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LAND USE NEWS

WESTERN U.S. STATES MISS DEADLINE AMID COLORADO RIVER NEGOTIATIONS

Efforts to reach a unified plan for managing the Colorado River by the November 11, 2025, deadline have fallen short, leaving the river system—and the 40 million people who depend on it—facing uncertainty.

Background

The Colorado River provides essential water supplies to seven western states and Mexico. The basin is divided into two regions: the Upper Basin (western Colorado, western New Mexico, eastern Utah, southwestern Wyoming, and northeastern Arizona) and the Lower Basin (southern California, southern Nevada, the majority of Arizona, and southwestern Utah). Shortages in water supply on the Colorado River at the turn of the 21st century prompted 18-year federal guidelines for curtailing water allocations triggered by Lake Mead and Lake Powell water.

Deadline Missed

Recognizing continuing drought conditions, the U.S. Bureau of Reclamation and the basin states have been negotiating a new long-term agreement which would apply after the existing guidelines expire at the end of 2026. In June 2025, federal officials set a November 11, 2025, deadline for basin states to submit a shared proposal outlining a post-2026 shortage framework. The Colorado River basin states recently failed to meet the Bureau's deadline.

Negotiations Continue

While the basin states did not submit a formal plan before the stated deadline, they did issue a joint statement acknowledging progress and affirming that they remain committed to finalizing their consensus.

The missed deadline places greater attention on the role of the Bureau of Reclamation, which has indicated it will proceed with review and public comment of its own draft guidelines under National Environmental Policy Act (NEPA) procedures in December 2025. If the states cannot reach consensus on their own alternative agreement, federally imposed guidelines may control. The Bureau aims to have a final decision on longer-term guidelines by the middle of next year.

Disagreements Over Cuts and Allocation

At the heart of the basin states' negotiations are questions about how to fairly reduce water use throughout the basin. Over the past two decades, Colorado River flows have declined to close to 75 percent of 20th-century averages. Reservoir elevations at Lake Powell and Lake Mead remain at historic lows, despite years of conservation efforts.

Key points of disagreement among the basin states include:

- How reductions should be apportioned between the Upper and Lower Basins, especially given differences in historical use, infrastructure, needs, and obligations;

- Which reservoirs should bear the brunt of shortages, and under what curtailment triggers;

- Whether future commitments should be binding or voluntary; and

The term of the next agreement.

Legal and Administrative Uncertainty

Without an updated agreement, water users across the basin face continued federal influence and control. The Bureau of Reclamation will continue to impose operational guidelines to ensure that water deliveries, infrastructure integrity, and legal obligations are maintained. An extended federal plan could invite litigation by and among the basin states.

Moreover, the lack of a plan makes it difficult for cities, irrigation districts, and tribes to make infrastructure investments, sign long-term water contracts, or plan for emergency drought scenarios. Many agricultural users operate under seasonal allocations, and uncertainty at the interstate level can compli-

cate crop decisions, capital improvements, and water banking programs.

Conclusion and Implications

The next major milestone will likely be the U.S. Bureau of Reclamation's release of its draft Environmental Impact Statement (EIS) in early 2026. This will provide an opportunity for public comment and formal analysis of various alternatives, including voluntary agreements, administrative action, or hybrid approaches.

In parallel, basin states are expected to continue negotiations to avoid a fully federal solution. However, it is unclear when the states intend to meet next to continue negotiations. Any consensus would need to be incorporated into the federal rulemaking process quickly to avoid delays in finalizing these post-2026 guidelines.

Many stakeholders hope the states will still succeed in crafting a durable, flexible framework—one that reduces legal risk, prioritizes reliability, and reflects a shared commitment to water security in the Colorado River Basin.
(Micheline Fairbank, Evan Klouse)

CALIFORNIA CHAMBER OF COMMERCE PROFFERS THE BUILDING AN AFFORDABLE CALIFORNIA ACT INITIATIVE TO STREAMLINE CEQA REVIEW AND PERMIT ESSENTIAL PROJECTS

In a bold initiative aimed at fundamentally modernizing California's project-permitting framework, the California Chamber of Commerce filed the Building an Affordable California Act (BACA) in October 2025, with amendments submitted in November 2025 to clarify and expand key provisions. The initiative seeks to streamline environmental review under the California Environmental Quality Act (CEQA) and expedite approval of projects deemed "Essential Projects," a term BACA defines broadly to include certain types of housing, water infrastructure, clean energy, transportation, broadband, public health, and educational facilities. BACA would impose firm deadlines on public agencies, standardize administrative procedures, constrain agency discretion, and establish expedited judicial review processes for these projects. Proponents describe the measure as a long-overdue modernization designed to reduce delays and costs while maintaining California's robust environmental protections, whereas critics raise concerns that compressed timelines could limit meaningful public engagement and tribal input If it garners sufficient signatures, the measure could appear on the November 3, 2026, statewide ballot

BACA Details

Essential Projects

BACA defines Essential Projects to include housing, water, clean energy, broadband, educational facilities, public health and safety infrastructure, and transportation improvements. Within the housing category, the measure explicitly encompasses residential-only projects, mixed-use developments, transitional housing, emergency shelters, supportive housing, farmworker housing, student housing, and senior housing.

Importantly, BACA preserves vested rights under existing housing statutes, including the Housing Accountability Act, SB 330, and the Builder's Remedy, while ensuring that resubmitted applications can opt into BACA's procedural timelines without reopening prior completeness determinations. The initiative also allows phased implementation of large Essential Projects, enabling qualifying portions to proceed independently under streamlined procedures.

Tribal Consultation and Early-Screening Procedures

BACA introduces a comprehensive, accelerated tribal consultation and early-screening process to identify and address potential impacts on tribal cultural resources prior to deeming an application complete. Tribal cultural resources are defined broadly to include properties listed or eligible for listing in the California Register or a local register, resources recognized in the National Register of Historic Places, sacred places identified by the Native American Heritage Commission, or properties listed in a tribal government register maintained by a federally ap-

proved Tribal Historic Preservation Officer. The initiative gives dispositive legal weight to official tribal, federal, and NAHC designations, removing the lead agency's discretion to make independent significance determinations.

Once a preliminary or full application is submitted, the lead agency must initiate discussions with Consulting Tribes, conduct a records search within 20 days, and share relevant project and cultural-resource information. Tribes may request meet-and-confer sessions to discuss avoidance, preservation, or treatment measures, with outcomes documented by the agency. Iterative consultation continues until agreed-upon mitigation measures are incorporated into enforceable conditions of approval. Approval of an Essential Project is permitted only after good-faith tribal consultation concludes, mitigation measures are included, and the agency provides substantial evidence explaining why avoidance is infeasible.

Completeness and Application Review

BACA clarifies the timelines and procedures for public agencies to determine the completeness of Essential Project applications. Agencies must render a completeness determination within 30 days, or the application is deemed complete by operation of law. Determinations cannot be based on items not listed on the agency's publicly available submittal checklist or on standards not in effect at the time of application submission. If deemed incomplete, agencies must provide a detailed corrections list, and applicants have 90 days to respond. Completeness determinations for resubmitted applications must be issued within 30 days or are automatically deemed complete.

Although the above process for determining completeness largely mirrors the process under the Permit Streamlining Act, BACA distinguishes itself by providing an administrative appeals process for completeness determinations, requiring final decisions within 60 days, after which judicial review may be sought within 90 days. These provisions aim to prevent iterative information requests from delaying projects and ensure timely progression to environmental review.

CEQA Review Timelines and Public Participation

For complete applications, BACA imposes the following CEQA review deadlines: 365 days to certify an Environmental Impact Report (EIR), 180 days for a negative declaration or mitigated negative declaration, and 90 days for exemptions or addenda. Days are calculated excluding weekends and state holidays, and lead agencies failing to meet deadlines must hold a public hearing within 60 days to issue final project determinations. Agencies may only modify timelines by mutual agreement with the applicant.

Public comment periods are standardized and shortened: 20 days for mitigated negative declarations and 45 days for draft or supplemental EIRs, with the administrative record including only comments submitted during these periods and verbal testimony from noticed hearings. Applicants may vest into significance thresholds already adopted or routinely applied by the agency at the time of submission, ensuring consistency in impact evaluation.

Preliminary Scoping and Streamlined Alternatives

BACA introduces an optional pre-filing scoping process, including public meetings to identify potential impacts and inform a single applicant-developed alternative. EIRs would analyze only the proposed project, the applicant's alternative, and the "no project" alternative, with agencies prohibited from requiring additional alternatives. Certification of scoping compliance is final after an administrative appeal window of five days. This approach is intended to clarify project scope early, reduce procedural burdens, and limit litigation risk over CEQA's "range of alternatives" requirement.

Judicial Review Reforms

BACA alters judicial review for Essential Projects by limiting challenges to substantial evidence support in the administrative record. Courts may only set aside approvals for arbitrary or prejudicial errors in public participation and must identify specific project phases or components requiring supplemental analysis. Blanket rescission of project approvals is precluded. Challenges must be filed within 30 days, with resolution required within 270 days, extendable by 90 days under limited circumstances. BACA also bars repetitive litigation and allows temporary injunctions only for clear, unmitigable public-safety risks.

Conclusion and Implications

If adopted, BACA would represent one of the most comprehensive procedural overhauls to CEQA and permitting in decades, extending streamlined review to housing, water, clean energy, broadband, transportation, and public-health projects. By imposing strict deadlines, limiting administrative discretion, standardizing comment periods, and formalizing tribal consultation, BACA aims to reduce delays, contain costs, and enhance predictability for developers and public agencies. While its ultimate impact will depend on judicial interpretation and agency implementation, the initiative signals a major effort to balance efficiency, environmental protection, and statewide infrastructure priorities.

For project proponents, BACA offers early certainty, predictable timelines, and limited exposure to shifting regulatory standards. For regulators, courts, and community stakeholders, it will require adapting to a tightly defined procedural framework. Whether the initiative passes in California's political landscape will test voter appetite for bold reform of CEQA while addressing the state's affordability, infrastructure, and climate challenges. Regardless of outcome, BACA marks a landmark attempt to untangle decades of procedural complexity surrounding essential development projects. For more information on the Building an Affordable California Act, *see:* https://advocacy.calchamber.com/wp-content/uploads/2025/10/Building-An-Affordable-California-Act.pdf
(Miguel Mauricio)

NEWPORT BEACH'S "RESPONSIBLE HOUSING INITIATIVE": CITIZENS PUSH BACK ON REGIONAL HOUSING NEEDS ALLOCATIONS PREVIOUSLY SET

In November 2026, Newport Beach voters will consider a citizen-sponsored ballot measure known as the "Responsible Housing Initiative," which would significantly reduce the number of housing units permitted under the City's certified housing element. Specifically, the initiative would cap development capacity at 2,900 units, down from the roughly 9,000 units contemplated in the City's current plan. The measure has qualified for the ballot after obtaining the required signatures.

The proposal arrives amid heightened statewide scrutiny of local housing decisions. California housing law increasingly emphasizes compliance, accountability, and production, particularly in high-cost coastal jurisdictions.

The Current Housing Element Framework

Newport Beach adopted its current housing element in 2022, following review and certification by the California Department of Housing and Community Development. The plan responds to the City's Regional Housing Needs Allocation of 4,845 units for the current planning cycle, which includes 2,160 units designated for extremely low-, very low-, and low-income households. To meet that obligation, the City planned for substantially more total units than required, allowing up to approximately 9,000 units across various opportunity sites.

The City justified this approach by emphasizing feasibility. In an exceptionally expensive market, affordable housing typically depends on cross-subsidy from market-rate development. Planning for only the minimum number of units, particularly if most are designated as affordable, assumes an unrealistic development pattern that state regulators have consistently rejected. The City described its additional capacity as a "buffer," designed to ensure that enough viable projects move forward to meet income-category targets even if some sites do not develop as anticipated.

The Responsible Housing Initiative

The initiative would fundamentally restructure that framework. It amends the General Plan to limit new residential development under the housing element to 2,900 units, with detailed sub-allocations by geographic area. Of those units, 2,160 would be reserved for lower-income households, leaving little capacity for moderate or above-moderate income development. The measure's structure is intended to demonstrate formal compliance with affordable housing requirements while sharply constraining overall growth.

Legal Context and State Enforcement Trends

Newport Beach is not operating in a vacuum. Several California cities have faced enforcement actions for failing to adopt or implement compliant housing elements. In some cases, jurisdictions have been subject to the so-called "builder's remedy," which limits local discretion over qualifying housing projects when a housing element is out of compliance. Nearby Huntington Beach has pursued litigation asserting that charter cities are exempt from certain state housing mandates, an argument recently rejected by an appellate court.

Elsewhere, cities have encountered legal exposure under the Housing Accountability Act for denying or reducing housing projects inconsistent with objective standards. These cases illustrate the state's increasing willingness to intervene when local actions are perceived as obstructing housing production.

If Newport Beach voters approve an initiative that effectively undermines a certified housing element, the City could face similar risks. While the initiative power is broad, it does not override state law. Courts have repeatedly held that voter-approved measures must yield when they conflict with mandatory housing statutes.

Prior Housing Controversies in Newport Beach

The upcoming ballot measure also follows recent litigation over the City's housing element adoption process. Newport Beach's Greenlight Initiative generally requires voter approval for significant changes to land use intensity. When the City Council adopted the current housing element without submitting it to voters, opponents challenged the action as inconsistent with the City Charter. A Superior Court judge rejected that claim, concluding that compliance with state housing law justified the Council's decision.

That ruling resolved one legal dispute but did not eliminate political opposition to the housing element. The Responsible Housing Initiative can be seen as a renewed effort to reassert voter control after the courts declined to require an election on the 2022 plan. Whether that effort is legally sustainable presents a distinct question from whether it is politically popular.

Conclusion and Implications

The Responsible Housing Initiative places Newport Beach at a crossroads between local land use preferences and California's increasingly assertive housing policy regime. On its face, the measure attempts to thread a narrow needle by accommodating the City's lower-income housing allocation while sharply limiting overall growth. In practice, it would dismantle the flexibility built into the City's certified housing element and invite scrutiny from state regulators and, potentially, the courts.

For residents, the initiative promises fewer new housing projects and greater voter oversight. For developers and affordable housing advocates, it raises concerns about feasibility, competition, and compliance. For the City itself, passage of the measure could trigger enforcement actions or litigation that undermine the very local control the initiative seeks to preserve.

As other jurisdictions have learned, deliberate deviation from state housing law carries tangible consequences. Whether Newport Beach voters are willing to accept those risks will be decided in November 2026. For more information on California's Regional Housing Needs Allocation, *see:* https://www.hcd.ca.gov/rhna

(Darien Key)

SAN FRANCISCO'S FAMILY ZONING PLAN: LEGAL, POLICY, AND HOUSING IMPLICATIONS

San Francisco has enacted a significant rezoning initiative with the approval of Mayor Daniel Lurie's Family Zoning Plan (Plan), a legislative measure intended to expand residential development capacity and ensure compliance with state-mandated housing obligations.

The Plan

Passed by the Board of Supervisors in a 7–4 vote, the Plan authorizes increased height and density allowances in designated residential and commercial corridors, particularly in neighborhoods on the city's west and north sides that have historically experienced limited housing growth. The measure reflects an effort to reconcile local land-use regulation with evolving state housing mandates amid persistent affordability challenges.

The Plan is situated within a broader statutory framework shaped by California's recent housing reforms, including Senate Bill 828. That legislation strengthened enforcement mechanisms requiring municipalities to adopt housing elements that realistically accommodate projected population growth. As a result of these reforms, jurisdictions across the Bay Area were compelled to plan for hundreds of thousands of additional housing units over an eight-year cycle. San Francisco's rezoning initiative represents a key component of its strategy to meet the state's requirement that the city provide capacity for more than 82,000 new housing units by 2031.

City officials have emphasized that compliance with state law is not optional. Failure to adopt a qualifying rezoning plan could subject San Francisco to substantial penalties, including the loss of state funding for housing and public services, as well as the potential preemption of local land-use authority. From this perspective, the Plan functions not only as a housing policy instrument but also as a safeguard of municipal autonomy within California's increasingly centralized housing regulatory regime.

From a land-use perspective, the Plan modifies zoning regulations for approximately 96,000 parcels. The changes do not constitute a uniform up-zoning of the city but instead apply targeted increases in allowable density. Height limits are generally raised by two to four stories in neighborhood a near public transportation, while select major thoroughfares are eligible for substantially taller structures. City officials characterized this approach as an attempt to balance growth with neighborhood-scale considerations.

Support and Opposition

Proponents of the Plan, including housing advocacy organizations, business groups, and policy institutions, argue that expanding zoning capacity is a necessary precondition for increasing housing supply and moderating long-term costs. San Francisco's rental market remains among the most expensive in the nation, with average rents far exceeding national benchmarks. Supporters contend that decades of restrictive zoning—particularly in well-resourced neighborhoods—have constrained supply and exacerbated displacement pressures elsewhere in the city. By permitting moderate height increases near transit corridors and allowing higher-density development along major arterial streets, the plan seeks to distribute housing growth more equitably across geographic and socioeconomic lines.

Opposition to the Plan has centered on concerns regarding displacement, affordability, and the adequacy of tenant protections. Tenant advocates and neighborhood organizations argue that rezoning alone does not guarantee the production of affordable housing and may incentivize speculative, market-rate development. Critics have also pointed to the potential demolition of rent-controlled units as a significant risk, particularly for low-income residents and communities of color that have experienced displacement in prior redevelopment cycles.

In response to these concerns, the Board of Supervisors adopted several amendments designed to mitigate adverse impacts. Most notably, the approved plan exempts buildings containing three or more rent-controlled units from demolition, thereby protecting approximately 80,000 such units citywide. Any proposal involving the removal of other rent-controlled housing would require additional review and approval by the Planning Commission. While some supervisors advocated for broader protections, others cautioned that further restrictions could under-

mine the city's ability to satisfy state housing requirements and expose it to enforcement actions.

The play also raised questions regarding the treatment of small businesses affected by redevelopment. Representatives of business advocacy groups expressed concern that existing municipal programs offer limited financial assistance to businesses facing displacement due to construction activity or lease non-renewals. Supervisors acknowledged these gaps and emphasized that rezoning must be accompanied by funding mechanisms, incentives, and regulatory tools capable of translating theoretical housing capacity into actual development outcomes.

Conclusion and Implications

In sum, the Plan represents a legally and politically consequential effort to align San Francisco's zoning code with state housing mandates while addressing long-standing inequities in development patterns. Although rezoning alone is unlikely to resolve the city's housing affordability crisis, the measure establishes a legal framework through which future housing production, financing strategies, and tenant protections may be pursued. Its ultimate impact will depend on subsequent legislative action, market conditions, and the city's ability to implement complementary policies that translate increased zoning capacity into inclusive and sustainable housing outcomes.
(Mona Goodarzi)

REGULATORY DEVELOPMENTS

U.S. BUREAU OF RECLAMATION ADOPTS UPDATED LONG-TERM OPERATIONS PLAN FOR THE CENTRAL VALLEY PROJECT AND STATE WATER PROJECT

In December 2025, the U.S. Bureau of Reclamation (Reclamation) adopted an updated long-term operations plan for the Central Valley Project (CVP) and State Water Project (SWP) that is intended to implement Executive Order 14181 signed by the President of the United States.

Background

The Central Valley Project (CVP) spans roughly 400 miles from the Cascade Mountains near Redding in the north to the Tehachapi Mountains near Bakersfield in the south. CVP facilities include reservoirs on the Trinity, Sacramento, American, Stanislaus and San Joaquin Rivers. In particular, the CVP takes water from the Trinity River and stores it in Clair Engle Lake, Lewiston Lake, and Whiskeytown Reservoir. The water is then diverted through a system of tunnels and powerplants into the Sacramento River for the Central Valley. Additionally, water is stored in Shasta and Folsom Lakes. In total, the project consists of 20 dams and reservoirs, 11 power plants, and 500 miles of major canals, as well as conduits, tunnels and related facilities. System wide, the CVP manages approximately 9 million acre-feet of water, delivers roughly 7 million acre-feet of water annually to various CVP contracts, and generates 5.6 billion kilowatt hours of electricity annually. The CVP was initially designed to protect the Central Valley from substantial water shortages and floods. However, the CVP is operated today in ways that increase the Sacramento River's navigability, provides domestic and industrial water supplies, generates electric power, and helps regulate environmental conditions.

The State Water Project (SWP) is a water storage and delivery system comprised of reservoirs, aqueducts, power plants, and pumping plants spanning more than 700 miles from northern to southern California. According to DWR, the SWP supplies water to more than 27 million people across California and irrigates roughly 750,000 acres of farmland. The SWP is capable of delivering roughly 4.2 million acre-feet of water per year. However, the amount of water available to water contractors varies each year because supply is impacted by variability in precipitation and snowpack, operational conditions, as well as environmental and other legal constraints.

The Record of Decision (ROD), developed under the framework of the National Environmental Policy Act (NEPA), adopts an updated LongTerm Operation Plan for these critical water systems. The ROD provides a summary of the submitted alternatives, information, and analyses in the final environmental impact statement, together with other relevant material in the record.

On January 24, 2025, President Trump issued Executive Order 14181 "Emergency Measures To Provide Water Resources In California and Improve Disaster Response In Certain Areas." A Presidential Memorandum titled "Putting People Over Fish" was signed four days before the Executive Order and references a reliable water supply, but the specific direction to the CVP is found in Executive Order 14181. The newly adopted ROD implements initial actions in response to Executive Order 14181.

The Record of Decision

The ROD considers various "actions" related to the operation of the CVP and the SWP. The actions being considered are for the purpose of: (1) meeting requirements under federal and state law; (2) satisfying Reclamation's contractual obligations and agreements, including with CVP water users; and (3) implementing CVP fish and wildlife project purposes and meeting federal trust responsibilities to Tribes, including those in the Central Valley Project Improvement Act (CVPIA). Operation of the CVP and SWP serves multiple purposes, including river regulation/flood control, improvement of navigation; irrigation uses, domestic uses, and fish and wildlife mitigation, protection, and restoration; power generation; and fish and wildlife enhancement. Operation of the CVP

and SWP also provides recreation and water quality benefits.

Action 5

After considering four alternative actions and a no-project alternative as contemplated by NEPA, Reclamation decided to implement "Action 5." Action 5 modifies components included in the "preferred alternative" of a previously issued environmental impact statement for long-term operations of the CVP in 2024. The preferred alternative in that ROD was Alternative 2, which was analyzed as the Proposed Action in certain biological opinions issued by the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) in 2024.

Further, Action 5 is intended to respond to Section 2 of Executive Order 14181 by operating the CVP to deliver more water to high need communities, including by increasing storage and conveyance and coordinated operations of federal and state facilities.

In addition, Action 5 removes the Delta Smelt Summer and Fall Habitat Action (Fall X2) and the Early Implementation measure of the Delta export reduction of the Healthy Rivers and Landscapes (HRL) Program, formally Voluntary Agreements from Alternative 2 (section 5.9 of Action 5, Spring Delta Outflow). Action 5 also updates Alternative 2 Delta operating criteria and governance. Removal of Fall X2 is based upon the USFWS 2024 LTO Biological Opinion determination that Fall X2 is not anticipated to have observable effects on Delta smelt survival.

According to Reclamation, the Early Implementation measure removal is due to a lack of necessary processes and progress to develop data and a program that could assist with determining whether and how to implement the HRL Program. Updates to Delta operating criteria include conditions for Old and Middle River management at no more negative than 5,000 cubic feet per second (cfs), and a stormflex action of 6,500 cfs. Under Action 5, the governance structure was revised to support actions that restrict water supply to those that provide a material benefit to listed species by using predictive tools for realtime assessment of environmental conditions.

According to the ROD, under Action 5, annual CVP deliveries may increase by up to 180,000 acre feet (AF) beyond amounts contemplated in Alternative 2, and SWP may increase by up to 220,000 AF compared to Alternative 2.

Conclusion and Implications

The updated LTO for the CVP and SWP appear to respond to certain mandates from Executive Order 14181 by adapting the preferred alternative in the prior LTO, which in turn was based on biological opinions from USFWS and NMFS. It remains to be seen whether the updated LTO will be challenged in court and, ultimately, whether it will be implemented. The Record of Decision for Updated Long-Term Operations Plan is available here, https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=57167
(Miles Krieger)

CALIFORNIA STATE WATER BOARD RECIRCULATES REVISED DRAFT STAFF REPORT AND SUBSTITUTE ENVIRONMENTAL DOCUMENT FOR PROPOSED UPDATE TO BAY DELTA PLAN

On December 12, 2025, the State Water Resources Control Board (State Water Board) issued a Notice of a Limited Recirculation of its update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan). The December Notice seeks public comments on revisions to the Bay-Delta Plan and the 2023 Draft Staff Report/Substitute Environmental Document (Draft Staff Report). The revisions to the Draft Staff Report include a new, 600-page chapter with supporting appendices, detailing proposed regulatory flow measures and the Healthy Rivers and Landscapes (Healthy Rivers) alternative. Interested parties are invited to provide public comments orally at a public hearing on January 28–30, 2026, or through written comment letters by February 2, 2026. According to the State Water Board, comments on these documents will inform the development of a final version of the Bay-Delta Plan and Staff Report.

Background

The Bay-Delta watershed is formed by the convergence of California's Sacramento and San Joaquin rivers and includes the San Francisco Bay, the Delta, Suisun Marsh, and numerous tributaries. The Bay-Delta is one of "the largest ecosystems for fish and wildlife habitat" in the U.S., provides two-thirds of the State's drinking water, and irrigates the State's most productive agricultural regions. The watershed also serves as the water source for the state's two largest water projects, the U.S. Bureau of Reclamation's Central Valley Project and the California Department of Water Resources' State Water Project.

The Bay-Delta Plan is a water quality control plan adopted by the State Water Board pursuant to the Porter-Cologne Water Quality Control Act (Porter-Cologne). (Wat. Code §§ 13000 *et seq.*) Water quality control plans must designate the beneficial uses to be protected, the water quality objectives that provide for the reasonable protection of those uses, and a program of implementation needed to achieve those objectives. According to the December Notice, the Bay-Delta Plan update will: (1) identify beneficial uses of water in the Bay-Delta; (2) establish flow-based water quality objectives to reasonably protect those beneficial uses; and (3) adopt a program of implementation to achieve the objectives, including monitoring and reporting requirements.

In addition to the requirements of California's Porter-Cologne, the State Water Board must comply with the California Environmental Quality Act (CEQA) in adopting water quality control plans like the Bay-Delta Plan. A water quality control plan is considered a certified regulatory program under CEQA, for which the State Water Board may adopt a substitute environmental document as the functional equivalent of an EIR. (*City of Arcadia v. State Water Resources Control Board,* 135 Cal. App. 4th 1392, 1421–23 (2006).) The substitute environmental document "may be comprised of a single document or a compilation of documents." (Cal. Code Regs., tit. 23, § 3777 subd. (a).)

The State Water Board adopted the first Bay-Delta Plan in 1978 and subsequently amended it in 1991, 1995, and 2006. Then in 2008, the State Water Board commenced a two-phase process for the next update. Phase I covered changes to the Lower San Joaquin River portion of the Bay-Delta Plan, while Phase II focuses on updating the Sacramento River and the eastern Delta portions.

The Phase II update process has involved numerous iterations of proposed updates to the Bay-Delta Plan and supporting environmental documents. The State Water Board completed a Scientific Basis Report in 2017 to describe the scientific basis for potential updates to Phase II. A Scientific Basis Report Supplement was issued in 2018, as an addendum to account for the possible inclusion of voluntary agreement proposal that would later become the Healthy Rivers alternative in the Bay-Delta Plan. In September 2023, the State Water Board combined these environmental analyses in the Draft Staff Report, evaluating the impacts of the Bay-Delta Plan update based on a variety of scenarios. Following public comments on the 2023 Draft Staff Report, the State Water Board issued a new update to the Bay-Delta Plan in October 2024 for further public comment. The State Water Board then circulated a revised draft

Bay-Delta Plan update in July 2025, only to withdraw the pending deadline for public comments in October of that year. According to the December Notice, the State Water Board delayed public comment on the July 2025 document to partially recirculate the Draft Staff Report and revisions to the proposed update to the Bay-Delta Plan itself.

Chapter 13 of the Draft Staff Report

The latest update includes a new Chapter 13 to the Draft Staff Report, adding approximately 600 pages and related appendices to the State Water Board's CEQA documentation. Broadly, Chapter 13 provides additional details on the proposed default regulatory pathway and the voluntary agreement-based Healthy Rivers pathway. These updates to the Draft Staff Report are based on updated models, new information submitted by the Healthy Rivers participants, and revised impact and mitigation conclusions. The State Water Board asserts these changes will improve the evaluation of outcomes, particularly because of the updated modeling on changes to hydrology and water supply, and analysis of their impacts under an adaptive range of 35 percent–55 percent unimpaired-flow scenarios. The State Water Board originally used the Sacramento Water Allocation Model (SacWAM) for these scenarios in 2023. Chapter 13 presents model information based on minor refinements to SacWAM's 2025 iteration and changes to real-time operational parameters.

Chapter 13 includes updated quantitative and qualitative ecological analyses, based on a full 35 percent–75 percent unimpaired-flow scenario range for each pathway. According to the December Notice, the latest update incorporates new habitat data submitted by Healthy Rivers participants, new flow thresholds prompted by public comments on the 2023 Draft Staff Report, and a recently developed Yuba River temperature model.

Chapter 13 also sets out a programmatic analysis framework for identifying and implementing Tribal Beneficial Uses, including cultural and subsistence uses (CUL), in future water quality control plans. According to the update materials, actions taken in furtherance of protecting CUL beneficial uses will overlap with other objectives that target flow and salmonid restoration.

Lastly, Chapter 13 includes minor changes and updated summaries of the mitigation measures identified in the 2023 Draft Staff Report, and adds three new mitigation measures to reduce or avoid impacts for aquatic biological resources, surface water, and recreation.

Conclusion and Implications

The State Water Resources Control Board will hold hearings from January 28–30, 2026, and will collect written public comments on the revised Draft Bay-Delta Plan and Draft Staff Report until February 2, 2026. Comments on these documents will inform the State Water Board's development of a final draft of the Bay-Delta Plan update and Staff Report, both of which will be made available for public review and comment prior to adoption at a future State Water Board meeting.

The December Notice for the Bay-Delta Plan and Draft Staff Report update is available at: https://waterboards.ca.gov/board_info/calendar/docs/2026/jan/notice-revdrftbdp.pdf.

(Joseph J. Gregory, Austin Cho)

LAWSUITS FILED OR PENDING

DUE PROCESS, AGENCY POWER AND THE CALIFORNIA COASTAL COMMISSION—STATE LAWSUIT FILED REGARDING PUBLIC ACCESS TO COASTAL AREAS

On November 19, 2025, John Levy Jr. et al. filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the California Coastal Commission in San Diego County Superior Court. [*John C. Levy, Jr., et al. v. California Coastal Commission*, Case No. 25CU062487N (San Diego County Super. Ct. Nov. 19, 2025).]

Background

In late 2025, a high-profile dispute between a Carlsbad homeowner, John Levy, and the California Coastal Commission (Commission) reignited long-standing constitutional questions about the scope of administrative enforcement power and the procedural protections owed to property owners. Levy, owner of a coastal property adjacent to the Buena Vista Lagoon, filed suit against the Commission after it imposed fines totaling between $1.4 million and $2.4 million for alleged violations of coastal access and permit conditions. Levy's challenge raises significant concerns regarding due process, separation of functions within administrative agencies, and the limits of quasi-criminal penalties imposed outside the judicial system.

The California Coastal Commission

The Commission emerged from a period of intense public concern over the rapid privatization and development of the state's shoreline. By the early 1970s, expanding residential and commercial projects increasingly limited public access to coastal areas, prompting a statewide political response. In 1972, California voters approved a landmark ballot initiative declaring the preservation and responsible stewardship of the coast to be a fundamental state policy for the benefit of both present and future generations. That initiative established the Commission as a temporary regulatory body and signaled a broad public mandate to prioritize coastal protection over unchecked development.

The initial experiment in coastal governance culminated four years later with the enactment of the California Coastal Act of 1976, which transformed the Commission into a permanent agency and codified its authority to regulate land use within the coastal zone. Under the Act, the Commission was charged with balancing environmental preservation, public access, and economic development, a mandate that necessarily required substantial discretionary authority over permitting and enforcement.

Over the ensuing decades, the Commission has overseen the preservation of open space, safeguarded scenic coastal views, protected agricultural and sensitive ecological lands, and expanded public access to beaches and shoreline resources. Through its administration of coastal development permits and enforcement actions, the Commission has become one of the most powerful land-use regulators in the state.

At the same time, the breadth of that authority has generated persistent controversy, particularly with respect to the Commission's enforcement mechanisms. Critics have long questioned whether the agency's combination of investigative, prosecutorial, adjudicatory, and financial functions comports with constitutional due process principles.

The Lawsuit

In Levy's case, the Commission concluded in October 2025 that he had repeatedly failed to remedy violations on his property, including maintaining unpermitted fencing, locked gates, and recreational improvements that allegedly obstructed public access to the beach and lagoon. The Commission also determined that Levy had not complied with several conditions attached to a coastal development permit (CDP) issued in 1998, such as habitat restoration and wetland buffer maintenance.

As a result, the Commission ordered Levy to pay substantial administrative penalties within 60 days and directed him to remove or open multiple gates,

including a vehicle gate along Mountain View Drive and a pedestrian gate providing access to a lagoon trail. The Commission further warned that continued noncompliance could result in additional fines exceeding one million dollars.

Levy responded by filing this petition for writ of mandate. His lawsuit challenges both the substance of the Commission's findings and the process by which the penalties were imposed. Central to his claim is the argument that the Commission's enforcement framework violates the Due Process Clause of the Fourteenth Amendment by consolidating investigative, prosecutorial, adjudicatory, and financial interests within a single agency.

According to Levy, the Commission acts simultaneously as accuser, judge, and beneficiary of the fines it levies, depriving property owners of neutral decision-making. He further contends that the proceedings lacked basic procedural safeguards, including adequate time to review the extensive evidentiary record. Levy alleges that Commission staff provided him with more than 1,200 pages of reports shortly before his hearing and denied his request for a continuance, effectively preventing meaningful participation in his defense.

Levy also disputes the Commission's authority to impose what he characterizes as punitive, quasi-criminal penalties through informal administrative hearings. Citing the magnitude of the fines, his complaint argues that heightened procedural protections—such as a jury trial or judicial adjudication—are constitutionally required when the government seeks to impose severe financial sanctions.

The dispute over the gates illustrates the complexity of the case. With respect to the Mountain View Drive vehicle gate, Levy maintains that the gate is not located on his property but rather on land owned by The Beach Homeowners Association. He argues that only the HOA, as the landowner, has legal authority to open the gate to the general public. Although the Commission asserts that a public beach access easement accepted by the city of Carlsbad in 2005 requires the gate to be opened, city officials have expressed disagreement, stating in prior correspondence that Levy appears to have substantially complied with his CDP conditions.

A similar disagreement surrounds the pedestrian gate to the lagoon trail. While Levy's 1998 permit required him to offer a public access easement for a trail, the city of Carlsbad has never formally accepted the dedication. Levy argues that absent acceptance, there is no enforceable public right of access and that keeping the gate locked is necessary to prevent trespass and protect private property. The Commission, by contrast, contends that the dedication was effectively accepted and that the locked gate unlawfully restricts coastal access.

Representatives of the Commission have defended the enforcement action as consistent with its statutory mission, emphasizing the importance of protecting public access for all Californians, including individuals with disabilities. The agency has also noted that the fines imposed are well below the statutory maximum, which allows for daily penalties that could have reached tens of millions of dollars.

Conclusion and Implications

Beyond the immediate dispute, the *Levy* litigation highlights broader tensions inherent in administrative enforcement regimes. As agencies increasingly rely on significant monetary penalties to ensure compliance, courts may be called upon to reassess the constitutional boundaries of agency adjudication. The outcome of this case may therefore have implications not only for coastal regulation in California, but also for the procedural limits of administrative power nationwide. The lawsuit is available online at: https://pacificlegal.org/wp-content/uploads/2025/11/Levy-v.-CA-Coastal-Commission_PLF-Petition-for-Writ-of-Mandate_11.19.25.pdf
(Mona Goodarzi)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT GRANTS LEAVE TO AMEND COMPLAINT TO REMOVE TAX ASSESSMENT CLAIMS AND RETAIN PROGRAM MANAGEMENT/FACILITATION CLAIMS WITHOUT REQUIRING PAY-FIRST-LITIGATE-LATER COMPLIANCE

Morgan v. Ygreene Energy Fund, Inc., ___Cal.5th___, Case No. S277628 (Cal. Dec. 4, 2025).

In *Morgan v. Ygreene Energy Fund, Inc.*the California Supreme Court held that claims seeking to invalidate or halt collection of Property Assessed Clean Energy Program (PACE) assessments must exhaust administrative remedies under the tax-refund process, including the pay-first-litigate-later rule. However, it reversed in part and remanded to allow plaintiffs to amend their complaint to pursue claims limited to program administration that do not challenge the validity or collection of the PACE assessments.

Factual and Procedural Background

The case arises from California's Property Assessed Clean Energy (PACE) program, created in 2008 to promote energy efficiency and renewable energy improvements to real property. Under the program, local governments may finance qualifying improvements—such as solar panels or energy-efficient upgrades—by issuing bonds and recovering repayment through a voluntary special assessment placed on the participating property. These PACE assessments are collected in the same manner and at the same time as property taxes and are secured by a lien that runs with the land. Although authorized by statute, most local governments do not administer PACE programs themselves, instead contracting with private entities to manage marketing, loan origination, and administration.

The plaintiffs, elderly homeowners, entered into PACE financing arrangements administered by private companies such as Ygrene Energy Fund and Renew Financial Group. They allege that these administrators failed to comply with consumer protection laws applicable to lenders and home-improvement sellers, including requirements related to disclosures, licensing, and prohibitions on taking security interests in seniors' homes. Plaintiffs contend they did not fully understand the financial risks of the PACE assessments and seek relief under the Unfair Competition Law and related statutes.

Plaintiffs sought injunctions prohibiting the PACE administrators from initiating or continuing collection of delinquent PACE assessments, orders requiring defendants to return all PACE assessment payments already received, and relief barring collection unless and until local governments remove the assessments from the property tax rolls. They also sought declaratory and injunctive relief requiring defendants to comply with consumer-lending and home-improvement laws, including licensing requirements, disclosure obligations, and joint-check payment rules, and to cease making or servicing PACE loans unless properly licensed. In substance, plaintiffs' remedies would void or suspend the enforceability of the PACE assessments by treating the underlying contracts as illegal and requiring repayment or non-collection of amounts added to property tax bills.

Defendants demurred, arguing that because PACE assessments are treated as taxes under California law, plaintiffs were required to pursue administrative refund procedures before filing suit. The trial court agreed and sustained the demurrers without leave to amend, and the Court of Appeal affirmed, setting the stage for Supreme Court review, as summarized below.

The Supreme Court's Decision

The Governing Rule: Statutory Procedures for Challenging Taxes

The Court began by reframing the issue not merely as one of "exhaustion," but as whether plaintiffs are attempting to bypass the exclusive statutory scheme the Legislature has established for challenging taxes. California law prohibits courts from enjoining the

collection of taxes; instead, taxpayers must "pay first and litigate later" through refund procedures prescribed by statute. This principle applies equally to local taxes and assessments and bars both direct and indirect attempts to restrain tax collection, including declaratory or injunctive relief that would have the same practical effect.

PACE assessments fall within this framework because the Legislature expressly required that they be collected "in the same manner and at the same time" as property taxes, thereby subjecting them to the Revenue and Taxation Code's challenge provisions. The fact that plaintiffs sued private PACE administrators rather than public entities does not alter the analysis; what matters is the nature of the relief sought, not the identity of the defendant.

Application to Plaintiffs' Claims Challenging PACE Assessments

Applying these principles, the Court concluded that plaintiffs requested remedies including orders requiring return of assessment payments, barring future collections, or conditioning collection on removal of assessments from tax rolls, would effectively invalidate or suspend tax obligations. Although framed as consumer-protection relief, these remedies would operate as de facto tax cancellations and therefore must be pursued through statutory tax-refund procedures.

The Court rejected plaintiffs' argument that relief could be limited to restraining only private actors. Their claims depend on treating the PACE assessments themselves as void, which would necessarily interfere with tax collection authorized by statute. Similarly, proposals to convert assessments into unsecured debts or to lift tax liens would directly contradict statutory provisions mandating that PACE obligations be collected as tax liens. As in prior cases involving special taxes and assessments, courts may not permit indirect challenges that would nullify tax obligations outside the statutory framework.

The Court also rejected policy arguments that local governments lack a sufficient fiscal interest in PACE revenues. Even if much of the revenue is passed through to private entities, local governments collect, temporarily hold, and rely on those revenues that could be comingled with general funds, and the Legislature has chosen to treat PACE assessments as taxes for all procedural purposes.

Required Procedures for Challenging PACE Assessments

The Court clarified that plaintiffs are not required to seek an "assessment reduction" under Revenue and Taxation Code section 1603, because that procedure applies to valuation disputes and does not encompass PACE assessments. However, plaintiffs *are* required to pursue the statutory refund process under sections 5096 and 5097 by paying the assessment and filing a refund claim alleging illegality or erroneous collection. Only after exhausting that process may a taxpayer file a refund action in court.

Possibility of Non-Tax Claims Proceeding on Remand

Finally, the Court found that while plaintiffs may not pursue claims that effectively invalidate PACE assessments without following tax-refund procedures, they may be able to amend their complaints to seek relief directed solely at the *administration* of the program rather than the validity of the assessments themselves. For example, requests for prospective injunctions governing how PACE administrators conduct future transactions (*e.g.*, joint-check requirements) might be permissible if they do not undermine the obligation to pay existing assessments. Because plaintiffs were not previously given guidance on this distinction, the Court remanded to permit Plaintiffs' leave to amend accordingly.

Conclusion and Implications

The Court held that claims seeking to invalidate, suspend, or recover PACE assessments must proceed exclusively through the statutory tax-refund process, because such relief would directly or indirectly challenge the legality of a tax. At the same time, the Court left open the possibility that plaintiffs may amend their complaints to pursue narrowly tailored claims addressing how PACE programs are administered, so long as those claims do not undermine the obligation to pay the assessments themselves. The decision thus reinforces the primacy of California's tax-challenge framework while preserving limited space for regulatory or consumer-protection claims that operate independently of tax validity. The Court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/S277628.PDF (Blaine R. Dyas)

SENATE BILL 9'S CONSTITUTIONALITY TO BE RECONSIDERED—SECOND DISTRICT COURT ORDERS REMAND TO THE TRIAL COURT TO CONSIDER SB 450'S IMPACT ON SB 9

City of Redondo Beach v. Bonta, Unpub., Case No. B338990 (2nd Dist. Nov. 12, 2025).

Senate Bill (SB) 9's interplay with California charter-city home rule has taken a procedural turn in an unpublished decision in *City of Redondo Beach v. Bonta*.

In 2021, the Legislature enacted Senate Bill No. 9 (2021–2022 Reg. Sess.) (SB 9), which requires local agencies to ministerially approve the development and subdivision of urban lots previously zoned for single-family residences. In 2022, a group of charter cities in California filed a petition for writ of mandate against the State of California and Rob Bonta, in his capacity as the Attorney General of California seeking to halt enforcement of SB 9 on the ground that it was an unconstitutional infringement on their municipal power. The trial court granted the petition, determining that SB 9 violated article XI, section 5, of the California Constitution. The trial court subsequently awarded the cities approximately $270,000 in attorneys' fees under Code of Civil Procedure section 1021.5. In this consolidated appeal, the state challenged the trial court's ruling on the writ petition and subsequent award of attorneys' fees. While the appeal was pending, the Legislature passed Senate Bill No. 450 (2023–2024 Reg. Sess.) (SB 450), which amended the language of SB 9 that the trial court relied on in granting the writ petition. The state argued that the Court of Appeal for the Second Judicial District should vacate both rulings and remand the matter to the trial court for further proceedings under the amended statute. The Court of Appeal agreed and remanded the matter back to the trial court to reconsider its rulings in light of the new statutory language.

The purpose of SB 9 (which added Government Code section 65852.21), was to ensure access to affordable housing by requiring that a proposed housing development of no more than two residential units in a single-family residential zone must be processed ministerially—without discretionary review or a hearing—so long as specified criteria are satisfied.

SB 9 also added Government Code section 66411.7, which requires a local agency to ministerially approve a parcel map for an urban lot split that meets certain conditions, including that the property is located within a single-family residential zone, the resulting parcels are of approximately equal area, and each parcel is at least 1,200 square feet.

Both provisions limit local agency regulation to objective zoning, subdivision, and design review standards—standards that involve no personal or subjective judgment and that can be uniformly verified by reference to an external, objective benchmark knowable to both the applicant and the public official before an application is submitted.

Read together, these amendments allow an eligible urban parcel in a single-family zone to be split into two lots and developed with up to two units per lot—up to four units total—without discretionary local review.

Background

In March 2022, Redondo Beach, Carson, Torrance, and Whittier, all charter cities, filed a writ petition and declaratory relief action challenging SB 9's constitutionality. The cities relied on the California Constitution's charter-city "home rule"/"municipal affairs" doctrine, arguing SB 9 was not reasonably related to its stated goal of ensuring access to affordable housing and, therefore, improperly encroached on state-granted charter-city authority.

The trial court evaluated SB 9 under the California Supreme Court's four-part *(California Fed. Savings & Loan Assn. v. City of Los Angeles,* 54 Cal.3d 1, 7 (1991) *(Cal Fed)* framework for charter-city preemption disputes: (1) whether the subject is a municipal affair; (2) whether there is an actual conflict between local and state law; (3) whether the state law addresses a matter of statewide concern; and (4) whether the law is reasonably related and narrowly tailored to resolve that statewide concern.

At the Trial Court

The trial court found the first two prongs were satisfied because SB 9 conflicted with the cities' land use and zoning regulations. On the statewide-concern prong, the court relied on SB 9's statutory language

and concluded the Legislature identified the relevant statewide concern as "ensuring access to affordable housing," but not necessarily to increasing housing supply generally. The court then construed "affordable housing" in the context of SB 9 to mean below-market-rate housing and, in doing so, rejected the state's broader theory tying affordability to supply increases across lower income levels.

Applying the affordable definition on the fourth prong, the court found no evidence that SB 9's ministerial duplex and urban lot split requirements would increase the supply of below-market-rate units. As a result, the court concluded SB 9 was not reasonably related nor narrowly tailored to the statewide concern and, so, violated the charter-city home rule doctrine. On June 18, 2024, the court entered judgment declaring SB 9 unconstitutional as applied to the cities and issued a writ directing the State to cease implementation and enforcement of SB 9 against them.

The Award of Attorneys' Fees and the State's Appeal

The trial court granted the cities' motion for attorneys' fees in which the cities sought $270,000, finding the cities' victory bestowed a significant benefit on the general public. Interestingly, the State did not "object to the reasonableness of the fees [requested by the Cities] on any ground." It did, however, timely appeal both the trial court's judgment and the attorneys' fee award.

The appellate court granted the state's motion to consolidate the appeals and addressed both issues in its opinion.

The Court of Appeal's Decision

After the trial court entered judgment on the cities' writ petition, the Legislature enacted SB 450, which amended SB 9 in several respects, including a major revision to SB 9's legislative findings that the trial court analyzed. As amended, the legislative findings now state California faces a housing crisis of both availability and affordability driven largely by a severe housing shortage. The legislative intent now expressly declares that addressing the housing crisis and housing shortage, including increasing overall supply, reducing barriers, and expanding ownership and rental opportunities, is a statewide concern rather than a municipal affair.

Because SB 9 had been amended between the time of the trial court's decision and the appeal, the State filed a motion to dismiss the appeal and remand the matter to the trial court for further proceedings. The appellate court agreed and further reversed the trial court's order granting the cities' motion for attorneys' fees.

The Court of Appeal found that:

> Our California Supreme Court has not finally and conclusively interpreted SB 9. In the absence of such a determination, the Legislature is within its power to clarify its intent in enacting the statute, and that clarification is entitled to consideration by courts in interpreting the statute. Here, there is no question that the amendments made by SB 450 directly impact the trial court's analysis under the *Cal. Fed.* Test.

The Court of Appeal ultimately went on to hold that:

> On these facts, we agree that the amended language of SB 450 is an intervening change in law that is entitled to consideration by the trial court in determining the constitutionality of the statute. . . . As the trial court did not have the benefit of SB 450's amended findings at the time it ruled on the Cities' petition, we reverse the judgment.

Conclusion and Implications

The *City of Redondo Beach v. Bonta* decision does not resolve SB 9's charter-city question on the merits; rather, it resets the litigation around a different set of facts. SB 450 expanded SB 9's legislative findings to state an express statewide concern related to housing availability, supply, and local zoning discretion so, until SB 9 (as amended) becomes settled law, charter cities should carefully evaluate SB 9 applications from a litigation risk assessment standpoint. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/B338990.PDF (Amara Morrison, Darien Key)

CALIFORNIA LAND USE™ LAW & POLICY Reporter

FIRST DISTRICT COURT AFFIRMS BUSINESS JUDGMENT RULE PROTECTIONS FOR HOMEOWNERS ASSOCIATION IN ACCESSORY DWELLING UNIT DISPUTE

Eng v. Opperman, ___Cal.App.5th___, Case Nos. A170737 & A171745 (1st Dist. Dec. 19, 2025, *certified for publication* Dec. 22, 2025).

In a recently published decision clarifying the scope of homeowners association (HOA) authority and the business judgment rule in California, the First District Court of Appeal held that an Homeowners Association (HOA) board's discretionary denial of an accessory dwelling unit (ADU) application was protected from legal challenge under the business judgment rule. The court affirmed the trial court's grant of summary judgment in favor of the Portola Ranch Association, concluding that the board acted within the authority granted by the governing covenants, conditions, and restrictions (CC&Rs) and that no evidence of bad faith, fraud, or gross negligence existed. The decision reinforces the broad discretion afforded to HOA boards in managing architectural and community standards while highlighting the evidentiary burden homeowners face when contesting such discretionary decisions.

Background

The dispute arose within Portola Ranch, a planned community governed by recorded CC&Rs, bylaws, and design guidelines that set standards for architecture, land use, and safety. The CC&Rs granted the HOA Board and its Design Review Committee discretionary authority to approve or deny requests for structural modifications, including ADUs, based on a range of considerations, including aesthetics, neighborhood compatibility, and safety concerns.

In 2020, homeowners Craig and Michelle Opperman submitted an ADU application proposing to convert an existing garage and construct a new garage on their property. The Design Review Committee, after reviewing the application, referred it to the HOA Board for final action. The Board ultimately denied the ADU application, citing concerns regarding traffic, fire safety, and neighborhood character. The Oppermans argued that these concerns were either unsupported or improperly weighted.

During this period, other homeowners (the Engs) initiated a separate quiet-title action over driveway easements affecting the Oppermans' property. The Oppermans filed a cross-complaint against the HOA and the Engs, asserting claims for breach of CC&Rs, breach of fiduciary duty, and interference with their expectation of approval for the ADU. They contended that the HOA Board exceeded its authority and acted arbitrarily in denying the ADU application.

At the Trial Court

The HOA moved for summary judgment, arguing that the board's discretionary denial was protected under the business judgment rule, which shields decisions made in good faith, with proper information, and in the honest belief they serve the community's best interests. The trial court granted summary judgment, finding that the Oppermans had presented no evidence of fraud, bad faith, or gross negligence and that the board acted within its CC&R authority. The court also awarded attorney fees to the HOA under CC&R provisions permitting recovery in successful actions defending board decisions. The Oppermans appealed both the judgment and the fee award.

The Court of Appeal's Decision

The Court of Appeal applied *de novo* review to the summary judgment ruling, evaluating whether genuine issues of material fact existed regarding the board's discretionary authority and adherence to the business judgment rule.

Under California law, HOA boards enjoy broad discretion in architectural review, provided decisions are made in good faith, after reasonable investigation, and within the bounds of the governing CC&Rs. The business judgment rule protects boards from liability for discretionary decisions absent evidence of fraud, bad faith, or gross negligence. The rule recognizes that boards possess unique knowledge of their communities and are tasked with balancing competing interests in a manner that courts should not second-guess without compelling evidence of misconduct.

Here, the HOA submitted declarations from the Board president and an independent architectural consultant demonstrating that the board's denial of the ADU application was based on documented traffic and fire-safety concerns, and was consistent with CC&R design guidelines. The Oppermans did not present evidence suggesting the board acted in bad faith, engaged in fraud, or failed to exercise ordinary care. The court concluded that no triable issue of material fact existed to overcome the protection afforded by the business judgment rule.

The court further emphasized that even where a homeowner may personally disagree with a board's discretionary decision, disagreement alone does not constitute a breach of fiduciary duty or overreach of authority. By contrast, allegations must demonstrate intentional misconduct, conflict of interest, or clear procedural violations to defeat the business judgment rule. The decision thus reinforces the principle that courts generally defer to the informed judgments of HOA boards in managing community affairs.

Application to ADUs and Architectural Review

This case carries particular significance in the context of accessory dwelling units, which have become a focus of state housing policy and local development tensions. While California law encourages the construction of ADUs through statutory entitlement frameworks, homeowners within common-interest developments remain subject to CC&R constraints. Eng v. Opperman clarifies that even when state law favors ADU development, an HOA's discretionary approval process is not automatically overridden. Boards may deny ADU applications if supported by rational safety, aesthetic, or neighborhood compatibility concerns, so long as decisions are consistent with CC&R authority and made in good faith.

The court's analysis also highlights the importance of recordkeeping and documentation for boards. By maintaining detailed records of deliberations, considerations, and supporting expert analysis, boards can reinforce the credibility of discretionary decisions and limit vulnerability to legal challenge.

Conclusion and Implications

Eng v. Opperman provides a clear affirmation that HOA boards in California enjoy robust protections under the business judgment rule when exercising discretionary authority over architectural review, including ADU applications. The ruling underscores that homeowners challenging board decisions must present evidence of bad faith, fraud, or gross negligence, rather than mere disagreement with the outcome.

For HOA boards, the decision reinforces the importance of consistent application of CC&R standards, careful documentation of deliberations, and reliance on objective criteria when evaluating modifications to properties. For homeowners and prospective ADU developers, the case illustrates that CC&R obligations and board discretion remain powerful legal considerations, even where state law promotes housing expansion.

Ultimately, the decision balances state-level ADU policy with the autonomy of community associations, confirming that courts will not substitute their judgment for informed board discretion. *Eng v. Opperman* provides essential guidance to California homeowners, HOA boards, and practitioners navigating the intersection of statutory housing rights and private community governance, emphasizing the continuing relevance of CC&R authority and the protective scope of the business judgment rule. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A170737.PDF
(Miguel Maurico)

SECOND DISTRICT COURT HOLDS DENSITY BONUS AFFORDABILITY COVENANT SURVIVES FORECLOSURE AS CONDITION ATTACHED TO PERMIT

Rodriguez v. City of Los Angeles, ___Cal.App.5th ___, Case Nos. B337221, B341105 (2nd Dist. Nov. 26, 2025).

In *Rodriguez v. City of Los Angeles* the Second District Court of Appeal held that rent restrictions imposed on a housing unit under the state density bonus law constituted a permit condition and therefore survived foreclosure despite being recorded 11 months after the creditor's deed of trust.

Factual and Procedural Background

Tthe Second District Court of Appeal considered whether an affordable housing covenant imposed under the State Density Bonus Law survives a foreclosure when the covenant was recorded after the lender's deed of trust. The dispute arose from a residential property in Los Angeles that, in 2005, received approval for an additional dwelling unit pursuant to the City's density bonus program. In exchange for the bonus unit, the property owner agreed to restrict one unit to low-income households for a minimum of 30 years.

The City and the owner memorialized this obligation in a recorded "Rental Covenant and Agreement," which expressly stated that the restriction would run with the land, bind successors and assigns, and remain effective even if the property were transferred through foreclosure. At the time the agreement was recorded, however, the property was already encumbered by a deed of trust securing a loan recorded earlier that same year.

After the borrower defaulted, the lender foreclosed in 2013. Several years later, the plaintiffs acquired the property through subsequent transfers. In 2023, the City notified plaintiffs that they were required to comply with the affordability covenant. The plaintiffs responded by filing an action for quiet title and declaratory relief, asserting that the covenant was a junior encumbrance extinguished by foreclosure and therefore unenforceable.

The trial court sustained the City's demurrer without leave to amend, concluding that the affordability covenant survived foreclosure because it constituted a condition attached to a land use approval. Plaintiffs timely appealed.

The Court of Appeal's Decision

The Court of Appeal affirmed, holding that the affordability covenant was not extinguished by foreclosure because it functioned as a permit condition. The court emphasized that the case did not turn on ordinary principles of lien priority, but instead on the legal nature of the obligation imposed through the density bonus approval.

The court found guidance in *City of Berkeley v. 1080 Delaware, LLC*, 234 Cal.App.4th 1144 (2015), which held that a condition imposed as part of a land use approval survived foreclosure. As in that case, the density bonus in *Rodriguez* allowed development that otherwise would not have been permitted. The affordability restriction was therefore inseparable from the entitlement itself. A purchaser could not retain the benefit of the additional unit while disclaiming the obligation that made the approval lawful in the first place.

The court rejected the plaintiffs' attempt to characterize the agreement as merely a covenant or equitable servitude subject to extinguishment under traditional foreclosure rules. Even if the agreement shared features of such instruments, its source in the City's regulatory authority rendered the agreement subject to the rules governing permit conditions. The court also dismissed arguments based on lack of notice or unfairness, noting that the agreement had been recorded and, in any event, regulatory land use conditions are not nullified by subsequent transfers of ownership.

Conclusion and Implications

The decision in *Rodriguez v. City of Los Angeles* confirms that affordability restrictions imposed under the Density Bonus Law are enduring land use conditions, not ordinary encumbrances subject to extinguishment by foreclosure. Grounded in Government Code section 65009 and prior precedent, the Court of Appeal held that such conditions run with the land and bind successor owners, ensuring that density

bonus approvals cannot be severed from their public-benefit obligations through title mechanics. More broadly, the ruling reinforces the Legislature's intent that increased development rights remain tied to long-term affordability commitments, preserving the integrity of California's density bonus framework.

The Court of Appeal's opinion is available here: https://www4.courts.ca.gov/opinions/documents/B337221.PDF

(Blaine R. Dyas)

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