferring the excess revenue into the City's general fund. They sought a writ of mandate requiring the City to stop the allegedly unconstitutional practices and to restore improperly transferred funds.

The City argued that petitioners failed to exhaust administrative remedies under Health and Safety Code section 5472, which requires ratepayers to pay utility fees under protest and file an administrative refund claim before bringing suit. The trial court agreed, concluding that even though the plaintiffs did not expressly seek refunds, their challenge necessarily attacked the legality of the fee collection and therefore required exhaustion.

The Court of Appeal held that section 5472 and the related refund procedures apply only to actions expressly seeking refunds, not to suits seeking prospective equitable relief or constitutional review of municipal fee practices. The court explained that administrative refund procedures are not designed to adjudicate the constitutional validity of a city's overall fee structure and revenue-transfer practices. Because the statutory scheme provides a mechanism only for monetary refunds—not systemic constitutional challenges—the exhaustion doctrine did not apply.

In so holding, the court rejected the City's claim that the relief sought—the restoration to the sewer and waste funds of all revenues improperly transferred to the general fund during the previous three years—would result in lower rates and operate as a de facto refund to all ratepayers. The court reasoned that a prospective rate reduction or fund reallocation is legally distinct from a refund of previously paid fees. Because petitioners did not seek a refund of any fees they had paid, the protest requirements were not triggered, and their Proposition 218 claims could proceed on the merits.

4. Land Use Litigation

Coalition of Pacificans for an Updated Plan v. City of Pacifica, 2025 WL 3764279 (2025)

The Court of Appeal vacated a $1.2 million attorney fee award, ruling that the trial court misapplied a new provision of the Housing Accountability Act that requires a court to give "due weight" to enumerated factors when deciding whether to award attorneys' fees in an action challenging a housing approval.

Government Code section 65589.5(p)(1), effective January 1, 2024, modifies the inquiry for attorneys' fees in cases challenging housing project approvals. The statute requires the court to "give due weight" to the degree to which the housing approval furthers HAA policies, the suitability of the project site for housing, and the reasonableness of the agency's decision. This "due-weight" requirement is intended to provide additional protections for local governments when sued by interest groups or neighbors over housing projects. The case centered on the HAA policies favoring new housing and those "guiding development in urban [areas]."

The trial court awarded attorneys' fees after finding a "fair argument" that the project might have a significant effect on the environment, and that the City should therefore have prepared an EIR rather than approving a negative declaration. Addressing the due-weight requirement, it held that approval of an eight-unit project was inconsequential given the statewide unmet need for two million housing units. It also concluded the project would not advance the policy of guiding development in urban areas because Pacifica was not an "urban area."

The Court of Appeal held that the trial court erred by assessing the project's impact against the statewide housing shortage, observing that use of a statewide benchmark would render the statutory factor "meaningless" as no individual project could meet such a standard. Instead, the court held that the inquiry must be informed by local considerations, such as the City's regional housing needs allocation (RHNA) and its permitting history. In this case, an eight-unit project was not inconsequential given that Pacifica had approved an average of only 16 units per year from 2015 to 2020, far short of its 413-unit RHNA allocation for the 2015–2023 cycle.

The appellate court also rejected the trial court's categorical determination that the entire City of Pacifica was "not an urban area." The court underscored that such a community-wide approach ignores the reality that most jurisdictions contain specific urbanized areas where development should be focused. A categorical approach, the court reasoned, could improperly release communities from their general obligation to facilitate new housing.

This decision provides a significant defensive tool for municipalities and developers facing attorneys' fee motions in actions challenging housing projects. By requiring courts to evaluate a project's benefits relative to localized RHNA targets rather than statewide deficits, the ruling ensures that even small-scale housing developments can be recognized as advancing core HAA objectives. The court's rejection of community-wide "non-urban" designations prevents project opponents from using a locality's general character to bypass HAA infill priorities.

Make UC A Good Neighbor v. Regents of University of California, 2025 WL 3687803 (2025)

Petitioners were not "successful parties" entitled to attorneys' fees under Code of Civil Procedure 1021.5 after the Legislature abrogated their legal victories by statute and the Supreme Court reversed the judgment.

Petitioners challenged the University of California, Berkeley's 2021 long-range development plan and a student housing project at People's Park. They alleged the University violated CEQA by failing to analyze potential noise impacts from student parties and failing to consider alternative locations for the housing project.

The Court of Appeal originally ruled in favor of petitioners on the noise and alternative location issues. However, while the case was pending before the California Supreme Court, the Legislature passed Assembly Bill No. 1307, which specified that noise from occupants of a residential project is not a significant environmental effect and exempted certain higher education housing projects from analyzing alternative locations. Based on AB 1307, the Supreme Court reversed the Court of Appeal's decision.

The petitioners argued they were nonetheless "successful parties" because their litigation established important legal precedents that remained "good law" for non-residential projects.

The Court of Appeal disagreed, holding that the Supreme Court's reversal constituted an unambiguous disapproval of the previous holdings on noise and alternative locations—the two issues on which petitioners had prevailed. Petitioners therefore failed the "pragmatic" test for success under Code of Civil Procedure section 1021.5. Because the litigation ultimately led to a final judgment in favor of the University, petitioners neither vindicated the principles of their action nor achieved their strategic objectives.

Herron v. San Diego Unified Port Dist., 109 Cal.App.5th 1 (2025)

The San Diego Unified Port District's lease of public trust lands to a private yacht club was a discretionary act not subject to traditional mandamus, and that petitioner's claim for administrative mandamus was barred by the 90-day statute of limitations.

Herron sued to set aside a lease granted by the Port to the Coronado Yacht Club. He alleged that the Port District breached its fiduciary duties under the Public Trust Doctrine, the San Diego Unified Port Act, and the Port's Master Plan by leasing coastal land for a private club that excluded the general public. He sought a writ of traditional mandate to compel the Port to solicit bids for an operator that would manage the property for the benefit of the public at large.

The Court rejected Herron's claim for traditional mandamus, explaining that such relief is only available to compel the performance of a ministerial duty. The court reasoned that the administration of public trust lands necessarily involves the exercise of discretion. The San Diego Unified Port Act explicitly authorizes the Port District to use tidelands for specific purposes, including "yacht club buildings," and does not mandate that such facilities be open to the general public at all times. Because the Port had the discretion to choose between compatible public trust uses, including a lease that permits the exclusion of the public for some portion of time, there was no ministerial duty to deny the lease or solicit public bids.

The court further held that because the Port's leasing decision was a discretionary exercise of quasi-judicial authority, the proper vehicle for judicial review was a petition for administrative mandamus. The lease at issue became final on January 1, 2019, but Herron did not file his petition until February 2023—over four years later. Consequently, the suit was barred by the 90-day limitations period in Code of Civil Procedure section 1094.5.

5. Takings

Benedetti v. County of Marin, 113 Cal.App.5th 1185 (2025)

The First District Court of Appeal held that an ordinance requiring a restrictive covenant for new residential development on agricultural land did not result in a taking of property without just compensation.

The case concerned Marin County's Local Coastal Program (LCP), which allows property owners in the "coastal agricultural production zone" to build new residential units only if they agree to a covenant requiring that the occupant of the unit be "actively and directly engaged in agricultural use of the property," either through daily management of a commercial agricultural operation or by leasing to a bona fide agricultural producer.

The Benedetti family, which owns property in the coastal agricultural production zone, sought to build an additional residence on the property without agreeing to the restrictive covenant. They filed suit, arguing that the County's LCP violated the unconstitutional-conditions takings framework in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The Benedettis contended that the covenant requirement failed both the nexus and proportionality requirements of that framework because it was insufficiently tailored to the County's interest in preserving agriculture in the coastal zone. They also claimed that the ordinance violated their substantive due process rights by requiring them to engage in farming rather than their preferred vocation.

The trial court rejected both claims, reasoning in part that the Benedettis could not assert a facial *Nollan*/*Dolan* challenge to the County's LCP. The Court of Appeal disagreed, finding that the Supreme Court's decision in *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024), allowed for facial *Nollan*/*Dolan* claims.

On the merits, though, the Court of Appeal affirmed the trial court and rejected the Benedettis' challenges. It concluded that the restrictive-covenant requirement in the LCP satisfied *Nollan*'s nexus test because it had a "direct connection" to the County's interest in preserving agricultural use and avoiding residential conversion of farmland. The condition also met *Dolan*'s "rough proportionality" requirement—that is, it was "related both in nature and extent to the impact" of the proposed development because "residential development of any size or type that is not required and used to support ongoing agriculture begins to establish a market for residential development and erode the viability of agriculture."

The Court of Appeal also rejected the Benedettis' due process claim. Applying rational-basis review, it concluded that requiring farm-owner occupancy or agricultural leasing for additional housing was reasonably related to the County's longstanding policy of farmland preservation. The fact that the covenant operates in perpetuity did not make it arbitrary in light of those goals.

For property owners and practitioners, the case offers two principal takeaways. First, while facial *Nollan*/*Dolan* claims may be formally available, they are difficult to win. A plaintiff must show that the government's permitting condition is systematically unrelated or disproportionate to the impacts of a proposed development. That will likely be the case only in relatively extreme situations. More often, a plaintiff will have better odds of success in bringing an as-applied claim, which requires only a showing that the permit conditions violate the *Nollan*/*Dolan* framework in the particular circumstances of their proposed development.

Second, the *Nollan/Dolan* framework is not a promising avenue for challenging local governments' zoning schemes, particularly in the coastal zone. While a number of California state laws in recent years have made it easier for property owners to build additional dwelling units—in the form of ADUs, duplexes, and the like—those statutes did not help the Benedettis, on account of their property's location in an area zoned for agricultural production under the County's LCP. Courts remain highly deferential to local governments' decisions to limit development on land zoned for agricultural purposes.

6. Subdivision Map Act

Cox v. City of Oakland, 17 Cal.App.5th 362 (2025)

The California Supreme Court held that under the Subdivision Map Act, the creation of legal parcels prior to 1972 requires more than a deed referencing multiple lots—only a conveyance that separates a portion of land from contiguous property creates a new legal parcel.

A landowner sought a Certificate of Compliance from the City of Oakland, asserting that a pre-1972 deed referencing three lots (Lot 18, Lot 17, and a portion of Lot 16) created three separate legal parcels. The City denied the request, concluding that the deed conveyed a single parcel encompassing all three lots, as they were never separately conveyed.

The Subdivision Map Act requires landowners to obtain local government approval and record a map before dividing property into smaller parcels for sale, lease, or financing. The Supreme Court focused on the meaning of "division of land" under section 66412.6(a) of the Map Act and harmonized it with the Map Act's general definition of "subdivision" in section 66424.

The Court first emphasized that conveyance alone is not enough. Simply referencing multiple lots in a deed does not constitute a legal division of land into separate parcels. For a division to occur, there must be a conveyance that places a portion of land into separate ownership, distinct from contiguous lands. In addition, the Court noted that prior to 1972, a lot depicted on an antiquated map did not gain independent legal status unless it was actually conveyed separately from surrounding lands. The recordation of a map or the use of lot numbers in a deed served primarily as a descriptive tool, not as a legal division.

In this case, Lot 18 was always conveyed together with at least one other contiguous lot and was never separately conveyed. Therefore, it was never "created" as a distinct parcel under the Act.

7. Real Estate

Rodriguez v. City of Los Angeles, 116 Cal.App.5th 488 (2025)

The court held that a recorded density bonus agreement requiring long-term affordable housing survives a foreclosure sale. The court's decision reaffirms the durability of affordable housing obligations imposed through the land-use entitlement process and carries important implications for property owners, developers, lenders, and purchasers of distressed assets.

The case arose from a residential project approved in 2005, when a prior owner obtained a density bonus under California's Density Bonus Law (Gov. Code §§ 65915 et seq.). As a condition of that approval, the owner entered into a written agreement with the City of Los Angeles committing to reserve one of the bonus units for low-income tenants for at least 30 years. The agreement was recorded against the property and expressly tied to the project's building permit. Several years later, the owner defaulted on its loan, and the lender foreclosed in 2013. The plaintiffs purchased the property at a foreclosure sale in 2019 and later sought to quiet title, contending that the affordable housing agreement was a junior encumbrance extinguished by foreclosure.

The Court of Appeal rejected the junior-encumbrance theory and affirmed the trial court's dismissal of the action. Central to its analysis was the legal character of the recorded agreement. Although the plaintiffs attempted to frame it as a conventional covenant or equitable servitude, the court concluded that the agreement functioned as a land-use permit condition imposed in exchange for discretionary approval of the density bonus. The court emphasized that substance controls over form: the agreement's recitals and operative provisions tied it directly to the issuance of the permit, making it inseparable from the underlying entitlement.

Once characterized as a permit condition, the enforceability of the agreement against successor owners followed naturally from settled land-use principles. Under Government Code section 65009(c)(1)(E), any "condition attached to a … permit" accepted by a project applicant and not challenged within 90 days of issuance remains enforceable and runs with the land. The court relied heavily on *City of Berkeley v. 1080 Delaware, LLC,* 234 Cal.App.4th 1144, 1151 (2015), which held that inclusionary housing requirements imposed through the entitlement process survived foreclosure and bound later purchasers. Allowing foreclosure to eliminate such conditions, the court reasoned, would undermine regulatory certainty and create incentives to evade land-use obligations through default.

The court also made clear that a quiet title action cannot be used to sidestep statutory land-use limitations periods. Section 65009 reflects a legislative judgment that land-use approvals must achieve finality, and successor owners cannot reopen long-settled permit conditions by reframing them as title disputes years later.

For property owners and developers, *Rodriguez* underscores that affordable housing commitments imposed through density bonus approvals are not merely contractual obligations of the original applicant. When recorded as part of the entitlement process, they are regulatory conditions that travel with the land and may survive foreclosure and subsequent transfers. For lenders and investors, the decision highlights the importance of land-use due diligence in addition to traditional title review, particularly when acquiring distressed properties.

More broadly, the opinion reinforces the reliability of California's housing incentive framework. By confirming that density bonus agreements can bind successor owners over time, the Court of Appeal's analysis enhances the predictability of land-use enforcement and the long-term viability of affordable housing commitments tied to development approvals.

Sandton Agriculture Investments III, LLC v. 4-S Ranch Partners LLC, 113 Cal.App.5th 519 (2025)

The Court of Appeal held that the rights to floodwater captured and stored in an aquifer beneath property were not personal property but rather appurtenant to the land and were transferred with the property during a foreclosure sale.

Sandton Agriculture Investments acquired ranch property through foreclosure after 4-S Ranch Partners defaulted on repayment of a loan. The primary legal issue was whether approximately 500,000 acre-feet of captured floodwater stored in an aquifer beneath the ranch should be classified as personal property or as part of the real property. 4-S argued that the capturing of floodwater rendered it personal property, which did not become part of the real property by

virtue of its storage in the aquifer. Sandton contended that the right to extract groundwater is a real property interest and that the captured floodwater was not severed from the real property, thus remaining part of the real property.

The court determined that the floodwater, once it seeped into the ground and became percolating groundwater, lost its status as personal property and instead became part of the real property. The court expressly rejected the theory of "floodwater as personalty through dominion and control" and reaffirmed the severance requirement: water in its natural state (including floodwater that percolates into an aquifer) remains real property unless severed. Because the water here was not severed from the land, the groundwater and related rights were appurtenant to the land and transferred with the land at the nonjudicial foreclosure.

8. Surplus Land Act

Airport Business Center v. City of Santa Rosa, 116 Cal.App.5th 501 (2025)

The First District Court of Appeal held that the City of Santa Rosa did not abuse its discretion under the Surplus Land Act when it declared a City-owned downtown parking garage to be surplus land, even though the property continued to serve a public parking function and the City conditioned its disposition on retention of some parking spaces.

The City adopted a resolution designating a 199-space public parking garage as nonexempt surplus land. The resolution required that any future development retain at least seventy-five public parking spaces on the site.

A neighboring property sought a writ of mandate contending that the City violated the Surplus Land Act because the garage remained necessary for public parking and therefore could not be deemed surplus land.

The appellate court rejected the premise that land currently used for a public purpose cannot qualify as surplus land. It held that the statutory requirement that land be "not necessary for the agency's use" focuses on whether the property is essential to the agency's own operations, not whether it serves some public benefit. An ongoing general need for public parking did not preclude the City from determining that a specific parking facility was unnecessary, particularly where it had determined that other facilities could accommodate demand.

Applying the deferential standard governing traditional mandamus, the court concluded that substantial evidence supported the City's determination, including extensive parking utilization studies, evidence of substantial unused parking capacity elsewhere downtown, and the high cost of needed structural repairs reflected in the administrative record. The court also held that the City satisfied the Act's requirement for written findings and that conditioning disposition on retention of some parking did not undermine the surplus designation.

9. Rent Control

CP VI Admirals Cove, LLC v. City of Alameda, 113 Cal.App.5th 1167 (2025)

A new certificate of occupancy and substantial property improvements did not exempt former military housing from local rent control under the Costa-Hawkins Rental Housing Act when those units were previously used for residential purposes.

The case concerned the applicability of the City of Alameda's Rent Control Ordinance to a recently rehabilitated residential housing site. The Admirals Cove property comprises nearly 150 townhomes built in 1969 for Navy and Coast Guard families. Used for military housing until 2005, the property fell into disrepair and was acquired by a private developer in 2018. The developer invested approximately $48 million to bring the units up to market standard and received a new certificate of occupancy in December 2020.

Costa-Hawkins Section 1954.52(a)(1) exempts from local rent control residential units that have a "certificate of occupancy issued after February 1, 1995." The developer argued that the units were exempt because its certificate of occupancy was issued after that date. The City of Alameda Rent Program denied the exemption, relying on a local regulation limiting the exemption if the property was used previously for "residential purposes." The trial court granted the developer's writ petition, holding the property exempt under a plain meaning interpretation of section 1954.52(a)(1) because the certificate of occupancy was issued after February 1, 1995. The City appealed.

In overturning the previous ruling, the court adopted and applied the interpretation articulated in prior cases holding held that Section 1954.52(a)(1) "refers to certificates of occupancy issued prior to residential use" of the affected property. Thus, a certificate of occupancy issued after February 1, 1995, does not trigger the exemption if there was prior residential use.

The court rejected the developer's arguments that extensive renovations, prolonged vacancy, federal ownership, or occupancy restricted to military families altered the analysis. As to renovations, the court declined a fact-intensive approach that would turn on the extent of rehabilitation, emphasizing the need for a "bright-line approach" centered on whether residential use preceded the certificate of occupancy. As to vacancy, the court noted that even a lengthy period of non-occupancy does not convert previously residential space into newly constructed stock for purposes of Costa-Hawkins. And the court confirmed that military housing is still "residential use;" it analogized that housing to other forms of status-restricted residential housing commonly present in local markets, such as senior, income-restricted, or preference-based housing.

This interpretation, the court explained, furthers Costa-Hawkins's purpose: "to encourage[e] construction and conversion of building which add to the residential housing supply." Ruling for the developer would lead to an interpretation that "perversely reward[s] landlords for allowing rental units to decay to the point the buildings need extensive rehabilitation."

The decision reinforces a bright-line rule for the Costa-Hawkins certificate-of-occupancy exemption. Where a property has any prior residential use, a post-1995 certificate of occupancy issued in connection with rehabilitation, reconfiguration, or a change in type of residential use will not trigger exemption under section 1954.52(a)(1).

Housing Legislative Update 2025

Perkins Coie

Senate Bill 79 Enacted, Paving the Way for More Housing Near Urban Transit Hubs

Prepared by Cecily Barclay and Alan Murphy

Key Takeaways

- SB 79 will require local approval of qualified transit-oriented housing projects near certain major transit stops in an anticipated eight urban counties, increasing allowable residential density in transit-rich areas.
- The bill sets specific height and density limits for projects, with required affordable housing set-asides for lower-income households.
- Local governments retain some authority to limit or modify SB 79's standards by excluding certain sites or adopting alternative transit-oriented development plans that maintain overall zoned capacity.
- Projects meeting SB 79 and nonconflicting local standards are generally protected from denial, and some may qualify for streamlined, ministerial approval under existing state law.

Arguably one of the most controversial and transformative housing bills in California history, SB 79 narrowly passed the legislature and was signed by Governor Gavin Newsom in late 2025.

More than seven years in the making, SB 79 provides that qualified transit-oriented housing development projects "shall be an allowed use" for sites zoned for residential, mixed, or commercial development within one-half or one-quarter mile of transit-oriented development (TOD) stops located in "urban transit counties," provided certain requirements are met.

SB 79 upzoning will apply to those counties with more than 15 passenger rail stations. Although "passenger rail stations" is not defined in the bill, the project sponsors state that jurisdictions in only eight counties—San Francisco, San Mateo, Santa Clara, Alameda, Sacramento, Los Angeles, San Diego, and Orange—will be affected. SB 79 generally will apply to affected cities beginning on July 1, 2026, but the law will not apply within unincorporated county areas until the seventh regional housing needs allocation (RHNA) cycle.

The chart below shows SB 79's maximum height and density standards, as well as the residential floor area ratio (FAR) that a local agency's development standards may not preclude. Local agencies, though, have various options for lowering these height, density, and FAR standards for individual sites or exempting the sites from SB 79, as further described below.

Type of TOD Stop	Project Distance From Stop (TOD Zone)	Development Standards Available to Transit-Oriented Housing Projects Under SB 79
Tier 1: Major transit stop served by heavy rail transit or "very high frequency" commuter rail, as each of these terms is defined in SB 79 (Not high-speed rail or Amtrak)	Adjacent to stop (within 200 feet of a pedestrian access point to the stop)	• Height: 95 feet • Density: 160 dwelling units per acre (du/ac) • FAR of 4.5 may not be precluded by local agency development standards
	Within ¼ mile of stop	• Height: 75 feet • Density: 120 du/ac • FAR of 3.5 may not be precluded by local agency development standards
	Between ¼ and ½ mile of stop in a city with at least 35,000 residents	• Height: 65 feet • Density: 100 du/ac • FAR of 3.0 may not be precluded by local agency development standards
Tier 2: Major transit stop, excluding Tier 1 stops, served by light rail transit, "high-frequency" commuter rail, or bus rapid transit, as each of these terms is defined in SB 79 (Not high-speed rail or Amtrak)	Adjacent to stop (within 200 feet of a pedestrian access point to the stop)	• Height: 85 feet • Density: 140 du/ac • FAR of 4.0 may not be precluded by local agency development standards
	Within ¼ mile of stop	• Height: 65 feet • Density:100 du/ac • FAR of 3.0 may not be precluded by local agency development standards
	Between ¼ and ½ mile of stop in a city with at least 35,000 residents	• Height: 55 feet • Density: 80 du/ac

		• FAR of 2.5 may not be precluded by local agency development standards

To qualify for these development standards, the following additional transit-oriented housing project attributes are required:

1. Density must be the greater of 30 du/ac or the minimum density required under local zoning.

2. Average habitable floor space must not exceed 1,750 square feet.

3. If the project is more than 10 units, housing must be dedicated to lower income households at any one of the following levels or at such higher levels if required by the local agency's inclusionary housing ordinance:

    - 7% to extremely low-income households
    - 10% to very low-income households
    - 13% to low-income households

4. Projects must comply with state law requirements for "replacing" any existing dwelling units and with other limitations on residential demolition.

5. Projects must be consistent with the height, noise, and safety standards of any applicable airport land use plan or zone, as well as objective statewide fire safety standards.

6. For any building over 85 feet in height, all construction workers must be paid prevailing wages, and a skilled and trained workforce must be used.

Transit-oriented housing projects that meet the state's density bonus eligibility requirements are entitled to additional density bonus units as provided by law. Projects that meet specified minimum density requirements are also eligible to receive the following additional concessions, in addition to those granted by the Density Bonus Law (up to five concessions), except that, in nearly all circumstances, the local agency will not be required to increase the maximum height allowed under SB 79:

- One additional concession for low-income units
- Two additional concessions for very low-income units
- Three additional concessions for extremely low-income units

For purposes of enforcing the Housing Accountability Act, projects consistent with both the SB 79 requirements and applicable, nonconflicting local objective general plan and zoning standards, as may be modified by Density Bonus Law concessions or waivers, will be deemed "consistent, compliant and in conformity with" any applicable plan, program, policy, ordinance, standard, requirement, or similar provision. Accordingly, a local agency will not be able to deny the transit-oriented housing project unless the agency made written findings that the project would have a specific, adverse impact upon public health or safety that could not feasibly be mitigated or avoided.

SB 79 does not modify the requirements of the California Environmental Quality Act (CEQA) or require a ministerial approval process, though certain SB 79 projects are eligible for streamlined, ministerial approval under the preexisting state law commonly known as "SB 35" or "SB 423." Projects proposed for streamlining

must comply with all requirements of that law, except that affordable housing requirements do not depend on whether the local agency is meeting its RHNA targets. SB 79 projects not subject to SB 35/SB 423 streamlining are reviewed under the jurisdiction's standard review process and the Housing Accountability Act.

Significantly, SB 79 provides local agencies with at least three paths to limit or modify the new development standards within their jurisdiction, as desired. First, until one year following adoption of the seventh-cycle housing element (until 2032 in the Bay Area), local agencies may adopt an ordinance excluding several types of sites from eligibility under SB 79. A site may be excluded if its allowable density and residential FAR are at least 50% of that required under SB 79 or, potentially, where even less density and residential FAR are allowed, provided one or more other site conditions or standards are met (for instance, the site is in a low-resource area).

Second, a local ordinance may exempt the following two additional types of areas within one-half mile of a transit-oriented development stop: (1) an area where there is no walking path of less than one mile that connects the area to the stop and (2) a previously designated "employment lands" area of at least 250 acres, provided all parcels are primarily dedicated to industrial use and the area is located in a jurisdiction with at least 15 transit-oriented development stops.

Third, a local agency may adopt a "transit-oriented development alternative plan." The plan is subject to several limitations, including maintaining at least the same total net zoned capacity provided for under SB 79, across all transit-oriented development zones within the jurisdiction.

Finally, SB 79 also will provide new land use authority for transit agencies. A transit agency's board of directors may adopt zoning standards for district-owned property located in a TOD zone that, with a few exceptions, are consistent with the development standards for height, density, FAR, and uses that apply to transit-oriented residential projects. There are extensive detailed provisions regarding required project attributes, as well as the process the transit agency must follow in adopting zoning standards, including compliance with CEQA, affordability requirements, and certain labor standards. Once adopted, the transit agency's zoning standards would be considered the same as locally approved zoning.

Major Reforms Enacted to the California Environmental Quality Act

Prepared by Alan Murphy and Deborah Quick

Key Takeaways

- AB 130 and SB 131 were passed by the California Legislature and signed by Governor Gavin Newsom, enacting the most significant reforms to CEQA in recent years.
- AB 130 establishes a new statutory exemption from CEQA for infill housing projects that meet specific criteria.
- SB 131 limits CEQA review for housing projects that nearly qualify for an exemption, focusing only on the environmental effects caused by the single condition that disqualifies them.
- Other significant provisions put in place by AB 130 and SB 131 pertain to housing element rezoning, nonresidential project CEQA exemptions, recordkeeping, and more.

During the annual state budget process, the California Legislature passed, and Governor Gavin Newsom signed, two bills that include the most significant reforms to the California Environmental Quality Act (CEQA) in recent years. Most prominently, AB 130 and SB 131 (1) establish a major new exemption from environmental review under CEQA for housing projects and (2) substantially curtail CEQA review for housing projects that fail to qualify for an exemption by a single condition. This Update discusses these two provisions and briefly notes several other important changes made by the reform bills.

Both bills took effect immediately following their passage on June 30, 2025.

New CEQA Exemption for Infill Housing Projects

AB 130 creates a new statutory exemption from CEQA review for housing development projects in urban areas that meet the following criteria:

- The project site is no more than 20 acres, except sites for builder's remedy projects, which are limited to five acres.
- The project site previously was developed with an urban use or largely adjoins or is surrounded by urban uses.
- The project is consistent with the applicable general plan and zoning, as well as any applicable local coastal program. Use of the Density Bonus Law does not make a project inconsistent with these documents.
- The project is at least one-half the applicable density specified in the Housing Element Law as appropriate to accommodate housing for lower-income households.
- The project site is not a type of site excluded from eligibility for streamlined, ministerial approvals under a provision of SB 35 / SB 423.

- The project does not require demolition of a historic structure on a national, state, or local historic register.
- No portion of a project deemed complete in 2025 or later is designated for use as a hotel or other transient lodging.

The new CEQA exemption requires that local governments consult with California Native American tribes and impose, as conditions of approval, any enforceable agreements reached during project consultation, as well as several specified measures, as applicable. A Phase I environmental assessment also must be completed, with further requirements contingent on its findings. Finally, to rely on the new exemption, specified labor standards must be met for buildings more than 85 feet in height and projects in which 100% of units are dedicated to lower-income households.

Limitation on CEQA Review for Eligible Housing Projects

SB 131 provides that, for a housing development project that would otherwise qualify for a statutory exemption or for certain categorical exemptions "but for a single condition," CEQA review is limited to "effects upon the environment that are caused solely by that single condition." A "condition" is defined as "a physical or regulatory feature of the project or its setting or an effect upon the environment caused by the project."

An initial study or environmental impact report for a qualifying housing project "is only required to examine those effects that the lead agency determines, based upon substantial evidence in the record, are caused solely by the single condition that makes the proposed housing development project ineligible" for the exemption. An environmental impact report prepared to analyze the effects of a single condition is not required to include any discussion of alternatives or growth-inducing impacts.

Housing development projects that include "a distribution center or oil and gas infrastructure" or that are located on "natural and protected lands" are not eligible for SB 131's limitation on CEQA review.

Additional Noteworthy Provisions

SB 131 includes a new statutory exemption from CEQA for most rezonings implementing an approved housing element.

SB 131 also creates several CEQA exemptions specific to tightly defined (largely) nonresidential projects, including day care centers, linear broadband installations, farmworker housing, high-speed rail, community water systems, and advanced manufacturing facilities.

SB 131 includes an important legislative finding that "CEQA should not be used primarily for economic interests, to stifle competition, to gain competitive advantage, or to delay a project for reasons unrelated to environmental protection." This finding suggests legislative disagreement with the courts' traditionally liberal application of rules governing who may bring a CEQA lawsuit.

Lastly, SB 131 amends the required contents of the record of proceedings for CEQA litigation to exclude most internal agency emails "that were not presented to the final decision making body."

For its part, AB 130 also includes a meaningful amendment to another state law, the Permit Streamlining Act. Public agencies now generally are required to approve or disapprove a housing development project subject to ministerial review within 60 days of receipt of a complete application.

Conclusion

For numerous projects, especially residential developments, AB 130 and SB 131 will make a major difference in the level of required CEQA review based on new judgments made by the Legislature. In AB 130, the Legislature determined that a broad class of residential development will confer greater statewide benefits if more swiftly approved and built than if forced to undergo project-by-project CEQA review. Under SB 131, the Legislature reached the same conclusion for certain narrow categories of nonresidential projects, and it strictly limited the scope of CEQA for many housing development projects that do not quite qualify for a wholesale exemption from environmental review.

CEQA Year in Review

Short-Form Case Summaries

Perkins Coie

CEQA YEAR IN REVIEW 2025

A Summary of Published Appellate Opinions involving the California Environmental Quality Act

Introduction

In a striking departure from recent years, the courts of appeal published only eight CEQA opinions in 2025. Of these decisions, four found prejudicial CEQA violations in negative declarations and EIRs and provide important guidance for lead agencies and practitioners.

The first reported decision ever to hold that a lead agency failed to meet its tribal consultation obligations under CEQA is *Koi Nation v. City of Clearlake*. The case emphasized that AB 52, which added tribal cultural resources to CEQA analysis in 2014, imposes important duties on lead agencies, particularly with respect to tribe-suggested mitigation measures, that differ procedurally and substantively from those that apply to other environmental issues.

Two other decisions concluded that lead agencies failed to grapple successfully with the CEQA issues raised by climate change. In one, San Diego County tried to identify types of projects that it would treat as exempt from vehicle miles traveled (VMT) analysis. The court held that substantial evidence did not support two of the categories the County identified and that more detailed local data were required. *Cleveland National Forest Foundation v. County of San Diego*. In the second case, *Center for Biological Diversity v. County of Los Angeles*, the court held that the EIR for a large mixed-use development was fatally flawed because it stated that the project's GHG emissions were "offset" by the state's cap-and-trade program even though the project was not part of that program.

Finally, in the second round of San Diego's Midway District litigation, the court of appeal held that the city still had not lawfully addressed the potential impacts of increasing the district's building height limit from 30 feet to 100 feet. The court held that approval of the height increase would require analysis of issues such as redirection of noise and air pollution around taller buildings. *Save Our Access v. City of San Diego*.

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A Court of Appeal held that a catch-all provision in the County of Amador's checklist for an encroachment permit requiring "other information as may be required" violated the Permit Streamlining Act. However, the court found that the County's grading permit application checklist was sufficient to justify its determination that the developer's application for that permit was incomplete, including for failure to include certain "information necessary to comply with CEQA."

Tulare Lake Basin Water Storage District v. Department of Water Resources, 115 Cal. App. 5th 342 (2025)

Preliminary Geotechnical Work for Delta Project Not Subject to CEQA Piecemealing Prohibition

The Third District Court of Appeal has held that the Delta Reform Act's certification-of-consistency requirement does not incorporate CEQA's "whole-of-an-action" requirement and prohibition against piecemealing. The court reasoned that the purposes of the CEQA and the Delta Reform Act are different. While the anti-piecemealing requirement under CEQA is intended to inform and guide decision makers about all reasonably foreseeable environmental effects before project approval, the Delta Reform Act's certification of consistency is prepared and submitted after project approval and, unlike an EIR, does not serve as an informational document.

EXEMPTIONS

Krovoza v. City of Davis, ___ Cal. App. 5th (2025) ___, 2025 WL 3763554

Unusual Circumstances Exception to Categorical Exemption Not Established by Violation of Noise Ordinance.

The City of Davis decided to relocate noisy playground equipment within a park, relying on CEQA categorical exemptions. The court of appeal rejected neighbors' claims that because the equipment in its original location violated the City's noise ordinance, unusual circumstances existed that precluded application of the categorical exemptions to support the equipment's relocation.

Assuming without deciding that use of the equipment did in fact violate the noise ordinance, the court noted that that was an existing condition. The city studied three different sites within the park for relocation of the equipment; the noise study established that if the equipment were moved to Location B, noise levels at the two nearest residential boundaries would be reduced compared to operation at the existing location.

For this reason, the court found the challengers had not met their burden to establish the "unusual circumstances" exception to the categorical exemptions: (1) that the project *would* have a significant

effect on the environment; or (2) that the project had some feature distinguishing it from others in the exempt class and that there was a reasonable possibility of a significant environmental effect due to that unusual circumstance.

SIGNIFICANCE THRESHOLDS

Cleveland National Forest Foundation v. County of San Diego, 109 Cal. App. 5th 1257 (2025)

County Thresholds for Exempting Projects from Vehicle Miles Traveled Analysis Not Supported by Substantial Evidence.

A court of appeal rejected a county's effort to identify development in "infill village areas" and small developments generating fewer than 110 daily vehicle trips as exempt from VMT analysis. The court held that the county should have provided data, not mere assumptions, showing that development in the infill village areas would actually result in lower VMT; the county also erred in expanding the areas it characterized as infill even though some of those areas did not match its own infill definition.

As to the small-project threshold, the court found that the county's adoption of a statewide threshold recommendation (fewer than 110 daily trips), without any evidence as to why that threshold was appropriate specifically for San Diego County, also did not satisfy the substantial-evidence test.

NEGATIVE DECLARATIONS

Koi Nation of Northern California v. City of Clearlake, 109 Cal. App. 5th 815 (2025)

Mitigated Negative Declaration Overturned for City's Failure to Meet AB 52 Tribal Consultation Requirements

In the first published decision to overturn a project approval for failure to comply with AB 52, the First District Court of Appeal held that the City of Clearlake did not follow through on its obligations under CEQA's tribal consultation requirements. The court overturned the City's Mitigated Negative Declaration and project approvals.

AB 52 amended CEQA to require lead agencies to separately consider tribal cultural resources and to consult with tribal governments on the identification of such resources, potential impacts on the resources, and potential mitigation measures. Here, the City initiated consultation and the Tribe's designated representative responded; his responses included requests for "retention of on-site tribal cultural monitors during development and all ground disturbance activities and the adoption of a specific protocol for handling human remains and cultural resources." The City's record showed no response and the Tribe's representative learned that these measures were not part of the City's plan for the project months later, when the City released an MND that did not include the measures. The City ultimately modified the project's mitigation measures but still did not require monitoring.

The court of appeal held that the City never concluded AB 52's consultation requirements. Specifically, a consultation is considered concluded when the parties "agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource" or when a party

"acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached." Labeling the City's consultation effort "perfunctory at best," the court held that the error was prejudicial and required the City to rescind its adoption of the MND and its project approvals.

ENVIRONMENTAL IMPACT REPORTS

Center for Biological Diversity v. County of Los Angeles, 112 Cal. App. 5th 317 (2025)

Tejon Ranch EIR Overturned For Misleading Discussion of Greenhouse Gas Emissions

The Second District Court of Appeal has held that it was prejudicially misleading for a mixed-use development project EIR to offset GHG reductions from the state's cap-and-trade program against the GHG emissions that were calculated for the project itself. Whereas cap-and-trade offsets may properly be included in the CEQA analysis of a project proposed by a "covered entity" that participates in the cap-and-trade program, the court held that the same is not true for a real estate development project proposed by a non-covered entity.

The EIR's Updated GHG Table 3 estimated the project's total unmitigated greenhouse gas emissions as 157,642 metric tons of carbon dioxide equivalent per year. But in the same table, the report stated that that number was reduced to 6,834 metric tons when cap-and-trade offsets were applied. The EIR arrived at this 96-percent reduction by showing the project's net GHG emissions "at zero for each category deemed subject to the cap-and-trade program," including electric power, natural gas, and transportation fuels.

The court held that the County "failed to proceed in the manner required by law when it applied the cap-and-trade program to the Centennial project's estimated unmitigated greenhouse gas emissions, which minimized the project's environmental impact and rendered the EIR prejudicially misleading." The court reasoned that the project was not a covered entity under the cap-and-trade program and that the CEQA Guidelines' "additionality" requirement for mitigation foreclosed "applying an energy provider's or fuel supplier's obligatory cap-and-trade compliance to offset the estimated greenhouse gas emissions of a land-use project."

Save Our Access v. City of San Diego, 115 Cal. App. 5th 388 (2025)

San Diego's Approval of Ballot Initiative Raising Height Limit in Coastal Neighborhood Violated CEQA (Again)

After a previous attempt was invalidated on CEQA grounds, the City prepared and certified a Supplemental EIR (SEIR) purporting to analyze the environmental impacts of increasing the building height limit in its "Midway District" from 30 to 100 feet. In 2022 voters approved that increase. A second round of litigation ensued, in which Save Our Access argued that while the SEIR evaluated the impacts to visual resources and neighborhood character from raising the height limit, it failed to evaluate other impacts.

The Court of Appeal rejected the City's position again, identifying multiple topics—noise, air quality and greenhouse gases, biological resources, and geologic hazards—that, in its view, had not been sufficiently addressed in either the City's original program EIR or its SEIR. For example, with respect to

noise, the court determined that because the PEIR had assumed that the 30-foot height limit would remain in place, it had not assessed whether taller buildings could reflect and refract more ambient noise, or whether constructing taller buildings would itself increase noise. And with respect to air quality, the court reasoned that the program EIR had not evaluated whether taller buildings would "interact with air flow or other atmospheric conditions that help dissipate emissions or odors."

CEQA LITIGATION

Citizens for a Better Eureka v. City of Eureka, 111 Cal. App. 5th 1114 (2025)

Failure to Timely Join an Indispensable Party Identified After CEQA Suit was Filed Mandated Dismissal

A Court of Appeal upheld the dismissal of a CEQA action for failure to timely name a developer that became a real party in interest during the pendency of the action.

On April 4, 2023, the City of Eureka adopted a resolution authorizing the removal of a public garage in order to facilitate development of affordable housing, relying on a Class 12 exemption under CEQA for the disposal of surplus government property.

On May 5, CBE filed a petition challenging the April 4 Resolution, alleging the City piecemealed the project, which it characterized as including both removal of the garage and development of affordable housing, such that the project did not qualify for a Class 12 exemption.

On July 18, the City adopted a Resolution selecting the Wiyot Tribe as the "preferred proposer" for the affordable housing development, relying on CEQA sections 21159.21 and 21159.23 and CEQA Guidelines sections 15192 and 15194 to exempt the affordable housing development. On July 19, the City filed a notice of exemption listing the Tribe as the affordable housing project developer.

On December 22, the City and Tribe entered into an MOU for the affordable housing development. That same day, CBE moved for a preliminary injunction against the City to enjoin any approvals of the affordable housing development. The Tribe moved to dismiss the petition on the basis that CBE failed to join the Tribe as a necessary and indispensable party, and that the statutory date to join the Tribe had expired.

The First District relied on (1) CBE's piecemealing theory to hold that the "project" challenged comprised both the removal of the garage and the affordable housing development, and (2) the City's identification of the Tribe as the "proposed developer" of the affordable housing project on the July 19 notice of exemption.

The court reasoned that "CBE plainly knew that the redevelopment of the lot would eventually and necessarily require a developer." Accordingly, "CBE had a duty to add the Tribe, as a real party in interest, when the July notice of exemption and award of redevelopment rights took place." The issuance of successive approvals and filing of successive notices of exemption did not relieve CBE of an ongoing duty—imposed by its own legal theory—to add real parties of interest as they may be identified. The Tribe, as developer, was an indispensable party, and the time to add the Tribe had clearly run; therefore, the appropriate remedy was dismissal of the action.

CEQA Case Summaries

Long-Form Case Summaries

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CEQA IN RELATION TO OTHER STATUTES

Old Golden Oaks v. City of Amador, 111 Cal. App. 5th 794 (2025)

Catch-All Provision in County Application Checklist Violated Permit Streamlining Act

A Court of Appeal held that a provision in the County of Amador's checklist for an encroachment permit requiring "[o]ther information as may be required" violated the Permit Streamlining Act. However, the court found that the County's grading permit application checklist was sufficient to justify its determination that the developer's application was incomplete.

An applicant sought both an encroachment permit and a grading permit to grade over 50,000 cubic yards for a residential subdivision. The County deemed both applications incomplete and requested several additional items, including wastewater treatment designs, a water agency plan, an indemnity agreement and "information necessary to comply with CEQA." The applicant sued, arguing that the request for information not listed on the County's official checklists violated the Permit Streamlining Act (Gov't Code section 65920 *et seq*., the "PSA").

The PSA requires public agencies to maintain "one or more lists that shall specify in detail the information that will be required from any applicant for a development project" (Gov't Code § 65940(a)), and to "indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it." Gov't Code § 65941(a).

The County's grading permit submittal checklist required "a completed application, an erosion control plan, and a copy of right-of-way agreements." The application itself asked whether the requested permit was subject to the CEQA. The County Code specified that an application to grade over 5,000 cubic yards of soil was subject to CEQA, and separately required an indemnification agreement for CEQA projects.

The court held that these County Code provisions, specifying when CEQA would apply and requiring an indemnification agreement for projects subject to CEQA, were sufficient to support the County's determination that the grading permit application was incomplete. The County was therefore justified in requesting additional information to support its CEQA review, as well as a signed indemnification agreement. The court rejected the argument that the PSA required the County to provide applicants with "all information required for a permit on a single checklist rather than maintaining several checklists in its municipal code and local ordinances," noting that the PSA allows "one or more lists" of required information. Gov't Code § 65940(a)(1).

Further, the County was not required to "list the exact environmental information needed in its criteria for issuance of grading permits." The court agreed with the County that "it is impossible to foresee the unique environmental issues presented in each development project and to include them in a standard checklist." Such a requirement would "frustrate the agencies' authority to seek this exact information during a permit application process" under the PSA's section 65941(b) and CEQA section 21160(a).

Conversely, the court agreed with the applicant as to the encroachment permit. The application form and submittal checklist made no mention of information needed for CEQA compliance. The checklist included a "catch-all provision" listing "'[o]ther information as may be required by the director [of transportation and public works].'" In the absence of any reference to CEQA in the checklist or County Code, this catch-all provision was insufficient to support a County determination that an encroachment application was incomplete for failing to include CEQA-related information.

Tulare Lake Basin Water Storage District v. Department of Water Resources, 115 Cal. App. 5th 342 (2025)

Preliminary Geotechnical Work for Delta Project Not Subject to CEQA Piecemealing Prohibition

The Third District Court of Appeal has held that the Delta Reform Act's certification-of-consistency requirement does not incorporate CEQA's whole-of-an-action requirement and prohibition against piecemealing.

The California Department of Water Resources commenced preconstruction geotechnical work for the Delta Conveyance Plan, a major proposed water tunnel through the Sacramento-San Joaquin Delta. Plaintiffs challenged the project, claiming that DWR was required to obtain a Delta Plan consistency certification under the Sacramento-San Joaquin Delta Reform Act before conducting geotechnical work. Plaintiffs also claimed that DWR's actions and attempt to separate the geotechnical work from the rest of the Project violated the Delta Reform Act and ran afoul of CEQA's prohibition against piecemealing.

The Court of Appeal held that CEQA's prohibition against piecemealing is not incorporated into the Delta Reform Act's certification-of-consistency requirement, and DWR was not prevented from treating the preconstruction geotechnical work as separate and distinct from the tunnel project. DWR was therefore not required to submit a consistency certification to the Delta Stewardship Council (the state agency responsible for implementing the Delta Plan) because while the tunnel project was a covered action under the Delta Reform Act, the geotechnical work itself was not. The court reasoned that the purposes of the CEQA and the Delta Reform Act are different. While the anti-piecemealing requirement under CEQA is intended to inform and guide decision makers about all reasonably foreseeable environmental effects before project approval, the Delta Reform Act's certification of consistency is prepared and submitted after project approval and, unlike an EIR, does not serve as an informational document. The certification instead confirms that the covered action is consistent with the Delta Plan.

In reaching its decision, the court gave great weight to the Delta Stewardship Council's interpretation of the Delta Reform Act and its conclusion that the geotechnical work was not a covered action under the Act. The Council had reasoned that the scope of a CEQA project was not necessarily coextensive with the scope of a covered action under the Delta Reform Act, and that a covered action may only be a subset of activity or multiple activities or sub-projects within a single project for CEQA. According to the Council, a public agency need only submit a certification of consistency for an activity that may cause a direct physical change or reasonably foreseeable indirect physical change in the environment, and the activity (1) will occur within the boundaries of the Delta or Suisun Marsh, (2) will be carried out, approved, or funded by the agency, (3) will be covered by one or more provisions of the Delta Plan, and (4) will significantly impact one or both of the Delta Reform Act's coequal goals. Agreeing with this interpretation, the court held that preconstruction geotechnical work was not covered by any Delta Plan regulatory policies and was therefore not a covered action within the meaning of the Delta Reform Act.

EXEMPTIONS

Krovoza v. City of Davis, ___ Cal. App. 5th ___ (2025), 2025 WL 3763554

Unusual Circumstances Exception to Categorical Exemption Not Established by Violation of Noise Ordinance

In May 2019, the City of Davis installed new playground equipment, a "Sky Track", at Arroyo Park. Residential neighbors complained about the noise generated by its use. The City commissioned a noise study that measured

the noise generated by the equipment at its location and at the two nearest residential boundaries to the Park. Those measurements were interpreted by the noise consultant to establish that use of the Sky Track would not violate the City's noise ordinance during the day, "but exceeded the noise threshold at night." The City posted signs stating the Sky Track was "open for use between 8 a.m. and sunset daily," installed noise mitigation modifications to the equipment and directed staff to lock the Sky Track so that it could not be used outside of the allowed hours. However, the locking mechanism was vandalized, and staff did not always carry out their locking and unlocking duties.

The City commissioned a second noise study to explore relocation of the equipment, with measurements taken of the noise levels from operation of the Sky Track at its existing location and at the same two nearest residential boundaries to the Park. That second study "concluded the noise levels associated with the *existing* operation of the Sky Track exceed both the City's day and night noise ordinance standards under certain circumstances." The City responded by closing the Sky Track until it could be relocated.

The study also analyzed anticipated noise levels from the Sky Track at three different, alternative locations within the Park. Noise levels from operation of the Sky Track at Location B, the selected location, were predicted to be lower at the two nearest residential boundaries as compared to operation at the existing location, and within the range of noise "generally equated with a refrigerator humming."

In August 2022, the City Council approved relocation of the Sky Track to Location B and filed a notice of exemption from CEQA, listing three categorical exemptions: Class 3 (new construction, installation or conversion of small structures, facilities or equipment); Class 4 (minor alterations to land, water or vegetation); and Class 11 (construction or placement of accessory structures).

Petitioners challenged the notice of exemption on the basis that the unusual circumstances exception applied.

The Court of Appeal held that Petitioners failed to meet their "burden of producing evidence supporting an exception," citing *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086, 1105 (2015). Under *Berkeley Hillside*, the unusual circumstances exception will disallow reliance on a categorical exemption if it can be shown either (1) "*with evidence* that the project *will* have a significant effect on the environment" or (2) "the project has some feature that distinguishes it from others in the exempt class, such as it size or location" and there is "a reasonable possibility of a significant effect [on the environment] due to that unusual circumstance."

Under the first test for unusual circumstances, Petitioners asserted that the City's own acoustic studies established that the Sky Track in its new location would violate the City's noise ordinance and that this violation constituted a significant effect on the environment. The court, assuming without deciding that the ordinance would be violated, agreed with the City that "a project's violation of its noise ordinance standing alone cannot constitute substantial evidence that the project *will* have a significant noise impact."

The court explained that the significant effect that Petitioners bore the burden of demonstrating "must be an adverse change in the environment." "Thus, the exception does not apply if the project causes no change from existing baseline physical conditions … or if the change in the environment is not adverse." Here, the record evidence was "that noise impacts will *decrease* following relocation of the Sky Track." Thus, an asserted "violation of the ordinance alone, without more, does not constitute substantial evidence that the project will have a significant impact on the environment."

Under the second test for unusual circumstances, the court rejected Petitioners' argument that non-expert public comments – mostly consisting of their own complaints about noise from Sky Track use at its existing location – and isolated staff comments, including the City Attorney commenting "that it would be unusual to conduct additional environmental review of a facility of the Sky Track's size", constituted substantial evidence

that Sky Track would increase noise levels as compared to baseline conditions at its new location, and thus Petitioners could not show with substantial evidence that a fair argument of a significant effect on the environment.

The City's acoustic studies also did not constitute substantial evidence supporting a fair argument of a significant effect on the environment, as they established that noise impacts at nearby residences would lessen once the Sky Track was relocated, as compared to its operation at its initial location. The court declined to entertain Petitioners' speculative extrapolations from the City's noise studies, which would require that the court "infer findings from evidence where there is no basis for doing so."

Lastly, the court rejected Petitioners' authorities for the proposition that the City was required to "consider the existing ambient noise environment" in order to determine whether relocation of the Sky Track would "result in a substantial increase in ambient noise levels." The authorities purportedly mandating this more stringent inquiry all concerned non-exempt projects. Here, the court explained, relocation of the Sky Track is exempt from CEQA. "Accordingly, a public agency need not conduct an initial study or any specific studies to determine whether a project is exempt from CEQA review, as to either the regulatory [i.e., categorical] exemptions or the regulatory exceptions to the exemptions."

SIGNIFICANCE THRESHOLDS

Cleveland National Forest Foundation v. County of San Diego, 109 Cal. App. 5th 1257 (2025)

County Thresholds for Exempting Projects from Vehicle Miles Traveled Analysis Not Supported by Substantial Evidence.

In 2013, the state legislature shifted the metric used to assess transportation-related environmental impacts under CEQA from traffic congestion and automobile delays to vehicle miles traveled (VMT). The CEQA Guidelines and the Governor's Office of Planning and Research ("OPR") set forth guidance for adopting these standards.

In 2022, the County adopted a Transportation Study Guide, implementing the changes to transportation analysis set out by the state. The County included thresholds of significance for transportation impacts to be used in completing CEQA analysis. At issue on appeal were the thresholds of significance set by the County for infill development and small projects.

The County's infill threshold focused on the location of the development, identifying certain "infill village areas" where projects would be exempt from VMT analysis. The County's small-project threshold was set at projects that generated fewer than 110 daily vehicle trips. For projects that met either the infill or the small-project thresholds, there would be a presumed finding of no significant impact and thus no VMT analysis required under CEQA.

Plaintiffs challenged both thresholds, arguing they were based on unsupported assumptions and that the infill threshold did not set a numeric VMT target.

The court found that while County could set a qualitative (as opposed to quantitative) infill threshold, substantial evidence did not support the use of the threshold in this instance. The County relied on several unsubstantiated assumptions that development in more dense areas, such as infill development, did not significantly impact VMT. The County should, instead, have provided data showing that development in the designated areas would

actually result in lower VMT to meet the substantial-evidence standard. The County also expanded the areas characterized as infill even though some of those areas did not match its infill definition.

As to the small-project threshold, the court found that the County adoption of OPR's threshold recommendation without any evidence as to why it was appropriate specifically for San Diego County did not satisfy the substantial-evidence requirement. The court stated that OPR's small project threshold was developed by evaluating projects across the state, and that specific analysis for San Diego County should have been conducted to support the 110-trip threshold.

NEGATIVE DECLARATIONS

Koi Nation of Northern California v. City of Clearlake, 109 Cal. App. 5th 815 (2025)

Mitigated Negative Declaration Overturned for City's Failure to Meet AB 52 Tribal Consultation Requirements

In the first published decision to overturn a project approval for failure to comply with AB 52, the First District Court of Appeal held that the City of Clearlake did not follow through on its obligations under CEQA's tribal consultation requirements. The court overturned the City's Mitigated Negative Declaration and project approval but did not accept the Tribe's invitation to require an EIR.

AB 52, enacted in 2014, amended CEQA to require lead agencies to separately consider tribal cultural resources and to consult with tribal governments on the identification of such resources, potential impacts on the resources, and potential mitigation measures. Here the City initiated consultation with the Koi Nation in relation to a proposed hotel and roadway extension project. The Tribe's designated representative responded, coordinated with the applicant's archaeologist, and requested mitigation measures that included "retention of on-site tribal cultural monitors during development and all ground disturbance activities and the adoption of a specific protocol for handling human remains and cultural resources." The City's record showed no response and the Tribe's representative learned that these measures were not part of the City's plan for the project months later, when the City released an MND that did not include the measures.

The Tribe did not comment on the MND during the CEQA comment period or object at the planning commission hearing on the project; the Tribe did appeal the planning commission's adoption of the MND and approval of the project. The city council ultimately modified the project's mitigation measures but still did not require monitoring.

The Tribe sued and the court of appeal, unanimously reversing the trial court's decision, held that the City never concluded AB 52's consultation requirements. Specifically, a consultation is considered concluded when the parties "agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource" or when a party "acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached." Labeling the City's consultation effort "perfunctory at best," the court held that the error was prejudicial and required the City to rescind its adoption of the MND and its project approvals.

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The Second District Court of Appeal has held that it was prejudicially misleading for a mixed-use development project EIR to offset GHG reductions from the state's cap-and-trade program against the GHG emissions that were calculated for the project itself. Whereas cap-and-trade offsets may properly be included in the CEQA analysis of a project proposed by a "covered entity" that is part of the cap-and-trade program, the court held that the same is not true for a real estate development project proposed by a non-covered entity.

The County's EIR analyzed the Centennial Specific Plan, which is the latest iteration of a long-debated development proposed for the Tejon Ranch in Antelope Valley. The Specific Plan calls for development of 19,333 residential units, along with business, commercial, and industrial uses, on about 7,000 acres of the ranch. The County approved the project in 2019 and three environmental organizations sued, alleging a wide array of CEQA defects. The published portion of the court of appeal's decision concerns only the petitioners' challenges to the EIR's GHG analysis.

The EIR's Updated GHG Table 3 estimated the project's total unmitigated greenhouse gas emissions as 157,642 metric tons of carbon dioxide equivalent per year. But in the same table, the report stated that that number was reduced to 6,834 metric tons when cap-and-trade offsets were applied. The EIR arrived at this 96-percent reduction by showing net GHG emissions "at zero for each category deemed subject to the cap-and-trade program," including electric power, natural gas, and transportation fuels.

The court held that the County "failed to proceed in the manner required by law when it applied the cap-and-trade program to the Centennial project's estimated unmitigated greenhouse gas emissions, which minimized the project's environmental impact and rendered the EIR prejudicially misleading." The court reasoned that the project was not a covered entity under the cap-and-trade program and that the CEQA Guidelines' "additionality" requirement for mitigation foreclosed "applying an energy provider's or fuel supplier's obligatory cap-and-trade compliance to offset the estimated greenhouse gas emissions of a land-use project."

Save Our Access v. City of San Diego, 115 Cal. App. 5th 388 (2025)

San Diego's Approval of Ballot Initiative Raising Height Limit in Coastal Neighborhood Violated CEQA (Again)

Twice in the past five years, San Diego voters have approved ballot initiatives seeking to raise the 30-foot height limit for buildings in the city's Midway-Pacific Highway Community Planning Area (often referred to as the Midway district). With the Fourth District Court of Appeal's recent decision in Save Our Access v. City of San Diego (Save Our Access II), the courts have twice invalidated those efforts for failure to comply with CEQA. The decision serves as a cautionary tale to cities and counties contemplating ballot initiatives that would loosen local zoning restrictions.

In 1972, San Diego voters enacted an ordinance capping building height to 30 feet within the City's Coastal Zone, seeking to preserve coastal views and limit density. One of the neighborhoods in which that height restriction applies is the Midway district. Home to an aging sports arena, a handful of strip malls, and some light industrial sites, the Midway has long been targeted as a prime candidate for redevelopment, particularly given its close proximity to downtown, the airport, and beaches.

To facilitate that redevelopment effort, San Diego voters in 2020 approved a ballot measure eliminating the 30-foot height limit in the Midway district. For CEQA purposes, the city sought to rely on a 2018 Program EIR (PEIR) that had been certified for a community plan update. An anti-development group called Save Our Access sued, arguing that the CEQA analysis in that document was inadequate because it did not envision raising the height limit. The trial court agreed, and the Court of Appeal affirmed. See Save Our Access v. City of San Diego, 92 Cal. App. 5th 819 (2023) (Save Our Access I).

While that appeal was pending, the City prepared and certified a Supplemental EIR (SEIR) and in 2022 voters approved a second ballot measure to remove the height limit. Save Our Access again sued, arguing that while the SEIR evaluated the impacts to visual resources and neighborhood character from raising the height limit, it failed to evaluate other impacts. The trial court rejected that claim, but in Save Our Access II, the Court of Appeal reversed, invalidating the result at the ballot box a second time on CEQA grounds.

The Court of Appeal faulted the city for wrongly assuming that the prior PEIR had adequately covered all environmental issues other than visual impacts and neighborhood character. The court identified multiple topics—noise, air quality and greenhouse gases, biological resources, and geologic hazards—that, in its view, had not been sufficiently addressed in either the PEIR or the SEIR. For example, with respect to noise, the court determined that because the PEIR had assumed that the 30-foot height limit would remain in place, it had not assessed whether taller buildings could reflect and refract more ambient noise, or whether constructing taller buildings would itself increase noise. And with respect to air quality, the court reasoned that the PEIR had not evaluated whether taller buildings would "interact with air flow or other atmospheric conditions that help dissipate emissions or odors."

Before issuing its opinion, the Court of Appeal had invited the parties to submit supplemental briefs explaining whether recent legislative changes to CEQA in Assembly Bill 130 and Senate Bill 131 affected the appeal. It concluded they did not, because those measures do not encompass "removal of the height limit for an entire planning area." The opinion thus sends a clear signal that amendments to CEQA aimed at housing infill do not automatically immunize broad regulatory or zoning changes from full CEQA review when significant unexamined impacts remain.

For land-use practitioners, housing developers, and local governments across California, the decision has several notable implications.

First, and perhaps most significantly, it underscores the importance of properly evaluating changed circumstances when relying on prior environmental documents such as a PEIR. When a previously certified EIR assumed one regulatory framework, such as a 30-foot height limit, a change to that framework may require not only a supplemental or subsequent EIR to address matters that were omitted from the PEIR entirely, but also an updated analysis of matters that were addressed in the PEIR but are affected by the changed circumstances. Save Our Access II applies a fairly rigorous form of scrutiny to the city's conclusion that the assumptions underlying the PEIR would remain valid even with the 30-foot height limit removed. If other courts follow that approach, it could significantly lessen the benefit (in the form of time and cost savings) of tiering off an earlier environmental document if some of the relevant conditions have changed.

Second, the opinion squarely holds that the new CEQA exemption for infill housing created by AB 130 applies only at a project-level basis, not to broader regulatory actions such as removing a height limit, even if many (or potentially even all) of the individual projects that the regulatory action will facilitate are themselves infill housing developments covered by AB 130. That holding could ensnare cities and counties that seek to align their zoning laws with AB 130. A CEQA analysis would still be necessary for those changes to local housing policy, even if the individual projects themselves would be exempt from CEQA.

Third, other state laws are likely to ameliorate some, but not all, of the effects of Save Our Access II. For example, the Density Bonus Law, Cal. Gov. Code §§ 65915-65918, provides additional height, density, and concession incentives for qualifying affordable housing projects. It generally preempts local zoning regulations, including height limitations, to the extent they would preclude construction of a project that qualifies for the law's benefits. But the height limit would still apply to projects that do not include the number and type of affordable-housing units necessary to qualify for the Density Bonus Law. Only a validly enacted measure repealing the height limit can negate all of its effects.

Finally, the broader context here is also worth noting. City officials in San Diego placed the 2020 initiative on the ballot without preparing any EIR, and then in 2022 certified the SEIR that addressed only the visual resources and neighborhood character issues, in order to place a second initiative on the ballot that same year, all while the initial round of litigation was still pending. It is difficult to avoid the conclusion that the Court of Appeal viewed the city's entire process as sloppy and rushed, which may well have colored the court's ultimate conclusion in both of the Save Our Access cases.

CEQA LITIGATION

Citizens for a Better Eureka v. City of Eureka, 111 Cal. App. 5th 1114 (2025)

Failure to Timely Join an Indispensable Party Identified After CEQA Suit was Filed Mandated Dismissal

The Court of Appeal upheld the dismissal of a CEQA action for failure to timely name a developer that became a real party in interest during the pendency of the action.

On April 4, 2023, the City of Eureka adopted a resolution authorizing the removal of a public garage in order to facilitate development of affordable housing, relying on a Class 12 exemption under CEQA for the disposal of surplus government property.

On May 5, CBE filed a petition challenging the April 4 Resolution, alleging the City piecemealed the project, which CBE characterized as including both removal of the garage and development of affordable housing, such that the project did not qualify for a Class 12 exemption.

On July 18, the City adopted a Resolution selecting the Wiyot Tribe as the "preferred proposer" for the affordable housing development, relying on CEQA sections 21159.21 and 21159.23 and CEQA Guidelines sections 15192 and 15194 to exempt the affordable housing development. On July 19, the City filed a notice of exemption listing the Tribe as the affordable housing project developer.

On December 22, the City and Tribe entered into an MOU for the affordable housing development. That same day, CBE moved for a preliminary injunction against the City to enjoin any approvals of the affordable housing development.

On February 9, 2024, the Tribe moved to dismiss the petition on the basis that CBE failed to join the Tribe as a necessary and indispensable party, and that the statutory date to join the Tribe had expired.

The First District relied on (1) CBE's piecemealing theory to hold that the "project" challenged comprised both the removal of the garage and the affordable housing development, and (2) the City's identification of the Tribe as the "proposed developer" of the affordable housing project on the July 19 notice of exemption.

The court reasoned that "CBE plainly knew that the redevelopment of the lot would eventually and necessarily require a developer." Accordingly, "CBE had a duty to add the Tribe, as a real party in interest, when the July

notice of exemption and award of redevelopment rights took place." The issuance of successive approvals and filing of successive notices of exemption did not relieve CBE of an ongoing duty—imposed by its own legal theory—to add real parties of interest as they may be identified. The Tribe, as developer, was an indispensable party, and the time to add the Tribe had clearly run; therefore, the appropriate remedy was dismissal of the action. A court of appeal held a CEQA challenge time-barred because it was not commenced within 30 days after a Notice of Determination (NOD) was filed for approval of a subdivision map based upon a Mitigated Negative Declaration (MND). The fact that the map and its vested rights were conditioned upon a later rezoning did not change that conclusion. Similarly, the fact that the city re-adopted the MND for each project approval was not dispositive. "It is the first approval that triggers the running of the statute of limitations, and later approvals do not restart the statute of limitations clock."

Developers proposed 42 homes on a parcel in Los Angeles. The project included a vesting subdivision map and a rezoning ordinance. In March of 2020, the city adopted an MND for the project, approved the vesting tentative map, and filed an NOD. In May of 2020, the city again adopted the MND, approved some retaining walls, and filed a second NOD. More than a year later, in June of 2021, the city again adopted the MND, rezoned the site, and filed a third NOD.

Project opponents filed suit on July 16, 2021, alleging CEQA claims. They argued their petition was timely because it was filed within 30 days of the third NOD. The appellate court disagreed, ruling that the suit was barred because it was not commenced within 30 days of the first NOD.

The court focused on CEQA's directive that an agency must conduct environmental review at the earliest feasible opportunity, which occurs when an agency commits to a project. It found that the city made its earliest firm commitment to the project when it approved the tentative map. Neither the conditions attached to the map nor the fact that rights would not vest until the rezoning was complete were relevant. Delaying vested rights impacts only the developer's protection against subsequent changes in local regulations; it does not affect the conclusion that approval of the tentative map constituted a project approval under CEQA. The court also rejected arguments based upon the city's re-adoption of the MND, reasoning that "because there [had] been no changes to the project requiring a subsequent or supplemental MND, the later adoptions of the same MND [could not] restart or retrigger a new limitations period."

2025 Year in Review: Wetlands, Species, and Federal Environmental Review

Perkins Coie

Clean Water Act, Endangered Species, Act and National Environmental Policy Act
2025 Federal Regulatory Changes

	Pre-Existing Regulations	New Regulations	Notes
Clean Water Act			
U.S. Army Corps of Engineers & U.S. Environmental Protection Agency **Definition of "Waters of the United States"** **33 C.F.R. § 328.3** **40 C.F.R. Part 120**	88 Fed. Reg. 61,964 (Sept. 8, 2023) September 2023 "Conforming Rule" – designed to conform to Supreme Court's ruling in *Sackett v. EPA*, 598 U.S. 651 (2023) Five categories of jurisdiction 1. Traditional navigable waters, territorial seas, and all interstate waters 2. Impoundments of jurisdictional waters 3. Tributaries that are relatively permanent 4. Adjacent wetlands (with adjacent defined as "having a continuous surface connection" to another jurisdictional water) 5. Intrastate lakes and ponds, not otherwise jurisdictional, with a continuous surface connection to another jurisdictional water Eight categories of jurisdictional exclusions	90 Fed. Reg. 52,498 (Nov. 20, 2025) Proposed regulation Would eliminate automatic jurisdiction for "interstate waters" – would need to meet another jurisdictional category. Would define "relatively permanent" as "standing or continuously flowing bodies of surface water that are standing or continuously flowing year-round or at least during the wet season" Would define "continuous surface connection as "having surface water at least during the wet season and abutting (i.e., touching) a jurisdictional water" Would define tributary as: "a body of water with relatively permanent flow, and a bed and banks, that connects to a downstream traditional navigable water or the territorial seas, either directly or through one or more waters or features that	Would build on the *Sackett* decision to substantially reduce federal jurisdiction even further. California retains state law jurisdiction over broadly defined "waters of the state" under the Porter-Cologne Water Quality Control Act Thus, the trend will continue of shifting permitting authority and responsibility from the Army Corps to the Regional Water Boards Need to consult State Water Resources Control Board, "State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State" (Apr. 2, 2019, revised Apr. 6, 2021) - this is the set of governing state regulations Note that the North Coast and San Francisco Regional

	Pre-Existing Regulations	New Regulations	Notes
		convey relatively permanent flow. A tributary does not include a body of water that contributes surface water flow to a downstream jurisdictional water through a feature such as a channelized non-jurisdictional surface water feature, subterranean river, culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, wetland, or similar natural feature, if such feature does not convey relatively permanent flow." Exclusions: would codify the definitions for "waste treatment systems" and "prior converted cropland;" broaden the exclusion for ditches to cover any ditch "constructed or excavated entirely in dry land"; and codify a new exemption for "groundwater, including groundwater drained through subsurface drainage systems"	Water Boards can be particularly stringent in asserting state law jurisdiction and regulating projects affecting "waters of the state"

	Pre-Existing Regulations	New Regulations	Notes
Endangered Species Act			
Both Services (U.S. Fish and Wildlife Service & National Marine Fisheries Service) **Listing and Delisting of Species, Designation of Critical Habitat** **50 C.F.R. Part 424**	89 Fed. Reg. 24,300 (Apr. 5, 2024)	90 Fed. Reg. 52,607 (Nov. 21, 2025) Proposed regulation	
	Listing decisions must be made "solely on the basis of the best available scientific and commercial information regarding a species' status *without reference to possible economic or other impacts of such determination*"	Would delete the italicized text	The proposed change would not affect the statutory requirements, which prohibit consideration of economic impacts, but it would nevertheless allow for economic impacts to be documented as part of the administrative record for a listing decision
	Defines "reasonably foreseeable" as extending "as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species' responses to those threats"	Would define "reasonably foreseeable" as extending "only as far into the future as the Services can reasonably determine that both the future threats and the species' response to those threats are likely"	This would be a significant change in terms of how threats to species due to climate change are considered in listing decisions
	There are four grounds for delisting: (1) the species is extinct; (2) the species has recovered; (3) new information shows the species does not meet the definition of an endangered or threatened species; and (4) new information shows that the listed entity does not meet the definition of a species	Would eliminate the requirement for "new information" Would consolidate (2) and (3) into one ground: where the species "does not meet the definition of an endangered species or a threatened species." Would clarify that the same factors and standards that apply to listing decisions also apply to delisting	The proposed changes would likely make it easier to delist species as compared to historic practice

	Pre-Existing Regulations	New Regulations	Notes
	Limits the grounds for determining when it is not prudent to designate critical habitat	Broadens the grounds for determining when it is not prudent to designate critical habitat, including (1) where threats to species stem solely from causes that cannot be addressed through Section 7 consultation; (2) adding a catch-all provision: when the Service "otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available"	The proposed changes would make it easier for the Services to decline to make a critical habitat designation for a listed species based on the finding that the designation is not prudent
	Broadens the circumstances for including in a critical habitat designation those areas that are unoccupied by the species but that are deemed essential for the conservation of the species	Unoccupied areas could be considered for a critical habitat designation *only* when (1) the occupied areas are inadequate to ensure the conservation of the species; *and* (2) there is a "reasonable certainty" *both* that the unoccupied areas (i) would contribute to the conservation of the species, *and* (ii) contain one or more of the physical and biological features that are essential to the conservation of the species	The proposed change would make it more difficult to include, and easier to exclude, unoccupied areas as part of a critical habitat designation

	Pre-Existing Regulations	New Regulations	Notes
Both Services **Section 7 Consultation** **50 C.F.R. Part 402**	89 Fed. Reg. 24,268 (Apr. 5, 2024)	90 Fed. Reg. 52,600 (Nov. 21, 2025) Proposed regulation	
	Revised the 2019 definitions of "effects of the action" and "environmental baseline"	Would restore the 2019 definition of "effects of the action" and would revise the 2024 definition of "environmental baseline"	The definitional changes would be mostly for clarification purposes
	Provides that offsite mitigation (e.g., offsets) may be required to minimize the impacts from a take of a listed species	Would delete this new requirement	The proposed change would limit the type and scope of mitigation that could be required to minimize the impacts from a take of a listed species
	Rescinded the restrictive definitions from 2019 of the phrases "reasonably certain to occur" and "consequences caused by the proposed action"	Would reinstate the 2019 definitions	The proposed change would limit the scope of impacts that need to be considered as part of the Section 7 consultation process
U.S. Fish and Wildlife Service Only **Exclusions from Critical Habitat Designations** **50 C.F.R. Part 17**	87 Fed. Reg. 82,376 (July 21, 2022)	90 Fed. Reg. 52,592 (Nov. 21, 2025) Proposed regulation	
	Rescinded 2020 regulations and restored agency practice under a 2016 policy, which affords substantial discretion in determining whether any particular area should be excluded from a critical habitat designation based on the economic or other impacts to that area that could result from the designation	Would reinstate the 2020 regulations to establish a framework and standards for determining when an area is to be excluded from a critical habitat designation Service would be required to conduct an exclusion analysis when the proponent for excluding the area has presented “credible information” regarding	Would make it easier to exclude areas from critical habitat designations and more difficult for the Service to deny exclusion requests

	Pre-Existing Regulations	New Regulations	Notes
		"the existence of a meaningful economic or other relevant impact" on the area that would result from a critical habitat designation Exclusion analysis would be required to "give weight" to those with "firsthand information" about such impacts (e.g., impacts identified by state and local governments; federal lands permittees, lessees, contractors; Indian tribes; etc.) Service would be required to grant an exclusion if "the benefits of excluding a particular area from critical habitat outweigh the benefits of specifying that area as part of the critical habitat," unless the exclusion would result in the extinction of the species	
U.S. Fish and Wildlife Service Only **Section 4(d) "Blanket Rule"** **50 C.F.R. §§ 17.31, 17.71**	89 Fed. Reg., 23,919 (Apr. 5, 2024) "Threatened" species automatically receive same level of protection as "endangered" species (unless the Service affirmatively adopts a species-specific rule providing for a lesser level of protection)	90 Fed. Reg. 52,587 (Nov. 21, 2025) Proposed regulation Would delete this "blanket rule," and each "threatened" species would be subject to its own species-specific rule to define the applicable level of protection	Full protection of "threatened" species would no longer be automatic Need to check each "threatened" species to determine the applicable level of protection

	Pre-Existing Regulations	New Regulations	Notes
Both Services **Definition of "Harm"** **50 CFR Parts 17, 222**	Longstanding definition of "harm" upheld in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995) ESA defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' Regulations define "harm" as "an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering''	90 Fed. Reg. 16,102 (Apr. 17, 2025) Proposed regulation Would rescind the longstanding regulatory definition of "harm" in its entirety without providing any replacement definition This rescission is based on the position that "take" should include only an affirmative act that is directed intentionally against a listed species--not an act or omission that indirectly and accidentally causes injury or death	Would significantly reduce ESA enforcement against development projects that only indirectly and accidentally causes injury or death to a listed species by modifying the species' habitat Note that California passed legislation (AB 1319) to strengthen the state law protections for federally-listed species that encounter reduced protection under the ESA
MIGRATORY BIRD TREATY ACT			
United States Department of the Interior **Solicitor Memorandum**	Memo M-37065 (Mar. 8, 2021) withdrew prior Memo M-37050 (Dec. 22, 2017) The December 2017 Memo stated the federal government's position that the MBTA prohibits only the intentional take of migratory birds, not incidental take The December 2017 Memo withdrew a previous memo (M-	Memo M-37085 (Apr. 11, 2025) reinstated the position that the MBTA prohibits only the intentional take of migratory birds The 2025 Memo withdrew the 2021 Memo and reinstated the December 2017 Memo	Yet another example of regulatory back-and-forth under changing presidential administrations Note that provisions of the California Fish & Game Code protect against both intentional and incidental take -- another example of California using its state law authority to fill in the gaps in federal law

	Pre-Existing Regulations	New Regulations	Notes
	37041), which took the position that the MBTA prohibits both incidental take of migratory birds		created by receding federal agency jurisdiction
NATIONAL ENVIRONMENTAL POLICY ACT			
Council on Environmental Quality **40 CFR Part 1508**	The regulations were first adopted in 1978, with minor amendments in 1986, a substantial overhaul in 2020, and then substantial revisions to the 2020 regulations made in two phases in 2022 and 2024	91 Fed. Reg. 618 (Jan. 8, 2026) Final regulation The new final regulation rescinds the CEQ's NEPA regulations in their entirety	Instead of uniform nationwide NEPA regulations, each federal agency that implements NEPA will now have its own set of regulations, with CEQ providing guidance and coordination Therefore, have to check each applicable federal agency's NEPA procedures, regulations, policies, handbooks, guidance, etc. The intent is to simplify and streamline the NEPA process, but this fundamental change may create more confusion and delay Substantively, the biggest changes relate to the scope of the impact analysis, climate change, environmental justice, cumulative impacts, and whether Draft EISs will be provided for public comment prior to the Final EIS Note, however, that NEPA's statutory requirements, as interpreted by the courts, continue to govern even in the

	Pre-Existing Regulations	New Regulations	Notes
			absence of the CEQ's regulations

Speakers

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An authority on real estate and land use law, Cecily counsels developers, landowners, and public agencies on complex legal and regulatory challenges associated with acquisition, entitlement, and development of land throughout California.

Cecily Barclay advises clients on land use and entitlements, real estate acquisition and development, and local government law matters. She assists with land use application processing, drafting and negotiating purchase and sale agreements, and negotiating and securing the approval of development agreements. She also handles general plan amendments, annexations, initiatives and referendums, and tentative and final subdivision maps.

Cecily's projects include redevelopment of land for market rate and affordable housing, life science campuses, hotels and resorts, and transit-oriented mixed-use development projects. She has significant experience in processing entitlements for redevelopment and expansion of regional retail centers, resort hotels, entertainment centers, biotech/R&D campuses, large mixed-use master-planned communities, and multifaceted reuse of former military facilities and other infill development sites. Her work involves advising on land use initiatives, negotiating school fee mitigation agreements, preparing conservation easements to mitigate for loss of biological resources, and drafting affordable housing programs, Williamson Act contracts, and related issues pertaining to agricultural properties.

Cecily is a lead author of Curtin's California Land Use & Planning Law, a publication summarizing the major provisions of California's land use and planning laws. Cecily also co-authored Development by Agreement, an ABA publication providing a national analysis of laws and practices concerning various forms of development agreements. She regularly speaks and writes on topics involving land use and local government law, including programs and articles for the American Bar Association, American Planning Association, Urban Land Institute, and other state and national associations and conferences.

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An authority on state and federal environmental law, Marc supports private and public sector clients in coordinating comprehensive regulatory compliance.

Marc Bruner represents governmental entities and private companies in a wide variety of environmental matters. He regularly works with clients in resolving complex compliance issues under the federal Clean Water Act, the California Porter-Cologne Water Quality Control Act, the federal and California Endangered Species Acts, the National Environmental Policy Act, the California Environmental Quality Act, the California Integrated Waste Management Act, and the full array of California laws and regulations governing water supply, air quality, coastal development, development along the banks of streams and rivers, historic resources, and the management and disposal of solid and hazardous wastes.

Marc is particularly well-versed in the rules and regulations governing the management of industrial, municipal, and construction stormwater and the treatment and discharge of process wastewater under federal National Pollutant Discharge Elimination System permits and state law waste discharge requirements. He has extensive knowledge of the current regulatory landscape and the proceedings of the State Water Resources Control Board and the California Regional Water Quality Control Boards.

Marc is co-author of the chapters covering wetlands and endangered species in Curtin's California Land Use and Planning Law, a leading treatise routinely relied upon by landowners, developers, and local governments throughout the state.

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Michelle advises clients on land use entitlements, environmental compliance, and real estate transactions.

Michelle Chan represents developers, landowners, and public agencies at all stages of project development, including mixed-use, commercial, and residential projects throughout California. She helps clients secure land use approvals such as general plan amendments, specific plans, zoning, and subdivision map approvals. Michelle also drafts and negotiates purchase and sale agreements, development agreements, leases, easements, licenses, and related transactional documents and agreements.

Michelle regularly advises clients on compliance with the California Environmental Quality Act and represents clients at public hearings to obtain land use approvals. She defends entitlements in litigation. Her current work involves the redevelopment of regional retail centers, transit-oriented mixed-use development projects, large mixed-use master-planned communities, and high-density residential projects.

In her active pro bono practice, Michelle represents clients seeking asylum and assists local nonprofit organizations.

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Garrett counsels clients across multiple industries in the development of complex land use and energy projects throughout California.

Representing developers, financial institutions, landowners, energy companies, and public agencies, Garrett Colli assists clients with land use and environmental matters.

Garrett coordinates and then successfully implements land use entitlement and environmental compliance strategies for residential, commercial, industrial, and renewable energy projects. He also negotiates purchase and sale agreements, leases, easements, and related transactional documents in support of development projects, with an emphasis on post-entitlement project implementation and the use of streamlining mechanisms. Garrett has deep experience in subdivision mapping, street and utility construction and dedication, and negotiation of related agreements with public agencies and utilities.

Garrett regularly advises clients regarding California Environmental Quality Act (CEQA) compliance and secures approvals under the Subdivision Map Act, the Clean Water Act, and the Federal Land Policy Management Act. He frequently represents clients at public hearings to obtain zoning approvals and has also defended clients in regulatory enforcement proceedings, including actions by the U.S. Environmental Protection Agency, regional water quality boards, and local agencies.

Garrett represents major mixed-use developers of projects in the Bay Area encompassing more than 20,000 units of housing with related commercial and retail components, among other projects. He also represents major energy companies in solar; wind; battery storage; and transmission project permitting, development, acquisition, and disposition.

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Matt provides strategic guidance to clients navigating California's complex development process.

Matt Gray handles land use entitlement processing, environmental compliance, and real estate transactions for developers, landowners, and local agencies. He negotiates and secures approval of development agreements, general plan amendments, specific plans, zoning, subdivision approvals, and annexation of property into cities and special districts; regularly appears before planning commissions and city councils; and advises clients on compliance with the California Environmental Quality Act and other federal and state regulations.

Matt develops and implements strategies for leveraging California's housing and development streamlining laws; negotiates affordable housing agreements, mitigation fee agreements, and conservation easements; advises clients on issues relating to water supply; and uses the initiative and referendum process in the land use planning context. Additionally, he negotiates purchase and sale agreements; site development agreements; covenants, conditions, restrictions, and easement agreements; and related transactional documents in connection with mixed-use, commercial, and residential development projects.

Matt's experience spans a variety of land use projects throughout California, including large urban redevelopment projects, military base reuse projects, mixed-use waterfront developments, renewable energy and related infrastructure projects, regional shopping centers, and master-planned residential communities.

Active in the community, Matt teaches at University of California Davis and is regularly invited to lecture on the California land use and planning law before various professional associations for planners, municipal engineers, and public works professionals. He has served on the board of directors of the AIDS Legal Referral Panel and as chair of the Amicus Committee of Bay Area Lawyers for Individual Freedom.

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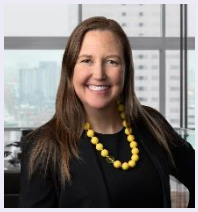
An experienced litigator in California and federal courts, Julie works with clients to resolve disputes and help them advance their business goals.

Julie Jones represents clients in environmental and land use counseling and litigation for complex development projects. She resolves issues that arise under the California Environmental Quality Act, the National Environmental Policy Act, the Clean Water Act, federal and state species protection statutes, and various other local, state, and federal statutes and common law doctrines that affect land use.

Julie assists private and public entities in permitting major university, traditional and renewable energy, water supply, marine terminal, residential, and commercial projects.

Julie is the author of the sustainable development chapter of California Land Use and Planning Law and has co-authored the treatise's chapters on federal and state wetland regulation and endangered species protections.



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A team leader who works across disciplines, Camarin drives project success for clients.

Camarin Madigan practices on the cutting edge between real estate, land use, and environmental laws. Collaborating with colleagues across multiple disciplines, she advises on all aspects of complex development projects, including acquisitions, dispositions, joint ventures, leasing, and financing. Camarin also handles land use entitlements and environmental permitting for similar projects and is recognized for her exceptional proficiency and deep knowledge of ground lease work.

Camarin's clients include developers, landowners, lenders, and public agencies. She manages real estate issues for a wide range of properties, from renewable energy projects to multi-family projects. Additionally, Camarin manages real estate work for a major higher education institution.

Prior to joining the firm, Camarin lived in Japan as part of secondment to the in-house legal department of a Japan-based international trading, investment, and service company. In this role, Camarin managed the legal affairs of the client and its subsidiaries in North, Central, and South America involved in various industries, including energy and natural resources, agricultural resources, and information technology.

Active in the San Francisco community, Camarin is pro bono counsel for the Friends of Port Chicago National Memorial and serves on the board of Contra Costa Senior Legal Services.

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With 17 years of experience in land use and development matters, Alan offers clients innovative solutions to complex and sensitive development challenges.

Emphasizing land use and development matters, including associated environmental review, Alan Murphy secures and defends land use entitlements and counsels clients in preparing development applications, throughout the approval process and in due diligence. Alan has significant experience with general plan and zoning interpretation and amendments, use permits, variances, development agreements, the Density Bonus Law, the Housing Accountability Act, SB 35/SB 423 streamlining, other state housing legislation, and the California Environmental Quality Act (CEQA).

Alan represents developers, landowners, educational institutions, and other clients before city councils and boards of supervisors, planning commissions, and local decisionmakers. He has successfully helped clients secure entitlements to develop thousands of new residential units across the San Francisco Bay Area, to redevelop property into three life sciences buildings totaling nearly 600,000 square feet in Foster City, and to redevelop over 500,000 square feet of office and research and development space in Mountain View.

Alan has been recognized for his excellence in land use and environmental law. He has lectured at Stanford University and California Polytechnic State University, San Luis Obispo, and he accepted invitations to co-chair CLE International's last four conferences on California land use law from 2017 through 2025.

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Debbi represents clients seeking land-use and resource permits and entitlements and compliance with environmental laws before administrative agencies.

Debbi Quick defends entitlements with environmental laws, including the California Environmental Quality Act and the National Environmental Policy, in litigation at both trial and appeal courts. Her practice also includes representing clients in complex civil appeals and trial court litigation in anticipation of possible appeals.

In appeals and defenses of both pretrial and posttrial decisions, Debbi's experience includes interlocutory review of summary judgments and motions denying arbitration. Working with clients across a range of industries, she has handled matters involving banking, retail, energy, manufacturing, insurance, and the environment.

Additionally, Debbi is the author of the Land Use Litigation chapter of Curtin's California Land Use and Planning Law.