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# CALIFORNIA LAND USE™
## LAW & POLICY Reporter

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## LAND USE NEWS

# META AND GOVERNOR NEWSOM ANNOUNCE NEW SACRAMENTO STATE CAMPUS ON CAPITOL MALL, FEATURING ARTIFICIAL INTELLIGENCE AND PUBLIC AFFAIRS PROGRAMS

In January 2026, a host of public- and private-sector leaders announced a new plan to demolish and replace the existing Employment Development Department and State Personnel buildings on Capitol Mall with a new Sacramento State campus (Project), fueled by $50 million in seed funding for initial planning efforts from Mark Zuckerberg's Meta®. The Project would include student housing, a hotel and venue, and, most notably, a new school of public affairs and an artificial intelligence campus a few hundred feet from the west steps of the Capitol. The artificial intelligence campus would support Sac State's newest bachelor's degree, "AI Business Management."

### Project Background

Downtown Sacramento, like many urban centers, took a huge hit during the pandemic. Governor Newsom has attempted to force many state employees to return to the office, partly to breathe life back into downtown Sacramento. The Governor has also been laser focused on addressing the homelessness crisis, including by encouraging the conversion of underutilized state properties into affordable housing. To address these twin issues, Governor Newsom recently announced and promoted the demolition of the State Personnel and Employment Development Department buildings on Capitol Mall, which would be replaced with a new Sacramento State campus featuring affordable student housing.

Mark Zuckerberg, the CEO of Meta (parent company to Facebook, Instagram, WhatsApp, and more), has also supported the Project by donating $50 million to jumpstart planning efforts, including the California Environmental Quality Act (CEQA) process. Unsurprisingly, his statements on the Project focus less on affordable student housing and more on the Project's new government affairs program and artificial intelligence campus. Big tech players have a demonstrated history of bailing on large projects like this one, making the Governor's long-term financial commitment to this massive Project a focal point for those interested in watching this story play out.

Several other public- and private-sector leaders have made statements on the Project, including Sac State President Luke Wood. Notably, during his live comments, after delivering a long list of the academic subjects to be taught at the new campus, including public policy, criminal justice, and international relations, he paused, checked his notes, and raised his eyebrows as he added "artificial intelligence" to the list.

Regarding the CEQA process for the Sacramento State Project, the site sits across the street from a daycare for state workers, a park, a historic Victorian mansion, housing, offices, and the Third District Court of Appeal. A portion of the EDD building also spans across 8th Street, directly above SacRT's 8th & Capitol Station, which serves all three of Sacramento's light rail lines. Considering how high-profile neighboring projects have been received by the public, CEQA litigators, and the Legislature itself, any redevelopment of state buildings along Capitol Mall will prove entertaining to follow.

### Artificial Intelligence and Data Centers

Relatedly, the rapid and accelerating development of data centers, i.e., the physical infrastructure required to support artificial intelligence, has caused concern and fueled pushback from neighbors and organizers across the country and within California. The U.S. economy took a hit during the pandemic and is otherwise currently experiencing heightened volatility and uncertainty. Much of the current economic distress is masked by relatively large revenue gains from artificial intelligence companies and data center development. In fact, by some estimates, more than 30 percent of the U.S. stock market is currently dependent on the success of AI and data center development.

This, in part, has spurred legislators at the state level to allegedly attempt to exempt data center

development from CEQA review via the "advanced manufacturing" exemption in SB 131 of 2025.

Relatedly, Senator Padilla recently announced SB 887, which would clarify that the "advanced manufacturing" CEQA exemption does not apply to data centers. Separately, some of the largest data centers ever proposed, which typically feature "emergency" gas turbines and demand extraordinary quantities of energy and water, are seeking by-right approval under existing industrial zoning designations, considering both the heightened demand for data centers and the political volatility surrounding them. In some cases, these "by-right" projects are proposed immediately adjacent to residential uses.

### Conclusion and Implications

Zuckerberg's investment of $50 million to promote the development of an artificial intelligence campus and public affairs program a few hundred feet from the Capitol, in the state with the fourth-largest economy in the world and home to many of the world's largest tech companies, marks yet another chapter in the artificial intelligence and data center land use saga. From a land use perspective, the Project will no doubt be worth following.

Governor Newsom's press release on the Project can be found here: https://www.gov.ca.gov/2026/01/29/governor-newsom-sacramento-state-and-meta-advance-major-redevelopment-in-downtown-sacramento-to-create-affordable-housing-for-students/

Sacramento State's webpage on the Project can be found here: https://www.csus.edu/experience/capital-campus/

(Blaine R. Dyas)

## SENATE BILL 79 AND PROPOSED SB 677: L.A. METRO BOARD VOTES TO FORMALLY OPPOSE LOCAL IMPLEMENTATION OF THE LAW, REQUESTS A LOS ANGELES COUNTY EXEMPTION

Last year, the California Legislature adopted Senate Bill (SB) 79 (Wiener) after multiple attempts at passing such legislation over the years. The law intends to accommodate additional residential density near transit corridors and to also increase ridership on transit routes.

Though SB 79 does not go into effect until July 1, 2026, Senator Wiener has already introduced clean up legislation (SB 677) that proposes several minor technical fixes. Housing and transit advocates hailed SB 79 as a key tool for fighting the state's prolonged housing crisis. Development skeptics, however, argue that the law infringes upon local land use authority. This was reflected at the February meeting of the L.A. Metro Board of Directors.

### Senate Bill 79 and Proposed SB 677

Generally, SB 79 upzones certain parcels around high quality transit in counties meeting certain transit criteria. SB 79 only applies in "urban transit counties," defined to mean a "county with more than 15 passenger rail stations." (Gov. Code, § 65912.156(p), (q).) Consequently, SB 79 only applies in Alameda, Contra Costa, Los Angeles, Orange, Sacramento, San Bernardino, Santa Clara, San Diego, San Francisco, and San Mateo counties.

SB 79 significantly increases the density around two tiers of transit stops, as defined. Projects that provide a specified share of affordable units and comply with the Section 65913.4 (i.e. SB 35) labor requirements will be eligible for streamlined and ministerial (California Environmental Quality Act-exempt) approval. The current draft of SB 677 makes minor changes to the definition of "high-frequency commuter rail." Still, however, SB 79 *does* allow for local agencies to enforce development standards that do not physically preclude development of a project meeting the density allowed under SB 79. Additionally, the law allows for transit agencies to adopt their own zoning policies applicable to agency-owned properties.

SB 79 (and by extension SB 677) do not operate in isolation, but they continue the legislative trend of exempting from local land use regulations certain development projects in transit-rich areas. The statutes reflect the Legislature view that infill and transit-oriented housing are matters of statewide concern.

### L.A. Metro Board Opposition

In a staff report presented to the Board of Directors at its January 15, 2026, meeting, Metro Staff explained that:

> •Staff have been working internally to analyze and refine what Metro would need from the legislature to ensure that the passage of SB 79 does not affect Metro's ability to provide high-quality transit in LA County.
> That report explained that SB 79 contained several ambiguities which result in confusion with respect to which transit lines along which SB 79 permits development. Further, Metro explains that:
>
> •SB 79 has become a catalyst for local opposition to Metro's transit projects. By linking increased housing density to both existing and future transit investments, the law has intensified resistance from some cities and community groups that now view new transit projects as a trigger for state-mandated upzoning.

This purportedly "created new political and permitting obstacles for voter-approved projects that have already completed environmental review."

Metro continues by claiming that the upzoning and streamlining provisions of SB 79 harm the county's low-income residents, who overwhelmingly rely on Metro services. Supposedly these provisions could engender so much opposition to expansion of Metro's network that this could result in slowed or stopped metro projects. To that end, the Metro Board of Directors voted 11 to two to oppose SB 677 unless otherwise amended to make Metro's requested clarifications, or to otherwise exempt L.A. County from the statute's applicability.

### Decision Impacts

The Metro Board of Directors' move to request the exemption of the County from the law's applicability is paradoxical, considering how transit-oriented housing development can increase overall transit ridership and, therefore, revenue growth. If exempt from SB 79, Metro will no longer be able to rely on the anticipated density to justify investing in transit expansion. Metro's position also ignores how infill development reduces vehicle traffic impacts as well as deleterious environmental impacts caused by single-occupancy vehicle commutes.

Further, Metro curiously argues that SB 79 would increase overall project opposition, while admitting that its transit projects are already subject to public opposition. Metro additionally ignores that SB 79 would eliminate the use of the California Environmental Quality Act to stop or slow certain housing development projects. The Legislature intended for SB 79 to provide even greater benefits to projects that exceed certain levels of affordable housing, yet Metro's action here opposes placing the very housing targeting its customers along Metro's rights of way.

### Conclusion and Implications

Metro's decision reflects the challenges that pro-housing policy makers and developers of infill housing face in Southern California, where support for pro-housing legislation lags behind that of the Bay Area. Still, Metro's opposition is unlikely to affect the state's pro-housing policy momentum, as Metro's request is inconsistent with the policies recently adopted and proposed by the Legislature. The state's third-largest transit agency, San Francisco Bay Area Rapid (BART), by contrast, supported SB 79 and continues to support its technical cleanup legislation.

Metro's move indicates that housing developers interested in invoking SB 79 could incur opposition from Metro, in addition to broader community opposition. Further, this decision also implies that Metro may be unwilling to adopt zoning policies that allow for dense housing development on its own properties.

For more information on chaptered SB 79, *see:* https://legiscan.com/CA/text/SB79/id/3059553. For more information on proposed SB 677, *see:* https://legiscan.com/CA/bill/SB677/2025

(Braedon Mansouri)

## LEGISLATIVE DEVELOPMENTS

# PROPOSED CALIFORNIA LEGISLATION WOULD EXEMPT SOME DEVELOPMENT PROJECTS FROM THE CALIFORNIA COASTAL ACT

California Assemblymember Rick Zbur, who represents a wide swath of metro Los Angeles, stretching from Glendale to Santa Monica, introduced Assembly Bill (AB) 1740 in February 2026. AB 1740 proposes changes to the California Coastal Act (Coastal Act) (Public Resources Code, § 30000 *et seq.*) to strengthen the housing approval process in certain coastal communities. AB 1740 would further the Legislature's efforts to slowly eliminate some of the Coastal Act's provisions, at least with respect to housing development.

### Background

#### The California Coastal Act

Adopted in 1976, the Coastal Act made permanent some of the coastal protections first established via voter initiative in 1972, including the California Coastal Commission. The Coastal Act seeks to protect the state's largest natural and scenic resource, but to also ensure equitable access to the shoreline.

To that end, the Coastal Act delineated an area along the state coastline, termed the "Coastal Zone." Very generally, the Coastal Act requires for cities and counties to adopt their own local coastal plans that govern land use in the Coastal Zone, each plan requiring certification by the Coastal Commission. Development within the Coastal Zone generally requires approval of a coastal development permit, which may be issued by the local agency, but its approval or denial may be appealed to the Coastal Commission. Many view the Coastal Commission as having exceeded its mission and having overregulated development in the Coastal Zone, including by severely limiting the development of housing in expensive coastal areas.

#### Legislative Efforts to Encourage Housing Development in the Coastal Zone

The State Legislature has recognized the Coastal Commission's impact on housing development and has slowly limited its authority with respect to certain development projects. Most recently, in 2025 the Legislature approved AB 130, which limits what housing development projects in the Coastal Zone that may be appealed to the Coastal Commission. Senate Bill 423 (2023) also extended into the Coastal Zone SB 35's (2016) streamlining protections for certain housing projects. Similarly, AB 2243 (2024) extended AB 2011 (by-right approval for certain housing projects on sites zoned for commercial uses) into the Coastal Zone.

### Assembly Bill 1740

If enacted and signed into law, AB 1740 would create a defined term for an "urban multimodal community" which includes: (1) at least one high-quality transit corridor or transit priority area; (2) has specified plans for climate action and road safety; and (3) maintains certain bike facilities, as defined. The law would allow the city to designate itself as an "urban multimodal community" and be exempt from Coastal Act permit requirements for specified activities. [This analysis is based on the current draft of the bill. The bill's language is almost certain to change as it is amended through the legislative process.]

Critically, AB 1740 would apply to "[a]ny aspect of a housing development project . . . including any permits, approvals, or public improvements required for the housing development project" as long as the project is located in an area designated for "multiunit housing" in any of the city's planning documents, and the project is not located within certain areas along the coastline, wetlands, or environmentally sensitive areas. Such projects will not be subject to review or approval by the Coastal Commission.

Curiously, the City of Santa Monica (one of many notorious California cities that long-opposed housing development) is listed as a sponsor of AB 1740. Meanwhile, the bill's author Assemblymember Zbur, has had a mixed record on housing—going so far as to oppose SB 79 (2025), Senator Scott Wiener's major legislation to upzone areas around transit.

As proposed, however, the bill may be far too weak to effectively encourage housing development. As it is written, the bill only allows cities to apply for the multimodal community designation. The State Legislature and the Department of Housing and Community Development have been skeptical of entrusting local jurisdictions with enforcing state housing laws, which is why many new laws and regulations have limited localities' ability to deny housing projects.

### Conclusion and Implications

It is entirely foreseeable that very few, if any, coastal cities—often places fiercely opposed to new housing development—will apply for the "multimodal community" certification. The most consequential change here would be to allow for a development applicant, a person who would be eligible to apply for residency in such a development project or otherwise apply for any of the projects authorized in the bill, to apply for the city's certification on its behalf. The city would then retain that certification for subsequent projects moving forward.

AB 1740 represents a positive step for longtime housing-averse coastal communities. Housing advocates have long pushed for increased density near transit and in expensive coastal communities. To that end, some pro-housing entities are cosponsoring the bill. Still, it remains to be seen how many jurisdictions will take it upon themselves to seek the multimodal community designation. The bill will likely be amended as it works its way through the legislative process. At the very least, the current iteration of the bill would not impede housing development in the Coastal Zone. For more information on AB 1740, *see:* https://legiscan.com/CA/bill/AB1740/2025
(Braedon Mansouri)

## REGULATORY DEVELOPMENTS

# SITES RESERVOIR PROJECT MOVES FORWARD WITH DEPARTMENT OF THE INTERIOR'S RECORD OF DECISION—THE ROAD AHEAD

The U.S. Department of the Interior's recent approval of a federal Record of Decision (ROD) for the proposed Sites Reservoir Project is a major milestone for one of California's most debated new water-supply proposals. This approval advances federal environmental review and signals a clearer federal role, but debate over the project's permitting, financing, and operations continues. The Department of the Interior, Bureau of Reclamation's January 23, 2026, ROD essentially approves the project environmentally and allows it to move forward in a meaningful way.

### Background

The Sites Reservoir is a proposed 1.5 million acre-foot off-stream reservoir planned in the Sacramento Valley near the community of Maxwell, on the border of Colusa and Glenn counties.

An off-stream reservoir means the reservoir basin would be located away from the mainstem of the Sacramento River, as opposed to being created by damming the river itself. The current project footprint is west of Maxwell, in an area where the reservoir would be impounded by a dam and conveyance infrastructure designed to move water into and out of storage.

### How Off-Stream Storage Works

A helpful way to conceptualize Sites is as a large side-basin that can be filled during certain periods and used later. In terms of how it functions, water is captured during wet periods/high-flow windows when regulatory and operational constraints allow diversion without unacceptable impacts. Next is the actual conveyance of the water to the storage basin, with Sites' planning describing a combination of existing and new conveyance components, including use of regional canal systems and new project-specific facilities. Water is then stored for later use, with the reservoir designed to hold water when it is relatively more available, to be deployed during shortages. Deliveries are shaped by contractual arrangements among participating agencies as well as environmental criteria.

This framework helps to explain a central point of controversy, being that storage does not "create" more water but rather changes timing and availability. Whether that timing change is beneficial or harmful in a given year can depend on a number of hydrological, regulatory, and environmental factors that are not necessarily easy to predict.

### Impact of Federal Record of Decision

A federal Record of Decision is the Bureau of Reclamation's formal decision document under the National Environmental Policy Act (NEPA), issued after completion of the project's federal Environmental Impact Statement process. It documents the agency's selected alternative and its rationale, including mitigation and monitoring commitments.

The ROD is significant both for reducing a major layer of uncertainty by completing a key federal environmental decision step and for signaling a go-ahead for continued project development, given that the federal environmental review process has reached a defined endpoint. At the same time, an ROD is not a universal permit. For a project such as Sites, additional approvals and agreements still govern when and how the reservoir would be filled and operated.

### Federal Cost Share Framework

The Department of the Interior's announcement accompanying the ROD stated that the decision authorizes Reclamation to provide up to 25 percent of the total project cost. That figure is significant not only because it can reduce the amount that participating agencies must finance, but also because federal participation can influence the project's overall feasibility and political durability. Relative cost share can affect local and regional agency confidence, financial structure in terms of how public funds, bonds, and participant contributions are blended, and accountability expectations, with greater commitment of public money tending to increase outside scrutiny.

### Key Outstanding Approvals and Constraints

Now that a federal NEPA decision is in place, there are still several hurdles for a project of this magnitude. Water rights and diversion authority must be addressed, as the reservoir can only be filled if diversions are legally and operationally allowed. Additionally, the project must address what triggers diversion, what limits apply during sensitive periods, and how releases/deliveries interact with environmental and downstream needs. Finally, while the ROD reflects completion of federal NEPA review, other statutory pathways, such as species protections, may shape project commitments as agencies finalize permits and operating plans.

### Conclusion and Implications

The Department of the Interior's ROD moves the Sites Reservoir into a more advanced phase, but it is best understood as a milestone rather than any sort of final decision as to the project's ultimate footprint or effects. The project will still be shaped by state water-right outcomes, enforceable diversion and operating criteria, final financing commitments, and the project's ability to address ecological and Tribal concerns with sufficient specificity to withstand scrutiny. The Record of Decision by the Department of the Interior, Bureau of Reclamation, is available on Reclamation's website at: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=57349
(Carson Trigueiro, Darien Key, Derek Hoffman)

## RECENT FEDERAL DECISIONS

# WHEN ONE SPECIES' LIFELINE ENDANGERS ANOTHER: NINTH CIRCUIT CLARIFIES INJUNCTION STANDARDS UNDER THE ESA

*San Luis Obispo Coastkeeper, et al. v. County of San Luis Obispo*, ___F.4th___, Case No. 24-7807 (9th Cir. Dec. 3, 2025).

On December 3, 2025, the U.S. Court of Appeals for the Ninth Circuit issued an opinion in *San Luis Obispo Coastkeeper, et al. v. County of San Luis Obispo* addressing the limits of injunctive relief under the federal Endangered Species Act when court-ordered measures designed to protect one listed species may pose risks to others. The case arose from long-running disputes over the operation of the Lopez Dam and Reservoir in San Luis Obispo County, California, and the downstream effects of those operations on protected aquatic species.

Environmental organizations alleged that the County's management of the dam unlawfully harmed threatened South-Central California Coast steelhead trout by altering the natural flow regime of Arroyo Grande Creek. The U.S. District Court agreed and issued a mandatory preliminary injunction requiring the County to take affirmative steps to modify dam operations and pursue regulatory compliance. On appeal, the Ninth Circuit vacated that injunction, concluding that the District Court had not applied the correct legal framework when multiple protected species were potentially affected.

### Background

Arroyo Grande Creek supports several species listed under the Endangered Species Act, each with distinct habitat requirements. The steelhead trout is an anadromous fish that depends on seasonal high flows to trigger migration, maintain spawning habitat, and allow juveniles to reach the ocean. Federal agencies have designated the creek as critical habitat, recognizing its importance to regional steelhead recovery.

The creek and its associated lagoon are also home to the endangered tidewater goby and the threatened California red-legged frog. These species occupy different ecological niches and life stages that can be sensitive to rapid changes in flow. The County argued that flow releases intended to benefit steelhead could scour goby habitat or dislodge frog egg masses, potentially resulting in prohibited takes of those species.

This ecological overlap framed the central legal issue in the case: how courts should approach injunctive relief under the ESA when protecting one listed species may risk harm to another equally protected species.

### At the U.S. District Court

The plaintiff organizations sought a mandatory preliminary injunction compelling the County to alter dam operations, implement specific flow release schedules, clear debris from culverts, study fish passage alternatives, and expedite preparation of a habitat conservation plan and incidental take permit application. They emphasized the urgency of the steelhead's winter migration season and argued that immediate relief was necessary to prevent irreparable harm.

The District Court granted much of the requested relief, finding a likelihood of success on the ESA claims and concluding that irreparable harm to steelhead was imminent. While the court summarized expert testimony regarding potential impacts on the tidewater goby and red-legged frog, it did not explicitly weigh those impacts in its equitable analysis. Instead, it directed the County to consult with federal wildlife agencies during implementation of the injunction.

### The Ninth Circuit's Decision

On appeal, the Ninth Circuit focused on the nature of mandatory preliminary injunctions under the ESA. Traditionally, courts applying the Supreme Court's decision in *Tennessee Valley Authority v. Hill* have held that Congress displaced judicial balancing of equities and the public interest in ESA cases, pri-

oritizing species protection regardless of cost. Under that framework, courts typically consider only likelihood of success and irreparable harm.

The panel held that this approach does not apply cleanly where injunctive relief for one listed species may jeopardize another. In such circumstances, the rationale of *TVA v. Hill*, which addressed a conflict between economic development and species preservation, does not resolve the competing interests at stake. Rigid application of that rule, the court explained, risks favoring one species while ignoring concrete risks to others that Congress also sought to protect.

Accordingly, the Ninth Circuit clarified that when a court considers a mandatory preliminary injunction under the ESA that may affect other listed species, it must weigh the competing equities and the public interest as they relate to those species. This holding does not reopen consideration of economic or developmental interests, but it does require courts to confront interspecies tradeoffs directly.

### Application to the Lopez Dam Injunction

Applying this framework, the Ninth Circuit concluded that the District Court's analysis was incomplete. Although the lower court acknowledged evidence concerning the tidewater goby and red-legged frog, it did not resolve conflicting expert opinions or explain how potential harms to those species factored into the decision to grant mandatory relief. Reliance on future consultation with federal agencies was not an adequate substitute for judicial weighing of the equities at the preliminary injunction stage.

The panel also emphasized the heightened scrutiny applicable to mandatory preliminary injunctions, which compel affirmative action and alter the status quo before the merits are resolved. In complex ecological settings involving multiple protected species, that standard is particularly demanding. The court therefore vacated the injunction and remanded the case for further proceedings, instructing the District Court to weigh the evidence regarding all affected species and determine whether some or all of the requested relief is warranted.

### State Law Claims and Broader Context

The plaintiffs also brought claims under California Fish and Game Code section 5937, which requires dam owners to release sufficient water to maintain downstream fish in good condition. The Ninth Circuit agreed that, unlike the ESA, section 5937 does not displace the traditional four-factor test for preliminary injunctions. However, because the District Court's equitable analysis under state law mirrored its incomplete ESA analysis, the panel vacated the injunction on the state law claim as well.

### Conclusion and Implications

The Ninth Circuit's decision provides important guidance for courts and litigants confronting ESA disputes in ecosystems that support multiple protected species. While reaffirming the statute's commitment to species protection, the court recognized that ecological reality often involves tradeoffs that require careful, explicit judicial analysis.

For courts, it emphasizes the obligation to weigh those competing risks when considering mandatory preliminary injunctions, rather than deferring difficult questions to future agency processes.

For public agencies operating dams and other infrastructure, the opinion highlights the importance of comprehensive planning tools such as habitat conservation plans and incidental take permits.
The Ninth Circuit's opinion is available online here: https://cdn.ca9.uscourts.gov/datastore/opinions/2025/12/03/24-7807.pdf
(Darien Key, Derek Hoffman)

## RECENT CALIFORNIA DECISIONS

# FIRST DISTRICT COURT ADDRESSES CITY'S GOVERNMENT CODE SECTION 65913.4 STREAMLINED MINISTERIAL APPROVAL OF HOUSING PROJECT AS EXEMPT FROM CEQA REVIEW

*1000 Friends Protecting Historic Benicia v. City of Benicia, Unpub.*, Case No. A172005 (1st Dist. Jan. 16, 2026).

In an *unpublished* decision, the California Court of Appeal for the First Judicial District affirmed the trial court's denial of a petition for writ of mandate filed by a local preservation nonprofit challenging Benicia's ministerial approvals of two multifamily housing projects under Government Code section 65913.4. The Court of Appeal held that the projects qualified for streamlined ministerial review, were exempt from the California Environmental Quality Act (CEQA), and that the petitioner's procedural arguments lacked merit. The opinion provides insight into how the streamlined CEQA exemptions in section 65913.4 apply, particularly regarding interpretive questions about "historic structure" protections and procedural appeals under Public Resources Code section 21151.

### Factual and Statutory Background

The City of Benicia contains the historic U.S. Benicia Arsenal Historic District, a National Register–listed area comprising multiple historic buildings. In 2017, the California Legislature enacted Senate Bill 35's streamlined approval scheme, codified in Government Code section 65913.4, to expedite multifamily housing development that meets objective planning standards in jurisdictions with unmet regional housing needs. Section 65913.4 authorizes a ministerial approval process that replaces discretionary permits and relieves qualifying developments from CEQA review, treating an application "subject to the streamlined ministerial approval process" as not a "project" under CEQA.

In August 2022, the City of Benicia approved two development applications—the Park Road project (14 units with deed-restricted low-income units) and the Jefferson Ridge project (121 units with an affordability component)—under section 65913.4, finding them consistent with all objective zoning, subdivision, and design standards. The City also adopted a resolution acknowledging its insufficient progress toward moderate-income housing goals, thereby enabling broader use of the section 65913.4 pathway.

### Petition for Writ and Trial Court Ruling

Shortly after project approval, the nonprofit 1000 Friends Protecting Historic Benicia petitioned for a writ of mandate under Code of Civil Procedure section 1094.5, asserting that the City's approvals violated CEQA because the projects did not qualify for ministerial processing. Specifically, the petitioner argued: (1) the developments did not meet eligibility criteria for section 65913.4, including compliance with objective standards; (2) the approvals resulted in demolition within the Arsenal Historic District and thus could not be exempt; and (3) procedural appeal rights under Public Resources Code section 21151 were improperly denied. The trial court rejected these contentions, and 1000 Friends appealed.

### The Court of Appeal's Decision

#### Applicability of Streamlined Review and CEQA Exemption

On appeal, the court first evaluated whether the Park Road and Jefferson Ridge projects fit within the scope of Government Code section 65913.4. Under that statute, a qualifying development need only satisfy objective zoning, subdivision, and design standards, and be consistent with specified criteria including required affordability and location within residential or mixed-use zones. The court observed that both developments satisfied these objective requirements and thus were properly processed under the ministerial procedure. Because section 65913.4 expressly treats developments subject to the streamlined process as not constituting a "project" under CEQA, no environmental review obligation attached to the approvals.

### Interpretation of "Historic Structure" Exclusion

1000 Friends argued that the projects should not have qualified for ministerial review because they would result in the demolition of historically significant resources within the Arsenal Historic District. Government Code section 65913.4 includes an exception to ministerial processing for projects that would require demolition of a "historic structure" listed on any historic register. The court rejected the petitioner's broad reading that a historic district qualifies as a single "structure," noting that the statute uses the unqualified term "structure," which ordinarily means a building or similar construction. Applying this plain meaning, the court held that the Arsenal District did not constitute a single historic structure that would trigger the exclusion, and that neither project required demolition of any individually listed historic building.

### Procedural Appeals Under Public Resources Code Section 21151

1000 Friends also contended that the City erred by failing to consider or permit an appeal under Public Resources Code section 21151 (which governs appeals from determinations of CEQA exemptions or negative declarations). The court disagreed, explaining that ministerial approvals under section 65913.4 do not trigger discretionary CEQA processes and, therefore, section 21151's procedural mechanisms for environmental appeals do not apply. Streamlined ministerial approvals are not subject to additional administrative hearings under section 21151, and the timing for any permitted appeal had long since expired at the time the City explained the development approvals were ministerial and exempt from CEQA.

### Conclusion and Implications

The Court of Appeal affirmed the trial court's judgment in favor of the City of Benicia and real parties in interest, holding that the Park Road and Jefferson Ridge projects properly qualified for streamlined ministerial processing under Government Code section 65913.4, were exempt from CEQA, and that the petitioner's statutory and procedural arguments lacked merit. Costs on appeal were awarded to the City and real parties.

While *unpublished*, this decision underscores key interpretive points in applying Senate Bill 35's streamlined housing approval statute: most notably, that historic districts do not automatically disqualify projects under the "historic structure" exception, and that ministerial approvals under section 65913.4 are insulated from CEQA's environmental review and related procedural appeal mechanisms. Practitioners should ensure developments meet objective standards and carefully consider statutory definitions when challenging streamlined approvals. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/A172005.PDF
(Miguel Mauricio)

## THIRD DISTRICT COURT AFFIRMS DENIAL OF WRIT CHALLENGING CITY'S CERTIFICATION OF EIR FOR WAREHOUSE PROJECT, FINDS WATER SUPPLY ASSESSMENT COMPLIED WITH CEQA

*City of Vallejo v. City of American Canyon*, ___Cal.App.5th___,
Case No. C102070 (3rd Dist. Jan. 14, 2026).

In a published decision addressing environmental review requirements under the California Environmental Quality Act (CEQA), the California Court of Appeal affirmed the trial court's denial of a writ of mandate challenging the City of American Canyon's certification of an Environmental Impact Report (EIR) and approval of the Giovannioni Logistics Center Project, a 2.4-million-square-foot warehouse development. The court held that the EIR and its associated Water Supply Assessment complied with CEQA and related Water Code provisions, and that the lead agency did not prejudicially abuse its discretion in evaluating water supply information. The opinion provides important guidance on the sufficiency of water supply analyses in EIRs and the standards governing judicial review of CEQA challenges.

## Factual and Statutory Background

The Project consists of a large industrial warehouse complex proposed on undeveloped land within the City of American Canyon. Because American Canyon lacks its own groundwater sources, it relies on imported water, primarily from the California State Water Project and additional supplies purchased from the neighboring City of Vallejo under a long-standing 1996 water supply agreement. The Project was subject to environmental review under CEQA (Pub. Resources Code, § 21000 *et seq.*) and related Water Code provisions (Water Code, §§ 10910–10912), which require agencies to include a Water Supply Assessment in EIRs for projects requiring water service. An EIR and Water Supply Assessment were prepared and circulated, and after public review and comment, the City certified the final EIR and approved the Project in March 2023.

### Procedural History

The City of Vallejo filed a verified petition for writ of mandate in Napa County Superior Court challenging the adequacy of the EIR's water supply disclosures and compliance with CEQA and the Water Code. Specifically, Vallejo contended that American Canyon's EIR failed to disclose: (1) the actual volume of water purchased from Vallejo; (2) place-of-use restrictions associated with Vallejo's water rights; (3) the potential effects of emergency curtailments on water supply reliability; and (4) the implications of ongoing contract litigation between the cities. The trial court denied the petition, finding no prejudicial abuse of discretion, and entered judgment in favor of American Canyon and the real party in interest, Buzz Oates LLC. Vallejo appealed.

## The Court of Appeal's Decision

### Water Supply and CEQA Adequacy

The Court of Appeal reviewed the administrative record *de novo* to determine whether the EIR complied with CEQA's informational and analytical requirements, including whether the Water Supply Assessment provided sufficient support for the City's findings and conclusions. Citing long-established CEQA standards, the court reiterated that an EIR must include enough detail to enable informed agency and public decision-making, but is not required to provide exhaustive data or certainty about project impacts. Under CEQA, an agency may only be found to have prejudicially abused its discretion if the EIR fails to provide essential information needed for meaningful consideration.

### Disclosure of Vallejo Water Purchases

Vallejo argued that the EIR failed to disclose the actual volumes of water American Canyon purchased from Vallejo and thus obscured the most relevant component of the city's water supply. The appellate court disagreed, finding that the EIR and attached Water Supply Assessment adequately described the sources and quantities of water available, including treated water and raw water under the 1996 Agreement, and provided the necessary context for evaluating the Project's water demands. The court emphasized that CEQA does not demand scientific precision beyond what is reasonably feasible, particularly where the overall supply clearly exceeds the project's projected needs.

### Place-of-Use Restrictions and Emergency Curtailments

Vallejo further contended that the EIR should have included a more detailed analysis of place-of-use restrictions tied to Vallejo's appropriative water rights and the potential effects of emergency curtailment orders on the availability of water for the Project. The court applied CEQA's flexible "reasonable likelihood" standard, under which an EIR must show that water is "reasonably expected to be available" from identified sources, rather than guarantee absolute certainty. The appellate court held that the absence of additional place-of-use detail and specific curtailment projections did not render the EIR inadequate, as such information would not have materially changed the overall assessment of water sufficiency nor assisted informed public participation.

### Contract Litigation and Supplemental Disclosures

Finally, the court addressed Vallejo's argument that the EIR should have discussed ongoing contract litigation between Vallejo and American Canyon regarding water rights. The court concluded that the litigation's mere existence, without evidence it would affect the physical availability of water to serve the

Project, did not trigger a requirement for more detailed analysis. The appellate court noted that CEQA focuses on physical environmental effects, and speculation about legal disputes that do not change water supply reliability is insufficient to invalidate an EIR.

### Conclusion and Implications

The Court of Appeal affirmed the Superior Court's judgment, concluding that American Canyon did not prejudicially abuse its discretion in certifying the EIR or in its water supply analysis. The decision underscores that CEQA's informational requirements must be understood in light of practical constraints and that an EIR's water supply discussion need not resolve all contractual or legal uncertainties so long as it reasonably supports conclusions about availability. For practitioners and local governments, the opinion clarifies the scope of acceptable CEQA water supply disclosures and reinforces the deference afforded to lead agencies where the administrative record shows adequate informational support for environmental decisions. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C102070.PDF
(Miguel Mauricio)

## 'WATER, NO INVITE'? FIFTH DISTRICT COURT FINDS CITY OF FRESNO MAY BE LIABLE FOR PROPERTY DAMAGE CAUSED BY SWITCH TO ALTERNATE WATER SOURCE

*Micheli v. City of Fresno, Unpub.*, Case No. F085599 (5th Dist. Feb. 13, 2026).

In the *unpublished* decision *Micheli v. City of Fresno* the Fifth Appellate District reversed the trial court's grant of summary judgment in favor of the City of Fresno and its order sustaining the Plaintiffs' inverse condemnation claim without leave to amend. The court also affirmed certification of a class of Fresno residents. In doing so, the court held that merely utilizing tap water does not "invite" water into a home, thereby precluding inverse condemnation claims. It further clarified that liability arising from a water supplier's alleged noncompliance with the California Safe Drinking Water Act (SDWA) is not solely dependent on whether numerical drinking water standards were exceeded.

### Factual and Procedural Background

The City of Fresno historically relied on groundwater for its potable water supply, but declining reserves led the City to develop the Northeast Surface Water Treatment Facility (treatment facility) to treat and distribute surface water. The State Water Resources Control Board (SWRCB) ultimately amended the City's water supply permit to govern its operation.

A 1998 engineering report commissioned by the City warned that blending treated surface water with groundwater would produce more chemically aggressive water, likely causing corrosion in the City's predominantly galvanized iron piping. The report predicted instances of red water as well as the potential leaching of metals, including lead, which would necessitate pipe replacement. This report proved correct, and the facility's operation led to complaints of discolored water. However, the City denied responsibility and maintained the water was safe. By 2016, the City received hundreds of complaints and was forced to publicly acknowledge the issue and launched an investigation. Testing confirmed that the blended surface water destabilized existing pipe scales, caused corrosion, and in some instances resulted in lead levels exceeding the EPA's action threshold. Despite this, the City failed to adequately report its findings, leading residents to believe their plumbing—rather than the water supply—was the source of the problem.

Plaintiffs, Fresno residents whose galvanized pipes were allegedly damaged by the treatment facility's water, filed suit asserting inverse condemnation, negligence, nuisance, breach of contract, unjust enrichment, and breach of implied warranty causes of action. In 2021, the trial court sustained the City's demurrer to the inverse condemnation claim without leave to amend but certified the case as a class action. After Plaintiffs filed a fifth amended complaint, the court granted summary judgment for the City on the remaining claims. Plaintiffs appealed, and the City filed a protective cross-appeal.

## The Court of Appeal's Decision

### Inverse Condemnation

The Court of Appeal reversed the trial court's order sustaining the demurrer to Plaintiffs' inverse condemnation claim without leave to amend, concluding that Plaintiffs met their burden in establishing every element for that cause of action. Crucial to this inquiry was whether the Plaintiffs were 'singled out' for special harm and whether they had 'invited' the water into their homes under *Williams v. Moulton Niguel Water Dist.*, 22 Cal.App.5th 1198 (2018). In *Williams*, the plaintiffs' inverse condemnation claim failed because they were not treated differently from other water district customers and had voluntarily received the same treated water. Conversely, here, Plaintiffs possessed a reasonable argument that they were indeed singled out as the treatment facility's water was only distributed to residents of northeast Fresno. The court also noted that the 'invited' water rationale from *Williams* was called into question in *Shehyn v. Ventura County Public Works Agency*, 108 Cal.App.5th 1254 (2025), which rejected a bright-line rule barring inverse condemnation claims simply because homeowners turned on their taps. Customers rely on supplied water for sustenance and have no other alternative to meet those needs. They do not 'invite' water into their homes as they are the customers of a state-sanctioned monopoly. Because Plaintiffs' complaint predated *Shehyn*, it lacked these arguments. The court emphasized they should be granted leave to amend, and as a result, Plaintiffs' allegations would be sufficient to support an inverse condemnation claim.

The court then shifted its focus to the causes of action adjudicated via summary judgment. Plaintiffs abandoned their breach of contract and implied warranty claims, so the court assessed the validity of the negligence and nuisance causes of action.

### Summary Judgment: *Hartwell* and *In re Groundwater Cases*

The City relied on *Hartwell Corp. v. Superior Court*, 27 Cal.4th 256 (2002) and *In re Groundwater Cases*, 154 Cal.App.4th 659 (2007) to argue that Plaintiffs could not recover damages absent proof that the City violated numeric drinking water standards and was ordered by the State to correct those violations. The court rejected this reading. *Hartwell* and *Groundwater* involved challenges to drinking water standards themselves. Conversely, the Plaintiffs here alleged that the City fell below state SDWA standards and protocols. Because their claims were based on operational noncompliance rather than an exceedance of numerical limits, those cases were inapposite and did not bar suit.

### Government Code Section 815.6

The trial court previously granted summary judgment under Government Code section 815.6, which imposes liability on a public entity for breach of a mandatory duty if: (1) a legislative or constitutional enactment imposes a mandatory duty; (2) the duty was designed to protect against the kind of injury suffered, and (3) the breach was the proximate cause of the injury. The court determined that the City could meet each of these elements.

Mandatory duty: The City potentially breached its mandatory duties to adhere to its water supply permit in operating the treatment facility by failing to control corrosion, engage in sufficient monitoring, or report its noncompliance with the requisite drinking water standards to the state. The City lacked discretion to alter or forego these responsibilities.

Injury suffered: Both state and federal iterations of the SDWA aim to limit lead levels in water primarily by reducing water corrosivity, and the alleged injuries suffered by the Plaintiffs were the severe corrosion of the Plaintiffs' and class members' residential plumbing. It was therefore designed to protect against the type of injury suffered by the Plaintiffs.

Proximate cause: The City could not prove that Plaintiffs lacked sufficient evidence to support its causation claims and thus, the City could not shift the burden onto Plaintiffs to prove a triable issue of material facts existed. Further, evidence showed that the City knew a large portion of Fresno homes used galvanized pipes and that corrosive water could destabilize protective pipe coatings. Investigations confirmed increased acidity and corrosion following surface water introduction. Therefore, sufficient evidence existed to avoid summary adjudication regarding this element.

### Civil Code Section 3479

Under Civil Code section 3479, Plaintiffs need only show that the City caused something that

interfered with their property interest to prevail on a nuisance claim. The claim was not barred by Civil Code section 3482, which protects conduct expressly authorized by statute, because the City never proved it was authorized to deviate from the corrosion control protocols required by the City's water permit.

### Time Bar

The court then addressed whether the Plaintiffs' negligence and nuisance causes of action were time-barred. The City argued that the Plaintiffs' claims did not specifically allege that the nuisance was continuing, and therefore waived this contention, leading the three-year statute of limitations to run. However, the court disagreed. Plaintiffs alleged that the nuisance was of a continuing nature—ongoing corrosion caused by blended surface and groundwater. This tolled the limitations period. The court held the same regarding the negligence cause of action. Though some residents noticed discoloration as early as 2012, the City repeatedly assured customers the water was safe. Without knowledge that their plumbing had been damaged by corrosive water, Plaintiffs were not required to investigate further, which would cause the limitations period to run. Accordingly, summary judgment was improper on timeliness grounds.

### Class Certification

Finally, the court addressed whether the trial court erred in certifying the class. The certified subclasses consisted of owners of single-family residences with galvanized plumbing served by the treatment facility. The City contended that the questions of law or facts predominating the case were not common between the Plaintiffs, and that the trial court's conclusion that the use of surface water was the likely cause of harm to Plaintiffs' pipes was not based on substantial evidence. The court rejected these arguments and affirmed the class certification order.

To obtain class certification, plaintiffs must demonstrate: (1) an ascertainable and sufficiently numerous class; (2) a well-defined community of interest—embodied by predominance, typicality, and adequacy of representation factors; and (3) that a class action is superior to alternative methods of adjudication. The court concluded these requirements were met.

- Typicality—The named Plaintiffs' claims were representative of the class. Although two Plaintiffs reported isolated water discoloration events before the treatment facility began operating, those incidents were factually distinct from the later corrosion issues at issue.

- Predominance: Common issues between the members predominated. Each was affected by the treatment facility's supply of water, which allegedly caused corrosion in their galvanized pipes. Though the members may have had different types of piping or plumbing designs, each member was subjected to the same kind of harm from the same source of water. The variations between the members affected their individual amount of damages but did not preclude certification.

- Commonality: The court found no compelling reason why the relevant issues were not sufficiently common to the issues presented by the Plaintiffs' claims or why they precluded certification.

### Conclusion and Implications

The Fifth Appellate District's ruling in *Micheli v. City of Fresno* emphasizes that public water suppliers may be potentially liable for property damage arising from their operational decisions. The court rejected the notion that homeowners 'invite' harmful water into their homes by merely turning on the tap and held that compliance with numerical drinking water standards does not shield a public entity from liability when its decisions lead to pipe corrosion. Additionally, this case emphasizes that water suppliers must adhere not only to contaminant thresholds, but also to mandatory operational and reporting duties designed to prevent corrosion. A failure to do so could result in liability for private property damage. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/F085599.PDF
(Adam Nir)

# FIRST DISTRICT COURT UPHOLD'S CITY'S GENERAL PLAN EIR, ALLOWS DEFERRAL OF SITE-SPECIFIC ANALYSIS FOR TOWN-WIDE HOUSING ELEMENT UPZONING PROJECT

*The Committee for Tiburon LLC v. Town of Tiburon*, ___Cal.App.5th___,
Case No. A171983 (1st Dist. Feb. 2, 2026).

In *The Committee for Tiburon LLC v. Town of Tiburon* the First District Court of Appeal reversed the lower court's ruling, holding that the Town of Tiburon (Town) need not conduct site-specific environmental review for each of the sites identified in its housing element for upzoning at the General Plan level, in part because no actual projects had been proposed.

## Factual and Procedural Background

In 2020, the Town of Tiburon, with an *average* home price exceeding $2.8mil, began developing the next iteration of its General Plan, including the 2023-2031 Housing Element which identified 17 sites for proposed upzoning to accommodate an additional 916 residential units. One of those sites, Site H, featured two existing residential units across nine acres, and was zoned for a maximum of seven units. The 2023-2031 Housing Element promoted upzoning Site H to accommodate up to 118 units.

The General Plan draft Environmental Impact Report (DEIR) did not conduct site-specific environmental review of any of the suggested upzoned sites. Instead, the DEIR considered the impacts of the addition of 916 residential units across the Town as a whole, explicitly deferring site-specific environmental review to the project level as individual developers propose specific developments.

Upon certification, The Committee for Tiburon LLC (Petitioner) filed a petition for writ of mandamus seeking to set aside the Town's General Plan and housing element with regard to the upzoning of Site H. Relevant here, Petitioner asserted the EIR improperly omitted site-specific environmental review of development of housing on Site H. Marin County Superior Court ruled in favor of Petitioners, and the Town of Tiburon timely appealed.

## The Court of Appeal's Decision

The First District Court of Appeal ruled in favor of the Town, in part because analyzing site-specific impacts of developing housing on Site H would be speculative at the General Plan phase absent a specific project proposal. The court first explains the role of programmatic EIRs in relation to the approval of overarching planning documents such as General Plans and housing elements, and subsequent "tiered" EIRs for specific projects proposed under the umbrella of the overall program.

Such programmatic EIRs must analyze the general impacts of the planning document but need not assess site-specific environmental impacts until a specific tiered project has been proposed, as such analysis would be speculative. Program EIRs must include reasonable forecasting but need not "foresee the unforeseeable." California Environmental Quality Act (CEQA) review is:

> . . .not triggered where there is not yet an identifiable impact as until that point, the review process [cannot] be meaningful in the sense that it allows consideration of alternatives that could mitigate the impact.

Accordingly, the Court of Appeal held that the Town's Programmatic General Plan EIR properly focused on the general, Town-wide impacts of adding 916 units and the associated increase in population without addressing site-specific environmental impacts. Importantly, the EIR noted that future, site-specific environmental impacts would be properly deferred to later environmental review when specific projects are proposed because there is no guarantee that each site will be developed. The Housing Element Law does not require the Town to build housing; it only requires the Town to "have land designated and zoned to accommodate" it's RHNA.

The Court of Appeal stressed that site-specific environmental review at the General Plan stage would not accomplish either of the two primary goals of CEQA: identifying ways to reduce or avoid significant environmental impacts via alternatives analyses and mitigation measures. This is true even though the

Town's Housing Element Process produced a report on Site H specifically addressing the site's wetlands, watershed, streams, and drainage channels and proffering a few alternative means for developing up to 118 units; that report does not constitute a proposed project which would be ripe for CEQA review.

### What the Court Did Not Decide

Finally, the court did not decide whether the deferral of site-specific environmental review for a subsequently proposed project on any of the sites identified for upzoning is proper at the General Plan stage even if the proposed project may qualify for a CEQA exemption. Instead, the court noted that the AG and HCD argued that:

> . . .the possibility that a future housing project may qualify for a CEQA exemption does not, by itself, make site-specific impacts more feasible to analyze at the General Plan and housing element stage.

However, the court assumed that no such exemption would apply for purposes of this analysis.

### Conclusion and Implications

The First District Court of Appeal upheld Tiburon's General Plan EIR which upzoned sites across the Town to accommodate it's RHNA even though the EIR failed to analyze site-specific impacts of future housing developments on those sites, since that would be speculative as no specific projects had yet been proposed. Time will tell how far CEQA defense counsel will be able to stretch the language in this decision in defending similarly situated programmatic EIRs. The court's *partially* published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171983.PDF
(Blaine R. Dyas)

## CEQA, DEFERENCE AND THE 'SUBSEQUENT REVIEW' STANDARD—SECOND DISTRICT COURT AFFIRMS STANDARD OF REVIEW POST MND/EIR

*Ventura County Citizens Against Mega Gas v. City of Camarillo, Unpub.*,
Case No. B344843 (2nd Dist. Feb. 2, 2026).

The Second District Court of Appeal, in *Ventura County Citizens Against Mega Gas v. City of Camarillo*, an *unpublished* case, reaffirmed a critical principle in California Environmental Quality Act (CEQA) jurisprudence: once a project has a Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR) approved, subsequent modifications are evaluated under a markedly deferential standard.

The court's opinion is less about the environmental merits of a Costco warehouse and gas station and more about the demanding standard petitioners must satisfy when challenging an agency's reliance on CEQA's "subsequent review" provisions.

### Background

### 2007 Approval to 2022 Modification

The City of Camarillo (City) originally approved a 499,000-square-foot commercial center in 2007, supported by a MND. Subsequent approvals in 2011 and 2016 modified site layout and elevations but did not increase the project's maximum square footage. The project was never built.

In 2022, Costco applied to modify the approved project to construct a 163,177-square-foot warehouse and a 16-dispenser (32-position) fuel facility. The City adopted a second subsequent Mitigated Negative Declaration (SSMND), rather than preparing an EIR.

Petitioner Ventura County Citizens Against Mega Gas (VCCAMG) argued that the addition of a gas station and other changed circumstances required preparation of an EIR. The Court of Appeal disagreed.

### CEQA's Subsequent Review Provisions

The opinion turns on CEQA Guidelines section 15162 and Public Resources Code section 21166—the statutory and regulatory provisions governing modifications to previously approved projects.

Under section 15162, once an MND or EIR has been adopted, a subsequent EIR or MND is required only if substantial evidence shows either substantial changes in the project, or substantial changes in circumstances, require major revisions to the prior EIR/MND due to new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The court emphasized that the focus is narrow and that a project modification "is not an occasion to revisit environmental concerns laid to rest in the original analysis."

Under a 15162 analysis, the central issue is not whether Costco's proposal could have environmental impacts, but whether it introduced new or more severe impacts beyond what had already been analyzed in the prior MND and Subsequent MND.

### The Court of Appeal's Decision

The court followed the analytical approach described in *Friends of College of San Mateo Gardens* (*Friends I* and *Friends II*).

First, the court reviewed whether substantial evidence supported Camarillo's determination to proceed under CEQA's subsequent review provisions to prepare the Second Subsequent MND rather than preparing a new EIR. The court found that the City had properly relied on substantial evidence in its decision to proceed as it did. Once that first determination was made in accordance with 15162, the court reviewed whether substantial evidence supported the conclusion that no new significant impacts—or substantially more severe impacts—would occur as a result of the change to Costco.

The court reviewed the City's decision—not the trial court's—under a *de novo* standard as to legal questions, but applied the substantial evidence test to the City's factual determinations. Under that standard, the petitioner bears the burden of showing substantial evidence that changed circumstances required preparation of an EIR. VCCAMG failed to do so.

### The "Fair Argument" Standard—With a Twist

VCCAMG argued that they had established a "fair argument" that the project would cause new significant environmental effects, thus triggering an EIR.

The court acknowledged that an EIR is required if a project modification introduces previously unstudied and potentially significant environmental effects that cannot be mitigated. But in the subsequent review context, the "fair argument" standard operates within the constraints of section 15162. The question is not whether there is a fair argument of environmental impact in the first instance; it is whether there is substantial evidence of new significant effects or a substantial increase in severity compared to the previously approved project.

### Incremental Effects Only

The court repeatedly emphasized that its review was limited to incremental effects of the Costco proposal compared to the earlier approved project. The total maximum development (499,000 square feet) remained unchanged. The anchor tenant square footage increased by less than four percent. The City concluded these were not substantial changes requiring major revisions to the previous approved MND and subsequent MND.

As to the fuel facility, the court held that petitioners did not provide substantial evidence showing that the addition created new significant effects or increased severity beyond what mitigation could address.

The opinion underscores a recurring theme: generalized concerns, assumptions, and speculative impacts are insufficient. The court quoted the principle that opinions stating nothing more than "it is reasonable to assume" something "may occur" do not constitute substantial evidence.

### Mitigation as the Safety Valve

A key reason the City prevailed was its reliance on mitigation measures.

For air quality, the SSMND updated data, calculated toxic air contaminant levels, applied Ventura County Air Pollution Control District (VCAPCD) thresholds, and continued prior mitigation measures. It also required a monetary contribution to offset emissions.

The court repeatedly returned to the statutory language: an EIR is required only if new significant environmental effects cannot be avoided or mitigated through further revisions to project plans. Because the City found that mitigation reduced impacts to less-than-significant levels—and that finding was supported by substantial evidence—the petitioner could not satisfy section 15162.

### No "Disagreement Among Experts"

Another important aspect of the standard of review involved CEQA Guidelines section 15064, subdivision (g), which addresses "disagreement among expert opinion."

Petitioners argued that comments from the public required an EIR. The court rejected that contention, concluding there was no meaningful disagreement among experts that would compel further environmental review. Non-expert comments, business-owner concerns about competition, and speculative predictions about urban decay did not amount to substantial evidence of environmental impact.

### Conclusion and Implications

The decision concludes that the City properly determined that an SSMND—circulated for public review—was the appropriate vehicle to address changed circumstances because mitigation measures reduced new impacts to less than significant levels.

The court held that VCCAMG failed to establish a fair argument that new significant environmental effects were not effectively remediated by mitigation.

Although unpublished and not citable, *Ventura County Citizens Against Mega Gas* provides a clear illustration of how the standard of review, more than the underlying environmental issues, can determine the outcome. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/B344843.PDF
(Brent McManigal, Darien Key)

## 90 DAYS AND VESTING RIGHTS: SANTA CLARA COUNTY SUPERIOR COURT REJECTS SINGLE-WINDOW INTERPRETATION UNDER SB 330

*Town of Los Gatos v. Arya Properties, LLC, et al.*,
Case No. 25CV462276 (Santa Clara Super. Ct. Jan. 29, 2026).

In *Town of Los Gatos v. Arya Properties, LLC, et al.*, the Santa Clara County Superior Court addressed the interplay between the Housing Crisis Act of 2019 and the Permit Streamlining Act. The dispute centered on whether Government Code section 65941.1(e)(2) provides developers with a single 90-day opportunity to cure an incomplete development application or permits successive 90-day periods following multiple incompleteness determinations.

### Background

The Town of Los Gatos (Town) filed a complaint for declaratory relief seeking judicial guidance on the proper interpretation of section 65941.1, arguing that the vesting rights conferred by a preliminary application expire if a complete development application is not submitted within 270 days. Defendants Arya Properties, LLC (Arya) and Los Gatos Boulevard Properties, LLC (Boulevard) filed a cross-complaint alleging violations of the Permit Streamlining Act, the Housing Accountability Act, and related statutes. The Superior Court's order denied the Town's motion for summary judgment and summary adjudication.

### Statutory Framework and the Builder's Remedy

The case arose against the backdrop of California's housing crisis and a series of statutory reforms designed to accelerate housing production. The Housing Crisis Act, enacted through Senate Bill 330, introduced a preliminary application process that allows developers to "lock in" applicable development standards at an early stage. Once a complete preliminary application is submitted, vesting protections prevent local agencies from imposing new or changed standards that would otherwise apply.

Under section 65941.1(e)(1), a development proponent must submit a full development application within 180 days of filing a complete preliminary application. Section 65941.1(e)(2) then provides that if the public agency determines the development application is incomplete pursuant to section 65943, the proponent must submit the specific information needed to complete the application within 90 days of receiving written notice. If the information is not submitted within "the 90-day period," the preliminary application expires.

The Town argued that this language establishes a single 90-day cure period following the 180-day window, for a total maximum of 270 days to achieve completeness. Defendants maintained that section 65941.1(e)(2), read together with section 65943, contemplates an iterative process that allows multiple 90-day resubmission periods.

### Arya and Boulevard Projects

Both the Arya and Boulevard projects were submitted during a period when the Town lacked a substantially compliant housing element, triggering the ability to file a builder's remedy application. Each developer timely filed a preliminary application and then submitted a development application within the 180-day statutory window.

In each case, the Town issued successive incompleteness determinations within 30 days as required by section 65943. The developers responded within 90 days to each determination. After multiple rounds of review and resubmittal, the Town asserted that the preliminary applications had expired because the development applications remained incomplete after a second resubmittal. The developers appealed, asserting that vesting rights remained intact. These undisputed facts framed a purely legal issue regarding statutory interpretation.

### The Superior Court's Ruling

The court began with the statutory text. It rejected the Town's reliance on the phrase "the 90-day period" as evidence of a single, nonrenewable window. The court found that the use of the definite article "the" did not impose a numerical limitation. Rather, it functioned as a reference back to the previously mentioned 90-day timeframe.

Crucially, section 65941.1(e)(2) expressly incorporates section 65943, which governs completeness determinations under the Permit Streamlining Act. Section 65943 establishes an iterative process: after each resubmittal, the agency has 30 days to determine completeness, and upon any resubmittal, a new 30-day period begins. The statute does not limit the number of resubmissions.

The court concluded that reading section 65941.1(e)(2) in harmony with section 65943 supports multiple successive 90-day cure periods following successive incompleteness determinations. The statutes can be harmonized without conflict, and nothing in the text expressly restricts developers to a single resubmission.

Although the court found the statutory language sufficiently clear, it reviewed legislative history materials and guidance from the Department of Housing and Community Development (HCD). The legislative record did not support the Town's proposed limitation. The court also noted that HCD had consistently interpreted section 65941.1(e)(2) to allow the 90-day deadline to reset with each incompleteness determination.

While acknowledging that agency interpretations are not binding, the court found HCD's position persuasive and not clearly erroneous. It further observed that the Housing Accountability Act includes an interpretive directive that it be construed to afford the fullest possible weight to housing production.

On policy grounds, the court rejected the Town's concern that an iterative reading would permit indefinite vesting through bad faith resubmissions. The court found no evidence of such abuse in the record and noted that complex development projects often require multiple rounds of clarification to achieve completeness. Interpreting the statute to impose a single 90-day window would risk forfeiting vesting rights prematurely and could undermine the Legislature's stated objective of facilitating housing development.

### Conclusion and Implications

The Superior Court's ruling denied the Town's motion for summary judgment and summary adjudication, holding that section 65941.1(e)(2), read in conjunction with section 65943, allows multiple 90-day resubmission periods without automatic loss of vesting rights.

The decision reinforces an expansive reading of SB 330's vesting protections and signals judicial willingness to interpret housing statutes in favor of maintaining developer rights during iterative completeness reviews. For jurisdictions, the ruling limits the use of repeated incompleteness determinations as a mechanism to extinguish vesting. For developers, it affirms that compliance with each successive 90-day cure period preserves the protections conferred by a preliminary application.
(Darien Key)

# LEGISLATIVE UPDATE

This Legislative Update is designed to apprise our readers of potentially important land use legislation. When a significant bill is introduced, we will provide a short description. Updates will follow, and if enacted, we will provide additional coverage.

We strive to be current, but deadlines require us to complete our legislative review several weeks before publication. Therefore, bills covered can be substantively amended or conclusively acted upon by the date of publication.

## California Environmental Quality Act

**AB 2234 (Papan)—**This bill was introduced on February 19, 2026. This bill would change the definition of "geothermal exploratory projects" under CEQA to include equipment and activities necessary to establish interconnectivity between certain infrastructure. The bill would also exclude certain wells connecting to geothermal reservoirs from the requirement that wells be located at least one-half mile from geothermal development when they are capable of producing geothermal resources in commercial quantities.

**AB 2410 (Ellis/Gallagher)—**This bill introduced on February 20, 2026. The bill would exempt critical fuels reduction projects done in communities in high fire threat districts or very high fire hazard severity zones from the requirements of the California Environmental Quality Act (CEQA), so long as the reduction meets one of the listed criteria defining a critical fuels reduction project. Before determining that a project is exempt, the lead agency must hold a public meeting to hear and respond to public comments. If the lead agency determines the project is exempt, it must file a notice of exemption. The bill includes a sunset date of January 1, 2030.

**AB 2569 (Hart)—**This bill was introduced on February 20, 2026. The bill would revise the definitions of "environment" and "significant effect on the environment," to include impacts on "people," as specified. Specifically, the term "environment" would include the health and safety of people affected by the physical conditions at the location of the project and the term "significant effect on the environment" would include exposure of people, either directly or indirectly, to a substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment. The bill would also require that an EIR include a statement on any significant effects that may result from locating a proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions.

**AB 2552 (Farías)—**This bill was introduced on February 20, 2026. This bill would apply to a project that has a significant transportation impact that the lead agency has decided to mitigate by requiring contributing to the Transit-Oriented Development Fund for purposes of the Transit-Oriented Development Implementation Program. The bill provides that the contribution would constitute full and complete mitigation for that portion of the project's significant transportation impact and would be a legally sufficient mitigation measure under CEQA.

**SB 887 (Padilla)—**This bill was introduced on January 13, 2026, and referred to the Committees on Environmental Quality and Energy, Utilities and Communication on February 11, 2026. This bill would define "data center" to include a large-scale energy consumer that requires uninterruptible electricity to serve a facility housing servers and related data center equipment and software for the processing, storage, and distribution of data and would specify that data centers as defined are not ministerial projects that would be exempt from the requirements of CEQA. The bill would also specify that the existing CEQA exemption for an advanced manufacturing center does not apply to data centers. Lastly, the bill provides that the Jobs and Economic Improvement Through Environmental Leadership Act of 2021, which allows for certain CEQA streamlining benefits, applies to data centers, subject to certain conditions.

### Density Bonus Law

**AB 2433 (Alvarez)—**This bill was introduced on February 20, 2026. This bill aims to ensure that projects receiving a density bonus deliver affordable units as part of the project. To clarify the law's purpose, the bill would rename the "Density Bonus Law" to the "Affordable Homes Bonus Program." The bill would include additional benefits for projects that meet the affordable housing requirements by allowing developers to use a site's entire floor area ratio for residential use to calculate base density, rather than limiting density to the dwelling units per acre. The bill would also increase the number of incentives or concessions available to an eligible project. The bill would also make a housing development that satisfies the requirements for the existing CEQA exemption for housing projects consistent with applicable general plan and zoning requirements a use by right and subject only to ministerial review.

### Planning and Zoning Law

**AB 1751 (Quirk Silva)—**This bill was introduced on February 9, 2026, and referred to the Committees on Housing and Community Development and Local Government on February 23, 2026. The bill, called the "Missing Middle Townhome Ownership Act," would establish a new ministerial approval process for townhome development projects that meet specified objective planning standards. The bill would define "townhome" as a single-family dwelling unit of no more than three stories that shares a common wall or is separated from neighboring units by an air gap and would define "townhome development project" to mean a housing development project consisting entirely of residential dwelling units that satisfy this definition of townhome. The bill would authorize a local agency to disapprove a townhome housing development project only if it makes written findings that the proposed townhome project would have a specific, adverse impact on public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the impact. The bill would authorize a local agency to adopt an ordinance to implement its provisions and would provide that the adoption of such an ordinance is not a project under CEQA.

**AB 1997 (Lee)—**This bill was introduced on February 17, 2026. This bill would require a local government to appoint a project development manager for certain projects to ensure that the permit application process moves quickly. Among other provisions to expedite permit processing, the bill would also shorten the timeline for final approval of a building permit during the post-entitlement phase of permitting.

**AB 2074 (Haney)—**This bill was introduced on February 18, 2026. This bill would state the intent of the Legislature to enact legislation to support transit-oriented housing development, high road labor standards, and downtown revitalization in major transit cities, as defined, establish land use standards appropriate to transit-oriented development in regional centers, streamline ministerial approval for developments that meet high road labor standards in regional centers, and establish a revolving loan fund to finance construction of qualifying developments in regional centers.

**AB 2601 (Lee)—**This bill was introduced on February 20, 2026. This bill would require that an application for a proposed housing development containing no more than two residential units within a single-family residential zone be eligible for concurrent processing with an application for a parcel map for an urban lot split, as provided. The bill would authorize a local agency to condition issuance of building permits, grading permits, or certificates of occupancy for a proposed housing development on the applicant first obtaining approval and recording a parcel map for eligible parcels pursuant to the existing urban lot split provisions. The bill would also allow the primary dwellings in an urban lot split under these provisions to be developed or converted to condominiums upon request of the applicant, or, if the housing development includes an existing unit, allow the applicant to request a condominium conversion for that unit pursuant to state and local law.

**AB 2676 (Gallagher)—**This bill was introduced on February 20, 2026. This bill would amend the Housing Crisis Act of 2019 to expand the prohibition against enacting a development policy, standard, or condition that has the effect of imposing or enforcing a moratorium on housing development within all or a portion of the jurisdiction of the county or city to also prohibit these policies, standards, or conditions within the sphere of influence of a city. The

bill would define "moratorium or similar restriction or limitation on housing development" to include, but not be limited to, the electorate of a county or city subject to these provisions from exercising its referendum power in a manner that has the effect of extending an existing moratorium or similar restriction or limitation on housing development. The bill would also prohibit a county or city subject to these provisions from enforcing an initiative or referendum imposing a moratorium or other similar restriction on or limitation of housing development until the initiative or referendum receives approval from the Department of Housing and Community Development (HCD). The bill would provide that if HCD denies approval of the initiative or referendum, as specified, the initiative or referendum would be deemed void. This bill would also revise the definition of "reducing the intensity of land use" to mean any action that would individually or cumulatively reduce the site's residential development capacity, including reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations. This bill would also provide that an action brought to enforce its provisions is subject to a three-year statute of limitations and that the bill's provisions apply retroactively to any pending action or proceeding.

**SB 677 (Wiener)—**This bill has been revived as a two-year bill and would now make clarifying changes to implement SB 79 (2025). The bill would revise the definition of "high-frequency commuter rail" to mean a public commuter or intercity rail station with a total of at least 48 passenger trains on average per weekday across all directions, not including temporary service changes of less than one month or unplanned disruptions, and not meeting the standard for high frequency commuter rail, at any point in the last three years.

**SB 908 (Wiener)—**This bill was introduced on January 22, 2026. This bill would add clarifying language and technical guidance to SB 79 (2025) and add a select set of San Franciso Bay area ferry terminals to the scope of its provisions.

**SB 1014 (Grayson)—**This bill was introduced on February 10, 2026, and referred to the Committees on Local Government and Housing on February 18, 2026. This bill would require cities and counties to disclose all infrastructure requirements (such as sidewalks and sewers) within 30 days of submittal of a housing application and would prohibit the local agency from adding new requirements more than 30 days after submission of a permit application.

**SB 1116 (Caballero)—**This bill was introduced on February 17, 2026, and referred to the Committees on Housing and Local Government on February 26, 2026. This bill would streamline the construction of smaller, lower-cost "starter" homes for home ownership. The bill would amend existing planning and zoning requirements for certain housing development projects to require that height limits apply exclusively to the physical height of a building rather than the number of floors. The bill would also prohibit imposition of specified front or internal setbacks or a standard that would have the effect of physically precluding the construction of up to the number of units allowed for by minimum lot sizes. The bill would also require that provisions related to ministerial approval of housing developments on certain subdivided lots be interpreted liberally in favor of producing the maximum number of total housing units.

**SB 1117 (Cervantes)—**This bill was introduced on February 17, 2026, and referred to the Committees on Housing and Local Government on February 26, 2026. This bill would amend Planning and Zoning law requirements for Accessory Dwelling Units (ADU) to make it less costly to build ADUs by removing the ability to impose financial penalty on ADUs over 750 square feet.

**SB 1216 (Blakespear)—**This bill was introduced on February 19, 2026. This bill would create a new housing leadership designation to recognize and reward cities and counties that demonstrate measurable success in building new homes. To qualify for a housing leadership designation, the bill would require that the jurisdiction have submitted a complete annual progress report for the preceding five years and, as applicable, that it meet specified requirements relating to housing production that vary based on whether the jurisdiction is an affordable jurisdiction, an unaffordable jurisdiction, or an extremely unaffordable jurisdiction, as those terms are defined.
(Amy Higuera)

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