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LAND USE NEWS

CALIFORNIA'S ZONE ZERO WILDFIRE RULES REMAIN DELAYED DESPITE MOUNTING EVIDENCE THEY SAVE HOMES

California has once again delayed finalizing long-anticipated wildfire safety regulations known as "Zone Zero," which would require homeowners in high-risk fire areas to keep the first five feet around their homes free of combustible materials. The latest postponement means mandatory protections may not take effect until 2029 or later, even as new post-fire research from the January Los Angeles wildfires shows that homes closer to Zone Zero standards were far more likely to survive. While state officials cite the need to balance safety, cost, and homeowner concerns, fire scientists and local agencies warn that delaying action increases risks for entire communities.

Zone Zero

Zone Zero refers to the immediate five-foot perimeter surrounding a home or building. Wildfire experts consider this area the most critical zone for structure protection because homes are most often ignited by wind-driven embers, not by direct contact with flames. Embers can travel far ahead of a wildfire, landing in mulch, dry vegetation, wood fencing, or debris and igniting a structure from the outside.

Decades of wildfire research show that clearing combustible materials from this narrow area dramatically increases a home's chance of surviving a wildfire. Because the measure is relatively low-cost compared to major retrofits, many researchers describe Zone Zero as one of the most effective and accessible wildfire mitigation strategies available.

Regulatory Delays

Despite this evidence, California's Zone Zero regulations remain unfinished. The California Board of Forestry and Fire Protection recently announced it would not resume substantive work on the rules until March 2026, missing a December 31, 2025, deadline set earlier this year by Governor Gavin Newsom. The regulations were originally required under a 2020 law passed after a series of catastrophic wildfires, with an initial completion deadline of January 2023.

Under the current timeline, enforcement for existing homes could be delayed until mid-2029 or later. That would affect roughly 2 million homes located in designated high-risk wildfire areas across the state, including parts of nearly every Bay Area County.

State officials say the delay reflects unresolved disagreements over how strict the requirements should be. Earlier drafts proposed banning nearly all combustible materials—including landscaping, wood fencing, and decorative features—within five feet of a home. Later proposals introduced multiple options, ranging from near-total bans to allowing certain "well-maintained" plants, fueling continued debate.

The consequences of these delays became especially apparent after the Eaton and Palisades fires in Los Angeles County earlier this year. Those fires killed 31 people and destroyed more than 16,000 structures, making them among the most destructive wildfires in California history. In the aftermath, researchers from the Insurance Institute for Business & Home Safety surveyed 252 homes that had been in the path of the fires. Their analysis found a clear relationship between the amount of combustible material in the five-foot zone and whether a home survived.

Homes with more than half of their Zone Zero area covered by vegetation or other flammable material were completely destroyed 27 percent of the time. By contrast, only 9 percent of homes with minimal combustible coverage in that same zone were lost. According to the institute's leadership, the findings demonstrate that even partial compliance with Zone Zero principles can significantly reduce destruction during extreme fire events.

Public Pushback

Despite strong scientific consensus, Zone Zero has faced resistance from homeowners, particularly in Southern California. Many residents have expressed concerns about the cost of removing established landscaping, the environmental impact of clearing vegetation, and the aesthetic effects of replacing gardens with gravel or bare ground.

Others worry that insurance companies—many of which support the regulations—could use noncompliance as grounds to cancel or deny coverage. Some residents have argued that irrigated plants and certain landscaping types can actually help protect homes and that blanket bans are overly rigid.

State officials say these concerns are part of why the regulations have taken so long to finalize. A spokesperson for the governor has emphasized that California is focused on getting the rules right, balancing wildfire resilience with affordability, homeowner input, environmental considerations, and insurance market realities.

While statewide rules remain stalled, some cities have chosen to act independently. Berkeley, for example, has approved its own five-foot ember-resistant zone requirements for approximately 1,000 homes in the Berkeley Hills, with enforcement beginning next year. This decision was influenced by the catastrophic 1991 firestorm in the Berkeley and Oakland hills killed 25 people and destroyed more than 3,000 homes.

Fire departments elsewhere are also encouraging voluntary action. For example, the Glendale Fire Department has urged residents to clear combustible materials, remove dead vegetation, move flammable items away from walls and vents, and choose fire-resistant landscaping, even in the absence of a formal mandate.

Conclusion and Implications

As climate change intensifies wildfire behavior and expands high-risk areas, the debate over Zone Zero highlights a broader challenge for California. While officials continue to deliberate over the final shape of the regulations, researchers and fire professionals stress that waiting carries its own risks.

Wildfire mitigation, experts note, is not purely an individual decision. Because homes can ignite one another, protecting a single structure also helps protect an entire neighborhood. Until statewide rules are finalized, many fire officials argue that voluntary action may be the most immediate and effective line of defense. For more information, *see:* https://cdnverify.bof.fire.ca.gov/media/wvhfwa3g/zone-zero-regulation-advisory-committee-2-zone-0-faqs-final-2-26-25.pdf (Mona Goodarzi)

LEGISLATIVE DEVELOPMENTS

CALIFORNIA SENATE BILL 72, A BILL TO MODERNIZE THE CALIFORNIA WATER PLAN AND ADVANCE LONG-TERM WATER SUPPLY GOALS

Senate Bill (SB) 72, the "California Water for All" bill, authored by Senator Anna Caballero, received unanimous passage through the California Legislature before being signed into law by Governor Newsom on October 1st of this year. The bill directs the Department of Water Resources (DWR) to undertake comprehensive planning and develop long-term water supply targets to be included in future updates of the California Water Plan, as a proactive measure to address concerns over future climate events potential impact on California's water supply. [Sen. Bill No. 72s, (2025-2026 Reg. Sess.].

Background

SB 72 aims to strengthen the California Water Plan, and increase collaboration between government agencies, shareholders, and the public in an effort to shift the state's actions away from reactive measures, and, instead, toward proactive measures that will serve to create a more climate resilient future water supply.

The California Water Plan, mandated by Water Code Section §10005(a), contains California's strategic plan for sustainably managing and developing future water resources. The law requires the Department of Water Resources update the plan every five years and, further, directs DWR to undertake comprehensive planning and analysis to include detailed information and metrics within future Plan updates. SB 72 modernizes the process for updating the Plan by requiring DWR to take steps to create a forward-looking roadmap for planning for future water supply. Of those requirements, the bill mandates DWR develop a range of water supply targets that consider future scenarios on a 50-year planning timeline. Notably, the Plan has not undergone any significant revisions that directly address future climate unpredictability, or extreme weather events and their potential to create drought conditions or otherwise effect the state's water supply, until now.

Prior to the passage of SB 72, updates to the Plan required "the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers that may be pursued in order to meet the future water needs of the state." SB 72 adds a requirement that discussion of groundwater recharge programs, water conveyance projects, stormwater capture, and demand management activities also be included. Additionally, SB 72 requires, as part of the upcoming 2028 Plan update, that DWR include an interim planning target of 9,000 acre-feet additional water, water conservation, or water storage capacity to be achieved by 2040.

As part of the subsequent 2033 update to the Plan, SB 72 requires DWR update the interim planning target for 2050; identify future water needs for urban, agricultural, tribal, and other uses; and include discussion of the estimated costs, benefits, and impacts of any project or action recommended which could help achieve water supply targets. Additionally, in all future updates to the Plan, DWR must include discussion of environmental, urban, agricultural needs on a regional basis, a summary of sources that can finance projects or actions within the various strategies, and information as to estimated costs, benefits, and impacts of any project or action recommended to help achieve water supply targets.

To increase transparency and collaboration, and encourage public engagement, the bill requires DWR issue drafts of future updates to the Plan and conduct public workshops that allow interested parties to provide comment. The bill also requires DWR's advisory committee be expanded to include tribal, labor, and environmental justice interests.

Lastly, DWR must report amendments, supplements, and additions included in the updates to the Plan, together with a summary of the department's conclusions and recommendations, to the California Legislature.

Senate Bill 72

SB 72 takes a proactive approach to address concerns regarding the effectiveness of current sustainable management and stewardship strategies, in light of concerns over the uncertainty of future weather events and the impact of those events on the state's

water supply which is, currently, heavily reliant on annual snow melt capture. As temperatures rise, more precipitation will be absorbed by dry soils, consumed by plants, or will evaporate, all of which is expected to create a potential for less water to reach streams, rivers, and reservoirs, thereby negatively impacting the state's available water supply. The several components of this bill work together to direct DWR to take measures that aim to create a more consistent, data-driven guide to quantify gaps within the state's watershed levels while identifying effective strategies to manage such gaps through creation of measurable goals and detailed analysis.

As concerns over future uncertainty in climate, and the effect of climate events on the state's water supply have increased in recent years, the Legislature, and the Governor, have taken meaningful steps toward more proactive planning, and SB 72 represents another step toward those efforts. In August of 2022, Governor Newsom released California's Water Supply Strategy: *Adapting to a Hotter, Drier, Future* which provides detailed steps, and goals, for ensuring the availability of future water supply for California. The report also provides guidance to ensure the state has water sufficient to meet its future needs in light of concerns about potential future drought conditions in California. In addition to this report, the state has funded over $8 billion dollars toward the modernization of water infrastructure and management, including enabling emergency drought response, improving water conservation efforts, and enabling projects by local water suppliers to create greater resilience against future droughts.

Following the release of this report, during the 2023-2024 legislative session, Senator Caballero authored SB 366, a previous version of SB 72 which received support in both chambers but was ultimately vetoed by Governor Newsom over concerns about potential costs to DWR and other state agencies that would be required to conduct analysis necessary to produce the information required in future Plan updates. During the 2024-2025 legislative session, the Senator worked with the Legislature, state agencies, and the public to garner support for the bill, ultimately leading to its successful passage this year.

Conclusion and Implications

The directives of SB 72 create ambitious goals that encourage greater data collection and collaboration serving to create a more reliable and climate-resilient future water supply. Ideally, the requirements of SB 72 will allow DWR, and other agencies, to proactively plan for long-term sustainable management and stewardship of the state's water supply, instead of focusing on managing scarcity. At minimum, the bill will provide a mechanism to promote specified and targeted data analysis that includes public input. For more information on this chaptered bill, *see:* https://legiscan.com/CA/text/SB72/id/3271508
(Miles Krieger)

REGULATORY DEVELOPMENTS

NEW ENDANGERED SPECIES ACT RULEMAKING BEING PROPOSED BY THE U.S. FISH AND WILDLIFE SERVICE AND NATIONAL MARING FISHERIES SERVICE

In November 2025, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively: Services) announced proposed revisions to the federal Endangered Species Act (ESA). The proposed rulemaking emphasizing causal proximity, economic transparency, and species-specific tailoring. By rescinding the 2024 Biden-era "blanket rules" and "compensatory mitigation" requirements, the Services aim to reduce the regulatory burden on infrastructure and energy sectors. However, critics argue these changes introduce administrative inefficiencies and may increase extinction risks by narrowing the scope of federal oversight.

Background

Since 2019, the ESA has been subject to regulatory oscillation, where successive administrations have fundamentally redefined core implementing regulations at 50 C.F.R. Parts 17, 402, and 424. In 2019, the first Trump administration introduced major reforms to Section 4 (listing/critical habitat) and Section 7 (consultation). In 2024, the Biden administration rescinded many of the 2019 changes, re-instating "blanket" protections for threatened species and expanding the "environmental baseline."

Before the recent proposed rulemaking, Section 4 of the ESA regarding species listing and delisting (50 C.F.R. § 424) prevented agencies from taking into consideration possible economic impacts from the listing process. Furthermore, there was broad consideration of impacts in the "foreseeable future". Traditionally under Section 4(d), a blanket rule automatically granted threatened species the same protections as endangered species.

Section 7 of the ESA outlines the procedures for interagency cooperation to ensure that federal actions do not jeopardize the continued existence of endangered or threatened species or results in the destruction or adverse modification of a critical habitat. This imposes an independent duty on all federal agencies to consult with the Services before engaging in any discretionary action that may affect a listed species or critical habitat. *Turtle Island Restoration Network v. Nat'l Marine Fisheries Serv.*, 340 F.3d 969, 974 (9th Cir. 2003). Local agencies are required to consult with federal agencies when there is a federal nexus such as a federal permit or federal funding.

The current administration seeks to reverse the 2024 changes, citing the need for "regulatory certainty" and alignment with the *Loper Bright* standard from the Supreme Court decision *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which requires agencies to adhere to the "single, best meaning" of the law rather than a "reasonable" interpretation.

The Proposed Rule

The proposed rule removes the phrase "without reference to possible economic or other impacts" from the listing process. While the ESA still requires listing decisions to be based solely on biological data, this change allows for the concurrent presentation of economic data to provide transparency to the public. The proposal further plans to reinstate a standard where the "foreseeable future" extends only as far as the Services can "reasonably determine that both the future threats and the species' responses to those threats are likely The proposals further aim to simplify the listing/delisting process to three clear paths: (1) extinction, (2) the entity no longer meets the definition of a "species," or (3) the species no longer meets the definition of threatened or endangered.

Under Section 4(d), FWS has the authority to issue regulations "necessary and advisable" for the conservation of threatened species. Historically, FWS used a "blanket rule" that automatically granted threatened species the same "take" protections as endangered species. The FWS will now issue species-specific rules for every newly listed threatened species. This aligns FWS practice with that of NMFS. While this allows for more "tailored" conservation, conser-

vationists argue it creates a massive administrative backlog and leaves species vulnerable during the gap between listing and rule finalization.

Interagency Consultation

Perhaps the most impactful change in the proposed rulemaking is interagency consultation (50 C.F.R. § 402). First, the proposal redefines how federal agencies assess the "effects of the action." The proposed rule clarifies that the environmental baseline refers to the condition of the species without the consequences of the proposed action. Critically, it excludes the impacts of existing infrastructure (*e.g.*, a dam that is already built) from the effects of a new permit for that same infrastructure. To be considered an "effect," a consequence must be "reasonably certain to occur" and meet a "but-for" causation test. The new rule re-inserts factors like temporal and geographic remoteness and causal complexity to limit the scope of federal liability. Moreover, the new rule removes the 2024 provision allowing the Services to require "compensatory mitigation" (offsets) as part of Reasonable and Prudent Measures (RPMs), arguing that the statute only authorizes measures to "minimize" take, not "offset" it.

Surviving *"De Novo"* Judicial Review

The 2025 proposals appear to rely on a constructionist interpretation of the ESA. By overturning *Chevron*, the Supreme Court signaled that courts should no longer defer to agency "interpretations" of ambiguous statutes. The 2025 rules are designed to survive "de novo" judicial review by arguing that terms like "minimize" (Section 7) and "foreseeable future" (Section 4) have a fixed legal meaning that does not include broader concepts like "mitigation" or "speculative climate modeling.

Conclusion and Implications

The November 2025 ESA proposals represent an effort to date to tether agency action to a narrow, causal, and economically transparent framework. While this provides the "regulatory certainty" long sought by industry, critics may find that it places a heavy burden on the Services to prove that species-specific management can prevent extinction with fewer broad-based federal protections. Final rules are expected in mid-2026. However, given the significant shift in policy, they will almost certainly be met with challenges and opposition. The proposed rulemakings can be found here: https://www.federalregister.gov/documents/2025/11/21/2025-20549/endangered-and-threatened-wildlife-and-plants-listing-endangered-and-threatened-species and https://www.federalregister.gov/documents/2025/11/21/2025-20551/endangered-and-threatened-wildlife-and-plants-interagency-cooperation-regulations
(Miles Krieger)

RECENT FEDERAL DECISIONS

U.S. DISTRICT COURT FORCES U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO PAUSE SWEEPING CHANGES TO FEDERAL HOMELESSNESS FUNDING PROGRAM

National Alliance to End Homelessness, et al. v. U.S. Department of Housing and Urban Development, et al., Case No. 1:25-cv-00636 (D. R.I. Dec. 23, 2025).).

An attempt by the Trump administration to restructure the federal government's largest homelessness assistance program has been put on hold after a series of legal challenges and court rulings forced the U.S. Department of Housing and Urban Development (HUD) to temporarily revert to its previous funding framework.

The Dispute

The ongoing dispute centers on HUD's Continuum of Care (CoC) Program, a $3.9 billion funding stream that supports shelters, permanent supportive housing, and related services for people experiencing homelessness nationwide. The program is widely regarded as the backbone of local homelessness response systems, particularly for individuals with disabilities and those experiencing long-term homelessness.

On Nov. 13, 2025, HUD released a new Notice of Funding Opportunity (NOFO) for the CoC Program that marked a sharp departure from the Biden-era rules under which the program had operated. The agency also announced it would not renew two-year grants that had been approved by Congress the year prior, instead shifting to a one-year funding structure with significantly altered priorities.

At the core of the proposed overhaul was a dramatic reduction in funding for permanent supportive housing. Under the new NOFO, providers would have been allowed to spend no more than 30 percent of their CoC funding on permanent housing, down from roughly 90 percent under prior rules. The remaining funds were intended to support temporary or transitional housing models, some of which could include work requirements or mandated participation in treatment programs.

HUD officials argued that the long-standing "Housing First" model—designed to place people into stable housing without preconditions like sobriety or employment—had failed to address the root causes of homelessness, such as mental illness and substance use. The agency framed its proposed changes as necessary reforms to a system it characterized as ineffective.

Providers, advocates, and state officials responded with alarm. Many warned that the new requirements would destabilize existing housing programs and displace tens of thousands of people who were already housed. The National Low Income Housing Coalition estimated that the changes could have put as many as 170,000 people at risk of homelessness.

The proposed funding notice also included provisions that would have allowed HUD to deny funding to organizations that acknowledge transgender or non-binary identities, employ harm-reduction strategies, or use diversity, equity, and inclusion language. Additional criteria favored providers operating in jurisdictions that enforce anti-camping laws, raising concerns that the program would encourage the criminalization of homelessness.

Equally troubling to many providers was HUD's decision to move a large portion of funding into a more discretionary and competitive category. Historically, most CoC funds were routinely renewed as long as programs met established performance requirements. Under the new structure, advocates feared HUD would gain greater latitude to reward or penalize jurisdictions based on ideological alignment rather than demonstrated outcomes.

Legal Backlash

In November and December 2025, two major lawsuits were filed challenging the revised NOFO. One suit was brought by the attorney generals and governors of 20 states, including California, New Jersey, New York, and Washington. A second suit was

filed by a coalition of cities, counties, and nonprofit organizations, including Boston, San Francisco, Santa Clara County, and national housing advocacy groups.

The plaintiffs argued that HUD's actions violated federal administrative law and bypassed Congress, which had explicitly identified permanent supportive housing as an evidence-based solution. The lawsuits also contended that the abrupt changes would cause immediate harm by delaying funding and forcing providers to radically restructure programs on an impossible timeline.

As the litigation progressed, HUD repeatedly attempted to withdraw and reissue its funding notice. In early December, the agency rescinded the one-year NOFO on the day of a court hearing, a move critics described as an attempt to derail the legal proceedings. HUD later released a revised notice with minor adjustments but continued to signal its intent to move away from the "Housing First" model.

On Dec. 23, 2025, U.S. District Judge Mary S. McElroy of Rhode Island issued a preliminary injunction blocking HUD from enforcing the November NOFO and ordered the agency to reinstate the original Biden-era funding rules for the 2024–2025 cycle. McElroy found that HUD's drastic changes were likely unlawful and that the agency had failed to justify its abandonment of permanent supportive housing. A copy of the complaint is available here: https://democracyforward.org/wp-content/uploads/2025/12/NAEH-v-HUD-25-cv-636-Complaint-with-civil-cover-sheet-and-summons.pdf

In the end, the court concluded:

> Upon consideration of the Plaintiffs' Motion for Preliminary Injunction and/or for Preliminary Relief under 5 U.S.C. § 705 (ECF No. 11), the Court concludes that Plaintiffs have established a strong likelihood of success on the merits, irreparable harm, and that the balance of equities and public interest favor the Plaintiffs. The Court made these findings based on Plaintiffs' Motions for Preliminary Relief and accompanying declarations as well as the hearing held on December 19, 2025. Therefore, for good cause shown, and for the reasons stated at that hearing, the Court GRANTS the Plaintiffs' Motion for Preliminary Relief.

In January 2026, HUD formally reinstated the original funding notice and informed providers that it would begin processing applications submitted under the prior criteria. The agency now expects to announce awards by May, offering temporary relief to service providers who rely heavily on federal funding to operate.

Conclusion and Implications

HUD has made clear that it intends to pursue similar reforms in the future and has stated it will revert to its revised funding framework if the court order is lifted; the application period for 2027 funding is expected to open later this year.

In the meantime, many organizations have delayed hiring, sought emergency bridge funding, or turned away people in need amid uncertainty over whether funding would arrive. Some nonprofits warned that even short-term disruptions could lead to permanent housing losses that would take years to undo.

For now, the courts have preserved the existing homelessness response system—but only temporarily. As litigation continues, the outcome could determine not only how billions in federal dollars are distributed, but also whether the "Housing First" model will remain the foundation of national homelessness policy or gives way to a more punitive and conditional approach. The U.S. District Court's order is available here: https://ecf.rid.uscourts.gov/cgi-bin/show_public_doc?2025cv0636-52

(Mona Goodarzi)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT LETS STAND COURT OF APPEAL'S OPINION INVALIDATING CITY'S SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR BALLOT MEASURE TO REMOVE COASTAL HEIGHT LIMITS

Save Our Access v. City of San Diego, ___Cal.5th___, Case No. S293971 (Cal. Dec. 30, 2025); ___Cal.App.5th___, Case No. D084132 (4th Dist. Oct. 17, 2025).

On December 30, 2025, the California Supreme Court denied the City of San Diego's petition for review and request to depublish the opinion invalidating the City's Supplemental Environmental Impact Report (SEIR) for its second ballot measure to remove a 30-foot coastal height limit, leaving the published appellate decision intact.

In a published opinion clarifying the application of the California Environmental Quality Act (CEQA) to plan-level environmental review and ballot measures affecting community planning and land use policy, the Fourth District Court of Appeal held that the City's SEIR for its second City-sponsored ballot measure to remove the Midway-Pacific Highway area coastal height limit failed to comply with CEQA. The appellate court reversed the trial court and directed issuance of a writ of mandate requiring further environmental review. The decision underscores the necessity for public agencies to analyze all reasonably foreseeable significant environmental effects of proposed actions, including plan-level changes affecting large geographic areas and multiple projects.

Factual and Regulatory Background

The City of San Diego's Coastal Height Limit Overlay Zone established a maximum building height of 30 feet in the Midway-Pacific Highway Community Planning area—a long-standing restriction intended to protect coastal views and neighborhood character. The City sought to remove this limit through voter-approved ballot measures to facilitate higher-density development, including housing and mixed-use projects supportive of community planning objectives.

In 2020, the City placed a ballot measure on the ballot to remove the 30-foot height limit. The appellate court previously upheld a trial court's invalidation of that measure, concluding its environmental review failed to consider the impact of building heights above 30 feet and was therefore inadequate under CEQA. During that appeal, the City prepared a Supplemental Environmental Impact Report and proposed a second ballot measure, which the City certified and approved for the 2022 ballot. The SEIR acknowledged that the removal of the height limit represented a changed circumstance but analyzed only view and neighborhood character impacts, asserting that the 2018 Program EIR (PEIR) for the broader Midway-Pacific Highway Community Plan Update sufficiently addressed all other potential impacts. Save Our Access, a community group opposing the City's actions, filed a new petition for writ of mandate challenging the adequacy of the SEIR and compliance with CEQA.

Procedural History

The San Diego County Superior Court denied the writ petition, finding that the City's SEIR complied with CEQA procedural and substantive requirements. Save Our Access appealed. Upon review, the Fourth District Court of Appeal reversed the superior court's judgment, concluding that the SEIR was legally inadequate because it failed to examine significant environmental effects beyond views and neighborhood character and improperly relied on the 2018 PEIR without conducting analysis required for a subsequent EIR under CEQA. The appellate court directed the superior court to grant the writ of mandate and order the City to comply with CEQA. The appellate decision was certified for publication. Following the appellate ruling, the City petitioned the California Supreme Court for review and requested depublication of the opinion, both of which the Supreme Court denied on December 30, 2025.

The Court of Appeal's Decision

CEQA Scope and Subsequent EIR Requirements

At the core of the appellate court's opinion is CEQA's requirement that environmental impact reports must discuss all significant direct and reasonably foreseeable indirect environmental effects of a project, identify feasible mitigation measures, and disclose the rationale for project approval despite significant environmental impacts. The court reaffirmed that a ballot measure adopted by a public agency is a "project" subject to CEQA's requirements.

The court emphasized that the City's SEIR for the second ballot measure was deficient because it primarily addressed only two categories of impacts (views and neighborhood character) while relying on the 2018 PEIR to cover all other potential effects without independently evaluating or explaining them in the context of a changed circumstance (i.e., the plan to lift the coastal height limit). Under CEQA case law, when a lead agency tiers from a program EIR, any subsequent environmental review must still include analysis of significant effects that were not examined, or fully considered, in the program EIR. An SEIR that simply adopts conclusions from an older PEIR without fresh analysis does not satisfy CEQA's informational requirements.

The appellate court conducted substantial evidence review of factual findings. The court found that the SEIR's reliance on the 2018 PEIR lacked substantial evidence for its conclusion that all significant environmental impacts except views and neighborhood character had been adequately analyzed. This procedural inadequacy prejudicially impaired informed public participation and rational decision-making by both the public and City decision-makers.

Application to Plan-Level and Programmatic CEQA Review

Save Our Access is significant for clarifying how CEQA applies to plan-level decisions and broad policy shifts, such as ballot measures affecting zoning or overlay restrictions across a planning area. The court's analysis rejects truncated environmental review that fails to account for environmental consequences reasonably foreseeable from substantial changes in land use patterns, such as increased building heights and associated density. The decision highlights that reliance on prior environmental documents alone, without fresh analysis tailored to the specific project at issue, is insufficient where new circumstances trigger a changed environmental baseline.

The case also underscores the importance of meaningful environmental disclosure to the electorate before the adoption of ballot measures. CEQA's purposes include informing public officials and the public about environmental risks and alternatives; a supplemental review that omits significant categories of impact undermines this core objective. The appellate court's ruling reinforces that lead agencies cannot delegate away or shortcut this fundamental requirement.

Conclusion and Implications

Save Our Access v. City of San Diego provides a clear reaffirmation of CEQA's robust informational and procedural requirements for environmental review associated with major land use policy changes and ballot measures. By reversing the trial court and invalidating the SEIR for failing to thoroughly analyze all potentially significant environmental impacts, the appellate decision sets a precedent that agencies must undertake comprehensive and tailored environmental review even when relying on programmatic documents.

For municipal governments and practitioners, the case signals that subsequent EIRs must contain independent analysis of all environmental effects triggered by a changed project. Simply deferring to prior program EIRs without adequate updated analysis will not satisfy CEQA. Agencies should also ensure environmental documents are prepared early and revised iteratively to integrate foreseeable impacts as policy decisions evolve. The California Supreme Court's denial of review leaves this guidance intact and reinforces the judiciary's willingness to scrutinize environmental review for compliance with CEQA's statutory framework. The Court of Appeal's October 17, 2025, published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/D084132A.PDF

(Miguel Mauricio)

FOURTH DISTRICT COURT ADDRESSES PROCEDURAL REQUIREMENTS IN THE HOUSING ELEMENT ADOPTION AND REVISION PROCESS

Californians for Homeownership, Inc. v. City of La Habra, ___Cal.App.5th___, Case No. G064286 (4th Dist. Dec. 18, 2025, *certified for publication* Jan. 16, 2026).

In a published decision addressing procedural requirements in the housing element adoption and revision process, the California Court of Appeal affirmed a trial court's denial of a writ of mandate challenging the validity of the City of La Habra's February 2023 revisions to its sixth-cycle housing element. The court held that the revisions did not require additional public hearings and that the City Council validly delegated authority for technical revisions to the City Manager. It further concluded that any procedural deficiencies did not constitute prejudicial error under Government Code section 65010. The decision provides significant guidance on how housing element revisions interact with statutory public participation requirements and the effect of Department of Housing and Community Development (HCD) certification on judicial review.

Factual and Statutory Background

California law requires each city's general plan to include a housing element that analyzes housing needs and establishes policies and programs for the planning period. The housing element must be periodically reviewed and revised under Government Code sections 65583 and 65588, and revisions must substantially comply with state law as reviewed by HCD. The statutory revision and certification process, governed primarily by Government Code section 65585, contemplates multiple draft revisions, public comment, and HCD review and may involve several rounds of modification to achieve substantial compliance. A housing element that HCD certifies as substantially compliant enjoys a rebuttable presumption of validity under Government Code section 65589.3.

La Habra initiated its sixth-cycle housing element revision in 2021. City advisory committees, the planning commission, and the City Council held public hearings on draft versions throughout 2021 and 2022. In September 2022, the City Council adopted the housing element via resolution, and it authorized the City Manager to make technical or clerical changes necessary to secure HCD certification. After submitting the draft to HCD, the City received comments and requests for revisions. City staff made additional changes and posted the revised element online before the City Manager approved the revisions in February 2023 under the authority delegated in the council's resolution. HCD then certified the revised element as substantially compliant, without assessing the procedural steps the City took.

Procedural History

Californians for Homeownership, Inc. (CFH), a nonprofit focused on addressing California's housing crisis, filed a petition for writ of mandate in Orange County Superior Court challenging the validity of the February 2023 version of the housing element. CFH contended that (1) the City Council and planning commission failed to hold public hearings on the specific February revisions, and (2) the revisions were approved by the City Manager, an unelected official, rather than adopted by the legislative body as required under Government Code sections governing general plan amendments. The trial court denied the petition, finding that prior hearings satisfied public participation requirements, the delegation to the City Manager was proper, and any procedural defects were subject to harmless error analysis under Government Code section 65010. CFH appealed.

The Court of Appeal's Decision

Public Hearing Requirements and Delegation of Authority

The Court of Appeal applied independent review to determine whether the housing element's revision substantially complied with statutory requirements. It first addressed CFH's argument that the February 2023 revisions required new public hearings. CFH relied on Government Code sections 65355 and 65353, which generally require legislative bodies and planning commissions to hold at least one public

hearing before adopting or amending a general plan. The court observed, however, that the statutory housing element revision process under section 65585 includes its own public participation regime, encompassing multiple drafts and requisite public comment periods, and that the February 2023 changes were part of the ongoing revision and certification process rather than a new, distinct amendment necessitating separate hearings. In the court's view, additional hearings were not mandated because the revisions were made in response to HCD's requests for substantive compliance and were thus integrated into the overall revision timeline. Moreover, the City Council, in its September 2022 hearing, adopted Resolution No. 6085 which gave the City Manager the power to make further technical or clerical revisions as necessary—thereby granting the City Manager the power to make non-substantive changes.

On the second issue, the court rejected CFH's contention that the February revisions were invalid because they were approved by the City Manager rather than formally adopted by the City Council. It explained that the City Council's September 2022 resolution expressly delegated authority to the City Manager to make technical or clerical revisions as necessary to secure HCD certification, and that delegation was permissible under the La Habra Municipal Code. The court cited established doctrine recognizing the discretion local legislative bodies possess in managing general plan revisions, including authorizing staff to carry out limited administrative tasks inherent in effectuating adopted policy. CFH's claim that the revisions exceeded the scope of the delegation was unavailing, as the council had the ongoing opportunity to review and retract the delegation and subsequently acted on ordinances implementing the housing element, indicating ratification of the revised content.

Harmless Error and Presumption of Validity Post-Certification

Even assuming, for the sake of argument, that additional hearings or formal council adoption were required, the Court of Appeal held that CFH failed to demonstrate prejudicial error under Government Code section 65010, subdivision (b). That statute bars invalidation of general plan actions based on procedural error absent a showing of substantial injury and a probable different outcome absent the error. The court noted that the February revisions were made at HCD's suggestion to achieve certification and that CFH did not show how additional procedures would have produced a different result. The court also reaffirmed that HCD's certification creates a rebuttable presumption of validity that shifts the burden to the challenger to show noncompliance with statutory requirements. CFH did not meet that burden.

Conclusion and Implications

The decision in *Californians for Homeownership, Inc. v. City of La Habra* affirms the principle that procedural challenges to housing element revisions must be evaluated within the context of the statutory revision and certification process and that not all post-adoption adjustments trigger fresh public hearing requirements. It clarifies that legislative bodies may delegate authority for technical revisions to achieve substantial compliance with state law and that such delegations will be upheld when consistent with local governance structures. The court's reliance on the harmless error rule and the presumption of validity after HCD certification underscores the high bar for invalidating housing elements on procedural grounds.

For local governments and practitioners, this opinion emphasizes the importance of integrating public participation into early stages of housing element revisions, documenting adherence to statutory processes, and understanding how HCD interaction shapes the timing and nature of revisions. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/G064286.PDF
(Miguel Mauricio)

THIRD DISTRICT COURT REJECTS BOND VALIDATION FOR DELTA PROGRAM—FINDS DWR LACKED AUTHORITY TO ISSUE BONDS BECAUSE THE DELTA PROGRAM WAS TOO VAGUELY DEFINED

Department of Water Resources v. Metropolitan Water District of Southern California, ___Cal.App.5th___, Case No. C100552 (3rd Dist. Dec. 31, 2025, *certified for partial publication* Jan. 28, 2026).

In *Department of Water Resources v. Metropolitan Water District of Southern California*, the Third District Court of Appeal affirmed a judgment denying validation of revenue bonds proposed by the California Department of Water Resources (DWR) for the "Delta Program." The court concluded that DWR lacked statutory authority to issue the bonds because the Delta Program was too vaguely defined to qualify as a permissible modification of the Feather River Project under Water Code section 11260.

Background

DWR sought judicial validation of revenue bonds to fund the planning, acquisition, and construction of the Delta Program, which it defined as facilities to convey water through the Sacramento–San Joaquin Delta. Various environmental organizations, public agencies, taxpayer groups, and water contractors opposed validation, asserting statutory and environmental law challenges. The trial court denied validation, and the Court of Appeal affirmed.

Statutory Authority for the Feather River Project

DWR's request for bond validation relied on Water Code section 11260, which authorizes the department to construct and operate the Feather River Project as the initial feature of the State Water Project. Rather than describing the project's physical components, section 11260 identifies the Feather River Project by reference to three planning reports prepared in the 1950s. The statute also authorizes DWR to implement "further modifications" to the project.

The dispute centered on whether the Delta Program fell within this modification authority or instead constituted a separate project requiring independent legislative authorization. Because the statute does not define the outer bounds of permissible modifications, the court was required to evaluate whether the Delta Program could reasonably be understood as part of the Feather River Project framework.

The Court of Appeal's Decision

In the bond resolutions submitted for validation, DWR defined the Delta Program broadly as "facilities for the conveyance of water in, about and through the Sacramento–San Joaquin Delta." The resolutions did not identify specific facilities, configurations, or operational parameters, nor did they describe how the Delta Program related to the Feather River Project as originally authorized. The Court of Appeal concluded that this definition lacked sufficient specificity to support validation.

The court emphasized that validation proceedings require an affirmative showing of statutory authority. Where a proposed project is described only in general terms, courts may be unable to determine whether the project falls within the scope of existing legislative authorization. Here, the absence of defined facilities, operational parameters, or a clear relationship to the Feather River Project prevented such a determination.

The decision underscores that bond validation is not a purely ministerial exercise. Agencies seeking validation may be required to demonstrate, with meaningful detail, how proposed projects align with statutory authority. Generalized descriptions may be insufficient, particularly where statutes rely on historical planning documents rather than contemporary project definitions.

As a practical matter, agencies may need to provide more detailed project descriptions earlier in the financing process or delay validation until project parameters are more clearly developed.

The court's analysis highlights the challenges of relying on decades-old statutory authorizations to support modern infrastructure initiatives. While section 11260 permits modifications to the Feather River Project, the court declined to infer expansive authority from a statute grounded in mid-twentieth-century planning materials. This suggests a judicial reluctance to extend historic authorizations to projects that may differ substantially in scope or function from those

originally contemplated, absent clear legislative direction.

Although the decision did not reject Delta conveyance as a policy objective, it indicates that future Delta conveyance efforts may require clearer statutory grounding. Agencies pursuing similar projects may need to more explicitly tie proposed facilities to existing authorizations or seek new legislative approval to avoid challenges at the validation stage.

Relationship Between Statutory Authority and Environmental Review

Respondents also challenged the bonds on environmental and public trust grounds, including alleged violations of the California Environmental Quality Act (CEQA) and the Sacramento–San Joaquin Delta Reform Act. The Court of Appeal affirmed the trial court's rejection of those claims, though the portion of the opinion addressing them was not certified for publication.

Importantly, the court resolved the validation issue independently of environmental compliance, reinforcing that statutory authority and environmental review serve distinct legal functions.

Conclusion and Implications

The decision illustrates that compliance with environmental review requirements does not substitute for clear statutory authority. Even where environmental challenges are unsuccessful, agencies must independently establish that proposed financing mechanisms are authorized by law. This distinction may shape litigation strategy and project sequencing in future infrastructure disputes.

Department of Water Resources v. Metropolitan Water District underscores the limits of relying on historic statutory authorizations to support modern water infrastructure financing. While section 11260 allows for modifications to the Feather River Project, the decision makes clear that agencies must define proposed projects with sufficient specificity to demonstrate that they fall within legislative authority. The case also illustrates the judiciary's role in scrutinizing bond validation requests where the scope of agency authority is uncertain. Going forward, the decision may encourage greater legislative clarity or more detailed project definitions when agencies seek to finance large-scale Delta conveyance efforts through revenue bonds. The court's *partially* published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C100552M.PDF

(Christina Suarez, Derek Hoffman)

THIRD DISTRICT COURT AFFIRMS MOVING PLAYGROUND EQUIPMENT WITHIN THE SAME PARK WAS SUBJECT TO CEQA EXEMPTIONS AND NOT SUBJECT TO UNUSUAL CIRCUMSTANCES EXCEPTION

Krovoza v. City of Davis, ___Cal.App.5th___, Case No. C100103 (3rd Dist. Dec. 30, 2025).

In *Krovoza v. City of Davis* the Third District Court of Appeal affirmed the lower court's ruling in favor of the City, holding that moving playground equipment within a park to reduce noise levels at nearby homes was exempt from the California Environmental Quality Act (CEQA) and was not subject to the "unusual circumstances" exception.

Factual and Procedural Background

Residents challenged the City of Davis' approval of the relocation of a "Sky Track" playground feature within Arroyo Park, which is akin to a zipline. It generated persistent noise complaints after its installation in 2019 due to its mechanical movement and proximity to nearby homes. An initial noise study determined the Sky Track violated the City's nighttime noise ordinance, resulting in initial mitigation efforts including restricted hours of operation, signage, rubber bumpers, and nightly locking. Initial mitigation reduced nighttime noise but proved operationally unreliable because of vandalism and staffing limitations.

To address these issues, the City commissioned a second acoustical study evaluating the relocation of

the Sky Track to several alternative locations within the park. That study concluded the Sky Track's existing operation exceeded the City's daytime and nighttime noise thresholds but also demonstrated that relocation to a more central park location would reduce noise levels at nearby residences. The City approved the relocation and filed a Notice of Exemption under the California Environmental Quality Act's categorical exemptions for minor structures, minor land alterations, and accessory structures (Classes 3, 4, and 11). Nearby residents filed a petition for writ of mandate, arguing that the project was subject to CEQA's "unusual circumstances" exception to the exemptions. The trial court denied the petition, and the residents timely appealed.

The Court of Appeal's Decision

The Court of Appeal affirmed the City's categorical exemption determination because (a) evidence that the relocated Sky Track might exceed a municipal noise ordinance did not, standing alone, establish a significant adverse change from baseline environmental conditions, and (b) the record contained no substantial evidence, whether through public comments, speculative interpolation of noise impacts, the absence of an ambient noise study, or alleged ordinance violations, supporting a fair argument that the project could have a significant noise impact.

Evidence That the Project Will Have a Significant Environmental Effect

The court first addressed whether evidence showed the project would, in fact, have a significant environmental effect. The residents argued that the relocation would violate the City's noise ordinance and that such a violation alone constituted substantial evidence of a significant environmental impact.

The court rejected that premise, emphasizing that the existence of an environmental impact depends on whether a project causes an *adverse change* from existing baseline physical conditions, not merely whether it exceeds a regulatory threshold. Even assuming a noise ordinance violation could be shown that fact alone does not establish an adverse environmental change, particularly where the project demonstrably reduces noise compared to existing conditions. Here, the noise study showed relocation would lower noise levels at all measured locations, defeating any claim of a significant *adverse* effect.

Fair Argument Test

The court next examined whether substantial evidence supported a fair argument that, due to unusual circumstances, the project might have a significant environmental impact.

As to public comments, petitioners cited complaints from residents about noise at the Sky Track's original location and generalized concerns about annoyance. The court held these comments did not constitute substantial evidence because they merely addressed existing conditions or consisted entirely of non-expert speculation about future impacts, rather than evidence of an adverse environmental impact at the *new* location.

As to interpolation of distances and noise impacts, residents attempted to extrapolate from the noise study increased noise impacts by assuming comparable distances and ambient conditions at unmeasured locations. The court rejected this approach as speculative, explaining that courts may not create evidence or infer impacts unsupported by the record.

As to ambient noise analysis, residents argued the City abused its discretion by failing to conduct a formal ambient noise study. The court disagreed, clarifying that CEQA does not require such analysis for categorically exempt projects. The City had no legal duty to perform additional ambient noise testing because the Project was appropriately deemed exempt from CEQA.

As to noise ordinance compliance, the court rejected the claim that the City was required to evaluate compliance with a separate ordinance governing audible noise inside residences. The record contained no evidence that noise from the relocated Sky Track would be audible inside homes, and as discussed above, violation of a noise ordinance *alone* does not constitute evidence that a project will have a significant effect, *i.e.*, an *adverse* change, on the environment. Additionally, petitioners identified no legal requirement for the City to evaluate compliance with the noise ordinance prior to approving the Project.

Conclusion and Implications

The Third District Court of Appeal affirmed the City's reliance on categorical exemptions. The court held that regulatory exceedances alone do not constitute a significant environmental impact (*i.e.*, an adverse change in the environment). Importantly, the

case reinforces authority that exemption determinations need not be supported by the analytical rigor required for non-exempt projects, even when technical studies are voluntarily prepared.

The court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/C100103.PDF
(Blaine R. Dyas)

IN LATEST CHAPTER OF 'MAKE UC A GOOD NEIGHBOR' SAGA, FIRST DISTRICT COURT UPHOLDS DENIAL OF PETITIONERS' MOTION FOR OVER $1 MILLION IN ATTORNEY'S FEES

Make UC a Good Neighbor v. Regents of University of California, ___Cal.App.5th___, Case No. A172510 (1st Dist. Dec. 19, 2025).

In *Make UC a Good Neighbor v. Regents of University of California* the First District Court of Appeal affirmed Alameda County Superior Court's denial of Make UC A Good Neighbor's and the People's Park Historic District Advocacy Group's (Petitioners') motion for attorney's fees under the Private Attorney General Doctrine because all of Petitioners' claims were explicitly rejected by both the California Supreme Court and Legislature.

Factual and Procedural Background

In 2021, UC Berkeley approved a housing project at People's Park featuring 1,113 student beds, 1.7 acres of open landscape, and 125 affordable and supportive housing beds for low-income residents not affiliated with the University. Petitioners filed suit against the project, arguing in relevant part that the EIR failed to account for noise caused by student parties and failed to analyze alternative locations for the project in violation of CEQA. The trial court rejected those claims, but the Court of Appeal agreed with Petitioners on the noise and alternative location claims.

The Legislature subsequently enacted AB 1307 which amended CEQA such that residential occupant noise does not constitute a significant effect on the environment and that public universities need not analyze alternative locations when developing residential or mixed-use housing projects under certain circumstances. The California Supreme Court granted review and held that AB 1307 required reversal of the Court of Appeal's decision on both issues, in favor of UC Berkeley. Petitioners moved for attorney fees under the private attorney general doctrine, arguing that portions of the Court of Appeal's analysis "remain good law" with respect to nonresidential projects. The trial court denied the motion, concluding that Petitioners were not successful parties on any claim. Petitioners timely appealed.

Appellate Court's Analysis

The First District Court of Appeal affirmed the denial of attorney fees because Petitioners were not a "successful party" for purposes of the private attorney general doctrine. "The successful party is 'the party to litigation that achieves its objectives.'" "[T]he critical fact is the impact of the action … [Parties] may be considered successful if they succeed on any significant issue in the litigation that achieves some of the benefit they sought in bringing suit."

Petitioners argued they were successful because portions of the Court of Appeal's earlier analysis remained good law as applied to non-residential projects, notwithstanding the Legislature's subsequent enactment of AB 1307 and the Supreme Court's reversal. This court rejected this argument for two reasons. First, although the Supreme Court reversed based on intervening legislation rather than expressly critiquing the Court of Appeal's reasoning, the reversal nevertheless constituted explicit disapproval of those holdings, rendering Petitioners unsuccessful on all fronts. Second, this court emphasized that any of their prior analysis of noise and alternative location analyses regarding nonresidential projects surviving the reversal was not citable precedent, characterizing those portions of the prior opinion as "smoldering ruins."

Conclusion and Implications

This decision reinforces that a party does not qualify as "successful" under the private attorney general

doctrine where intervening legislation and Supreme Court reversal eliminate *all* claims and practical relief sought by petitioners. The case also underscores the limits of relying on superseded appellate analyses to support attorney fee claims, particularly where the Legislature has acted expressly to abrogate the underlying legal holdings.

The court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/A172510.PDF (Blaine R. Dyas)

FOURTH DISTRICT COURT AFFIRMS CITY'S AUTHORITY TO AMEND GROWTH MANAGEMENT PERFORMANCE STANDARDS DESPITE VOTER ADOPTION OF 'PROPOSITION E'

North County Advocates v. City of Carlsbad, Unpub., Case No. D083749 (4th Dist. Dec. 18, 2025).

In December 2025, the California Court of Appeal for the Fourth Appellate District issued an *unpublished* decision in *North County Advocates v. City of Carlsbad*, affirming a trial court judgment that upheld the City of Carlsbad's authority to amend long-standing growth management performance standards despite voter adoption of Proposition E in 1986. The case arose from a challenge by North County Advocates, a nonprofit organization, which alleged that the City violated Proposition E and its 1986 Growth Management Plan by approving development without meeting original performance standards for parks, traffic circulation, and open space. The decision provides important guidance on how voter initiatives interact with municipal planning frameworks and the extent of local government discretion over long-term infrastructure standards.

Background

Proposition E and the 1986 Growth Management Framework

Proposition E was adopted by Carlsbad voters in November 1986 following a period of rapid growth and a temporary building moratorium:

> The City Council or the Planning Commission shall not find that all necessary public facilities will be available concurrent with need as required by the Public Facilities Element and the City's 1986 *growth management plan* unless the provision of such facilities is guaranteed. (Italics added.)

The initiative imposed a cap on the total number of residential dwelling units in the city and required that development proceed only when necessary public facilities were available concurrent with need. The measure emphasized traffic circulation, schools, parks, libraries, open space, and recreational amenities, and it restricted increases in residential density without voter approval. Importantly, Proposition E amended the City's General Plan by adding growth limits and concurrency requirements, but it did not itself set out detailed numerical performance standards for public facilities.

At the time Proposition E was adopted, Carlsbad had already enacted a Growth Management Plan through Ordinance No. 9808 and related resolutions. That plan established performance standards for a wide range of facilities and expressly reserved to the City Council the discretion to amend those standards as part of an ongoing planning process. This reservation of authority became central to the dispute decades later.

The Lawsuit and Core Legal Questions

North County Advocates filed suit in 2019 seeking declaratory and injunctive relief, alleging that Carlsbad continued to approve development even though it failed to meet the original 1986 performance standards for parks, traffic circulation, and open space. The organization argued that Proposition E effectively froze those standards in place and that any post-1986 amendments were invalid absent voter approval. It further contended that the City had materially reduced public facilities without corresponding reductions in residential density, contrary to the initiative's terms.

The City responded that Proposition E did not incorporate the specific 1986 performance standards

into the voter initiative and that Ordinance No. 9808 preserved municipal authority to amend the Growth Management Plan over time. According to the City, the challenged standards had been lawfully amended, often to comply with changes in state law such as the Complete Streets Act, and the City remained in compliance with the standards as currently written.

After a bench trial, the trial court ruled in favor of the City, concluding that Proposition E did not bind Carlsbad to the 1986 performance standards and that the City lawfully amended those standards pursuant to its reserved authority. The court acknowledged concerns about whether the City's approach aligned with the "spirit" of Proposition E but held that, as a matter of law, the initiative did not prohibit later amendments.

The Court of Appeal's Decision

On appeal, the Court of Appeal conducted a *de novo* review of the legal issues and reached the same conclusion. The court emphasized that Proposition E referenced the "1986 growth management plan" only in a general sense and did not restate or expressly adopt the detailed standards contained in the underlying ordinances and resolutions. Under established principles of statutory interpretation, a general reference to a body of law incorporates that law as it may be amended over time, absent clear voter intent to the contrary. The court also relied on California Supreme Court precedent holding that voter initiatives do not restrict legislative amendment authority unless the initiative clearly and expressly does so.

Parks, Traffic, and Open Space Standards

Applying these principles, the appellate court evaluated each category of facilities challenged by North County Advocates. With respect to parks, the court noted that the City amended the parks performance standard in 2017 as part of a settlement with the same organization, resetting the timing for when park construction must be scheduled. Because the revised standard did not require compliance until 2022, the court found no violation based on conditions existing when the lawsuit was filed. The court further deferred to the City's interpretation of what constitutes a park and when a park is considered scheduled for construction, concluding that the City's approach was reasonable and consistent with Proposition E's requirement that facilities be guaranteed rather than already built.

For traffic circulation, the court upheld the City's shift from a vehicle-focused level of service standard to a multimodal approach that accounts for pedestrians, bicyclists, and transit users. The court accepted evidence that exempting certain street segments from strict level-of-service requirements was reasonable to avoid adverse safety and community impacts and to comply with state law.

Regarding open space, the court rejected arguments that Proposition E required the City to maintain 40 percent of its total land area as open space, noting that this figure appeared only in ballot arguments rather than the initiative text itself. The court also upheld the City's interpretation of which zones were subject to the 15 percent open space performance standard and found no evidentiary basis for concluding that the City failed to meet its reporting or monitoring obligations.

Conclusion and Implications

The *North County Advocates v. City of Carlsbad* decision reinforces the principle that voter initiatives amending general plans are typically construed as setting broad policy goals rather than freezing detailed regulatory standards in perpetuity. Absent clear language limiting amendment authority, cities retain discretion to adapt growth management tools to changing legal requirements, planning philosophies, and community needs.

The ruling illustrates the judiciary's continued deference to local governments in interpreting and implementing their own planning documents, particularly where those documents balance competing policy objectives. As cities across California confront evolving infrastructure demands and state mandates, the Carlsbad decision provides a useful roadmap for navigating the intersection of voter control and municipal flexibility. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/D083749.PDF
(Darien Key)

FIRST DISTRICT COURT ISSUES FEE DECISION—CLARIFIES AB 1633'S 'DUE WEIGHT' STANDARD FOR CEQA HOUSING-APPROVAL CASES

Updated Plan v. City Council of the City of Pacifica,
___Cal.App.5th___, Case No. A170704 (1st Dist. Dec. 30, 2025).

In a *partially* published decision filed December 30, 2025 by the First District Court of Appeal in *Coalition of Pacificans for an Updated Plan v. City Council of the City of Pacifica* the court offers important guidance on how trial courts must evaluate private attorney general fees (Code of Civil Procedure § 1021.5) in lawsuits challenging a local agency's approval of a housing development project in the post-AB 1633 landscape.

Background

The case stems from the City of Pacifica's (City) approval of the Vista Mar project, comprised of eight townhome units proposed on a steep, vegetated hillside (Project). The City relied on an Initial Study/Mitigated Negative Declaration (IS/MND) in connection with its approval of the Project. Following the City Council's narrow approval by a 3–2 vote, opponents filed a petition for writ of mandate asserting California Environmental Quality Act (CEQA) and General Plan claims.

On the merits, the trial court found substantial evidence supporting a "fair argument" that the project may have significant effects on the environment and further held the City prejudicially abused its discretion by not preparing an Environmental Impact Report (EIR). The trial court rescinded the City's approvals. No party appealed the CEQA merits judgment.

Plaintiffs then sought attorney's fees under CCP § 1021.5, which allows a court to award attorney's fees to a successful party in an action that results in the enforcement of an important public right or benefit. After extensive post-hearing proceedings (including briefing prompted by the January 1, 2024, effective date of AB 1633's new fee provision), the trial court awarded $1,286,144.57 in fees, allocating joint-and-several liability among the City and real parties in interest.

The Court of Appeal's Decision

The First District Court of Appeal reversed the fee order and remanded the decision to the trial court, holding the trial court had abused its discretion in applying AB 1633's new "due weight" provision, found at Government Code § 65589.5(p)(1).

AB 1633's New 'Due Weight' Requirement

Effective January 1, 2024, AB 1633 added Gov. Code § 65589.5(p)(1) to the Housing Accountability Act ("HAA"), directing that, in cases challenging approval of a housing development project, courts—when "weighing" the significant benefit and necessity of private enforcement prongs of CCP § 1021.5—must give "due weight" to three factors: 1) the degree to which approval of the housing development project furthers policies (including subdivisions (a)–(c)); 2) site suitability for the housing development project; and 3) the reasonableness of the local agency's decision.

The court emphasized that these factors *modify*, but do not *displace*, the standard § 1021.5 inquiry relative to whether an attorneys' fee award is justified. The statute does not preclude consideration of other relevant factors in the fee "weighing" process, and the "due weight" factors are not exclusive or dispositive.

Courts Must Still Consider Environmental Review Concerns When Applying the New 'Due Weight' Standard

A central concern among land use practitioners has been whether AB 1633 effectively bars courts from crediting the public benefit of CEQA enforcement in housing-approval litigation. Pacifica position is that § 65589.5(p)(1) does not preclude consideration of a project's potential environmental impacts (or the public benefit of requiring additional study) within the CCP § 1021.5 analysis.

At the same time, the opinion makes clear that courts must continue to evaluate environmental constraints consistently with the procedural posture of the underlying CEQA merits ruling—particularly where the merits turned on the "fair argument" test's relatively low threshold.

Where the Trial Court Went Wrong

The Court of Appeal identified two "degree to which" errors likely to recur in fee disputes:

First, the Court of Appeal indicated that reliance on the state's housing shortage is the wrong benchmark. The trial court minimized the project's housing contribution because eight units are "small and inconsequential" relative to a two-million-unit statewide shortage. The Court of Appeal held that approach renders the statutory factor meaningless; analysis should be localized, and the opinion points to the City's 2015–2023 Regional Housing Needs Allocation and local housing production history as relevant context.

Second, the Court of Appeal rejected a categorical "urban/not urban" label applied to the entire city. Because § 65589.5(c) contemplates that jurisdictions often contain some "urban areas" and some non-urban areas, the "urban infill" inquiry must be evaluated in a more location- and context-specific manner, rather than by declaring all of Pacifica to be "non-urban," which is what the petitioners and trial court sought to do.

Site Suitability and Reasonableness

On the site suitability factor, the court accepted that steep-slope/landslide and erosion risks may weigh against a site's suitability even if zoning allows housing—while cautioning courts not to treat a "fair argument" merits determination as a finding of likely impacts, and not to rely on extra-record assumptions (*e.g.*, generalized storm impacts or the court's reliance on personal knowledge) when weighing suitability.

On the reasonableness factor, the court confirmed that inadequate environmental review can support a determination an approval was unreasonable for fee-weighing purposes, although CEQA challengers are cautioned that "any CEQA error" will not automatically establish unreasonableness.

Conclusion and Implications

Pacifica signals that fee exposure in CEQA housing-approval challenges is neither eliminated nor automatic under AB 1633. Rather, the new framework rewards record and fact-based, localized showings: agencies and project proponents should document the local RHNA context, infill characteristics, and the decision's reasonableness while project opponents should anticipate that "due weight" arguments will be the focus of any post-merits fee litigation. The court's *partially* published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A170704.PDF

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